



JUDICIAL MERIT SELECTION COMMISSION
Sworn Statement to be included in Transcript of Public Hearings

**Circuit Court
(Incumbent)**

Full Name: **Benjamin Hellams Culbertson**
Business Address: **P.O. Box 479; Georgetown, SC 29442**
Business Telephone: **(843) 545-3030**

1. Why do you want to serve another term as a Circuit Court Judge?

I have served as a Circuit Court Judge (excluding my appointment as a Special Circuit Court Judge) since July, 2007. I feel that my experience, knowledge and demeanor enable me to decide contested matters more expeditiously and manage the circuit court more efficiently. I have enjoyed my judicial career thus far and want to continue as a circuit court judge for the rest of my professional career.

I also feel that the 15th Judicial Circuit is better served with my judicial office (Circuit Court Judge, 15th Judicial Circuit, Resident Seat 2) remaining in Georgetown County. This seat has always been held by a Georgetown resident with the other resident seat being held by an Horry County resident (currently Judge Steven H. John). The 15th Judicial Circuit consists of two counties with each having a resident judge.

My age, years of service and contributions to the South Carolina Judicial Retirement System also provide economic stability for my family and me as I near retirement age (though I do not anticipate retiring for quite some time).

2. Do you plan to serve your full term if re-elected?

Yes.

3. Do you have any plans to return to private practice one day?

No.

4. Have you met the Constitutional requirements for this position regarding age, residence, and years of practice?

Yes.

5. What is your philosophy regarding *ex parte* communications? Are there circumstances under which you could envision *ex parte* communications being tolerated?

My philosophy regarding *ex parte* communications is the same as stated in the *South Carolina Appellate Court Rules*. Rule 501, Cannon 3(B)(7), SCACR, prohibits all *ex parte* communications with a judge except:

- (1) where circumstances require such communications for scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits provided the judge reasonably believes that no party will gain a procedural or tactical advantage from the communication and the judge promptly notifies all parties of the substance of the communication and allows an opportunity to respond;**
 - (2) to obtain advice of a disinterested expert on the law applicable to the proceeding if the judge gives notice to the parties of the person consulted and the substance of the advice and affords the parties reasonable opportunity to respond;**
 - (3) to consult with court personnel whose function is to aid the judge in carrying out adjudicative responsibilities or with other judges;**
 - (4) with the consent of the parties to mediate or settle matters pending before the judge;**
 - (5) those communications expressly permitted by law, such as the issuance of temporary restraining orders under limited circumstances.**
6. If you disclosed something that had the appearance of bias, but you believed it would not actually prejudice your impartiality, what deference would you give a party that requested your recusal? Would you grant such a motion?

After disclosing something that has the appearance of bias, a judge must recuse himself or herself if requested by a party or lawyer to the proceeding.

7. How would you handle the appearance of impropriety because of the financial or social involvement of your spouse or a close relative?

If the financial or social involvement did not affect my impartiality, I would advise the parties and lawyers, on the record, of the involvement that gives the appearance of impropriety. I would then allow them to consider, out of my presence, whether to waive my disqualification from presiding over the matter. If any of the parties or lawyers do not waive my disqualification, I would then recuse myself from the proceeding. If, on the other hand, all parties and lawyers waived my disqualification on the record, I would then continue to participate in the proceeding.

8. What standards have you set for yourself regarding the acceptance of gifts or social hospitality?

A judge shall not accept, and shall urge members of the judge's family residing in the judge's household, not to accept, a gift, bequest, favor or loan from anyone except for:

- (1) a gift incident to a public testimonial, books, tapes and other resource materials supplied by publishers on a complimentary basis for official use, or an invitation to the judge and the judge's spouse or guest to attend a bar-related function or an activity devoted to the improvement of the law, the legal system or the administration of justice;**
- (2) a gift, award or benefit incident to the business, profession or other separate activity of a spouse or other family member residing in the judge's household provided the gift, award or benefit could not reasonably be perceived as intended to influence the judge;**
- (3) ordinary social hospitality; and**
- (4) a gift from a relative or friend, for a special occasion (i.e., wedding, birthday, anniversary) provided the gift is fairly commensurate with the occasion and relationship.**

9. How would you handle a situation in which you became aware of misconduct or appearance of infirmity of a lawyer or of a fellow judge?

