



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

Circuit Court
(Incumbent)

Full Name: Honorable Diane Schafer Goodstein

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

I am still inspired by the work I get to do. It started with my election in 1998 and continues to grow even to this day. I would be privileged to be able to continue to do the work I love so long as I am able to do so effectively and as an asset to our State.

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. I have made no plans beyond my time as a trial judge.

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?

I begin with the dictates of Canon 3 B (7) that states "A judge shall not initiate, permit, or consider ex parte communications or consider other

communications made to the judge outside the presence of the parties concerning a pending or impending proceeding except that:

(a) Where circumstances require, ex parte communications for scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits are authorized; provided:

- (i) The judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex partes communication, and
- (ii) The judge makes provision promptly to notify all other parties of the substance of the ex parte communication and allows an opportunity to respond.

(b) A judge may obtain the advice of a disinterested expert on the law applicable to a proceeding before the judge 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.

(c) A judge may consult with court personnel whose function is to aid the judge in carrying out the judge's adjudicative responsibilities or with other judges.

(d) A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to mediate or settle matters pending before the judge.

(e) A judge may initiate or consider ex parte communications when expressly authorized by law to do. For example the judge is allowed to have ex parte communications when a party is seeking a preliminary restraining order; Indigent criminal defendants are allowed to request funding in ex parte fashion to preserve the attorney client privilege to prepare their defenses; Ex parte communications are allowed by counsel for a criminal defendant to request a mental status evaluation, a final example is that there is ex parte communication when the court is hearing a motion to relieve counsel in order to preserve the party's attorney-client

privilege. It is important to note however that ex parte does not mean off the record. In many of these examples the ex parte communications are on the record and the record sealed. I will conclude this answer with a particularly poignant experience I had involving an ex parte communication which context was for an emergent scheduling situation. I took a call from an attorney on a Friday afternoon requesting his case be continued because he was on the way to the hospital and he knew something was wrong. I told him I would call the other side and tell them of our call and if his concerns were accurate, we would work out the issue of the scheduling of his trial set for Monday and right then to care for his health. My clerk and I called the other attorney and described what had occurred. The lawyer who had called died several hours later. I believe because the issue was only one of the scheduling and emergent and we promptly called the other attorney the ex parte communication was acceptable. Clearly there was no advantage to be had and I was personally glad this attorney's last hours were at least alleviated of this concern.

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?

A judge must be mindful at all times to respect and comply with the law and must act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. Canon 2A states "A Judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities."

A judge's decision to recuse is a matter that is discretionary with the judge. The test is whether one who is viewing the circumstances would reasonably believe that the judge lacked impartiality. If I have raised an issue by a disclosure of what could be perceived as having the appearance of bias and one of the party's requests recusal I am likely to recuse. The reason is if I believe something has the appearance of bias, then I have determined that reasonably one could perceive bias, therefore if either party is concerned about my hearing

the matter (without other circumstances involved which could be important) I would recuse and grant the motion.

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

The commentary to Canon 2 states "The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality and competence is impaired."

It is clear that I would not hear matters involving clients of my attorney husband or attorney daughter.

However, because of the appearance of impropriety I do not hear contested matters involving the attorney members of the Charleston County Aviation Authority or contested matters involving members of their Law firms.

The same is true of the attorneys in the firm which employs our daughter.

However, I do not recuse if the financial involvement is de minimis.

I do not recuse myself when the social involvement of my spouse, daughter, or close relative is normal casual social interaction. If the relationship is such that the commentary to Canon 2 is invoked I would recuse.

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

If I have been asked to give a talk or teach a seminar, I would accept refreshments if they were offered to the group at large. If it is necessary that I travel overnight to give a talk or teach I will accept a room offered for my use for the required period only. Also, there are bar associations who entertain the judiciary as a whole at judicial conferences and I have attended those. I have had counties provide a meal for me along with the jury and other court personnel as we are waiting for a jury to

complete their deliberations. Other than the reciprocal normal hospitality with friends, I do not allow litigants or attorneys to buy me meals or give me gifts or anything of value outside of perhaps the smallest gesture (such as a note or flowers upon the death of a parent from a longstanding friend). It is my normal practice, if they do I return the gift with a note however if the gift is perishable I re-gift it and send a note of explanation. I do not accept anything of value from a litigant perhaps with the exception of a county where I have held court and the county through the clerk of court provided snacks (counties are often litigants). In 2014 I was the portrait recipient from the Association of Justice and while money was raised for the portrait and gifts made to the University of South Carolina School of Law and Charleston School of Law I am unaware of the amounts or the donors. To my knowledge I have been provided nothing of value which could connect a lawyer or litigant with a case pending before me.

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?

I would conduct myself in accordance with Canon 3D(1) and (2) as follows:

1. A judge who receives information indicating a substantial likelihood that another judge has committed a violation of the Code of Judicial Conduct should take appropriate action. A judge having knowledge that another judge has committed a violation of the Code of Judicial Conduct that raises a substantial question as to the other judge's fitness for office shall inform the appropriate authority. According to the commentary "Appropriate action" may include direct communication with the judge; other direct action if available (for example Lawyers helping Lawyers) and reporting the violation to the appropriate authority or other agency or body.
2. According to Canon 3D(2) "A judge who receives information indicating a likelihood that a lawyer has committed a violation of the Rules of Professional Conduct contained in Rule 407 SCACR should take appropriate action. A judge having knowledge that a lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to the lawyer's honesty;

trustworthiness or fitness as a lawyer in other respects shall inform the appropriate authority. Just as with judges "appropriate action" may include direct communication with who has committed the violation, other direct action if available and reporting the violation to the appropriate authority or other agency or body obviously what action I would take depends much on the circumstances presented.

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

In 2014 I was the portrait recipient from the Association of Justice and while money was raised for the portrait and gifts made to the University of South Carolina School of Law and Charleston School of Law I am unaware of the amounts or the donors.

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?

Sometimes I draft them myself with the help of my law clerk. However, because of the volume of cases that I handle, particularly non-jury matters, I will often request proposed orders from the attorneys. If I have decided the matter at the hearing, I will ask one of the attorneys to draft a proposed order. If I have taken the matter under advisement sometimes, I ask that both sides draft proposed orders. Other times I will reach a decision reduce the decision to a memorandum sending the memo to all attorneys and ask one to prepare a proposed order. When the orders arrive, and now usually they do so electronically, my administrative assistant will log them in and my law clerk will compare the proposed order to our hearing notes and evaluate the document for consistency with the notes, perhaps memorandum and perform any assigned research. If questions arise, we may review the hearing transcript, but this occurs infrequently. Once my clerk's review is completed, the order, research, memorandum and notes come to me for review and editing. Once an order is completed, it is signed,

whether electronically or hard signed and its completion recorded in our records.

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

I handle deadlines in multiple ways. First, I will have my administrative assistant and law clerk calendar the deadline. Second, I have developed along with my staff over time an excel type spreadsheet that is maintained both by my administrative assistant and my clerk. When a matter is heard it is listed on the spreadsheet with identifying information such as name, case number, attorneys, county heard, dates proposed orders are due, and the like. Certain information is color coded to indicate issues such as age of the case, conclusion of the case, and tardiness of tasks. Once an order is signed it is entered into the system. The