If I receive information that a judge or lawyer has engaged in misconduct, then Rule 501, Cannon 3(D) of the *South Carolina Appellant Court Rules* states that I should take "appropriate action," which may include direct communication with the judge or lawyer who

has committed the violation, other direct action if available, and reporting the violation to the appropriate authority. If I have knowledge that a judge has committed a violation of the Code of Judicial Standards that raises a substantial question as to the judge's fitness for office or, if I have knowledge that a lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to the lawyers honesty, trustworthiness or fitness as a lawyer, then I must report the violations to the appropriate authority, agency or other body.

If I have a reasonable belief that the performance of a lawyer or another judge is impaired by drugs of alcohol, or by a mental, emotional, or physical condition, Rule 501, Cannon 3(G), SCACR, requires me to "take appropriate action, which may include a confidential referral to an appropriate lawyer or judicial assistance program." Appropriate action means action intended and reasonably likely to help the judge or lawyer in question address the problem and prevent harm to the justice system. Depending upon the circumstances, appropriate action may include speaking directly to the impaired person, notifying an individual with supervisory responsibility over the impaired person, or making a referral to an assistance program.

Depending on the gravity of the conduct that has come to the judge's attention, the judge may be required to take other action such as reporting the impaired judge or lawyer to the appropriate disciplinary authority.

10. Have you engaged in any fund-raising activities with any social, community, or religious organizations? Please describe.

I have not engaged in any fund-raising activities with any social, community, or religious organizations.

11. Do you have any business activities that you would envision remaining involved with if reelected to the bench?

No.

12. How do you handle the drafting of orders?

Whenever appropriate, I draft my own orders. If I direct an attorney in the proceeding to prepare an order, I state on the record or in writing to all attorneys the contents desired in the order. Before presenting the order to me for signature, I require the attorney preparing the order to provide all other attorneys with a copy of the

proposed order and give those attorneys opportunity to respond to the proposed order.

If an attorney is preparing the order, I also log into my computer calendar the date the order is due and the attorney that is to prepare the order.

13. What methods do you use to ensure that you and your staff meet deadlines?

I log tasks and deadlines on a program in my computer and check it daily. I also have my secretary prepare a monthly report of matters taken under advisement.

14. What is your philosophy on “judicial activism,” and what effect should judges have in setting or promoting public policy?

A judge may be “judicially active” to promote the efficiency and integrity of the judicial system. However, a judge must never do anything that adversely affects the integrity of the judicial system. A judge should never be influenced by public policy or opinion, and must be impartial at all times. A judge must ensure that all litigants receive equal treatment.

15. Canon 4 allows a judge to engage in activities to improve the law, legal system, and administration of justice. What activities do you plan to undertake to further this improvement of the legal system?

If re-elected, my primary undertaking to improve the legal system will be to continue working diligently and efficiently to bring disputes to trial quicker. I strongly favor scheduling orders that set deadlines for discovery, pretrial motions and dates upon which a case must be ready for trial. I am less inclined to grant continuances to cases that have been pending for long periods of time. To the extent that time permits, I work through bar associations and judicial conferences to improve the efficiency of the legal system.

16. Do you feel that the pressure of serving as a judge strains personal relationships (i.e. spouse, children, friends, or relatives)? How do you address this?

The pressure of serving as a judge has not strained my personal relationships and I do not feel that the pressure of serving as a judge in the future will strain personal relationships. I have a philosophy that one must work when it is time to work and devote

time to one's family and friends when that time dictates. I have never had to "choose" between family, friends and my duties as a judge.

17. The following list contains five categories of offenders that would perhaps regularly appear in your court. Discuss your philosophy on sentencing for these classes of offenders.
 - a. **Repeat offenders:** These offenders should receive the maximum or near maximum sentences permitted by law, especially if the offender has repeated the same offense multiple times or engaged in more serious offenses than previously committed.
 - b. **Juveniles (that have been waived to the circuit court):** The primary consideration in these cases is the reason for the waiver of the juvenile to circuit court. If the family court waives the case to the circuit court because the juvenile committed a violent crime and the juvenile system cannot provide adequate protection to the public, then the sentence in the circuit court should be incarceration as permitted by law to protect the public. If, on the other hand, the juvenile commits a non-violent crime but, the family court waives jurisdiction to the circuit court because of the juvenile's age and the maximum sentence permitted under a juvenile system does not provide adequate time for rehabilitation, then the sentence may be for a longer period of probation to provide adequate time for rehabilitation.
 - c. **White collar criminals:** First time offenders of white collar crimes should be sentenced the same as first time offenders of non-violent blue collar crimes. Repeat offenders of white collar crimes should be sentenced the same as repeat offenders of non-violent blue collar crimes.
 - d. **Defendants with a socially and/or economically disadvantaged background:** If the defendant commits a violent crime that endangers the public, then little to no consideration is given to the socially and/or economically disadvantaged background of the defendant. If, on the other hand, the defendant is a first time offender of a non-violent crime and is a prospect for rehabilitation, then the defendant's social and/or economic background may be a valid consideration in sentencing.
 - e. **Elderly defendants or those with some infirmity:** If the defendant commits a violent crime that endangers the public, then little to no consideration is given to the defendant's age or infirmity. If, on the other hand, the defendant is a first time

offender of a non-violent crime and is a prospect for rehabilitation, then the defendant's age and/or infirmity may be a valid consideration in sentencing.

18. Are you involved in any active investments from which you derive additional income that might impair your appearance of impartiality?

No.

19. Would you hear a case where you or a member of your family held a *de minimis* financial interest in a party involved?

No, unless I advised all parties and attorneys on the record of the financial interest, allowed the parties and attorneys to discuss the matter out of my presence and, the parties and attorneys waived my disqualification on the record and asked me to hear the case.

20. Are you a member of any organization or association that, by policy or practice, prohibits or limits its membership on the basis of race, sex, religion, or national origin? If so, please identify the entity and explain if this organization practices invidious discrimination on any basis.

I am a member of the Georgetown Cotillion Club (a 100+ year old social dance club) and the Winyah Indigo Society (a 250+ year old historical society) which limit memberships to males. Both of these organizations are purely private organizations whose membership limitations are not constitutionally prohibited. I am also a member of Duncan Memorial United Methodist Church (a 250+ year old church) which limits membership to Christians. To my knowledge, none of these organizations have any non-white members.

None of these organizations practice invidious discrimination on any basis. Membership in these organizations is not a violation of Rule 501, Cannon 2(C), SCACR.

21. Have you met the mandatory minimum hours requirement for continuing legal education courses?

Yes.

22. What do you feel is the appropriate demeanor for a judge and when to these rules apply?

At all times, a judge shall act in a manner that promotes public confidence in the integrity and impartiality of the judiciary. A judge

shall require order and decorum in proceedings before the judge. And a judge shall be patient, dignified, courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity.

23. Do you feel that it is ever appropriate to be angry with a member of the public, especially with a criminal defendant? Is anger ever appropriate in dealing with attorneys or a pro se litigant?

A judge should never show his or her anger. However, a judge must maintain decorum and order in the courtroom and when in chambers. Showing anger at any time may make the judge appear biased. However, failure to maintain decorum and order may give the impression that the judge is not in control of the court and diminish the judge's ability to exercise his or her authority.

I HEREBY CERTIFY THAT THE ANSWERS TO THE ABOVE QUESTIONS ARE TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

Benjamin H. Culbertson

Sworn to before me this _____ day of _____, 2020.

(Signature)

(Print Name)

Notary Public for South Carolina

My commission expires: _____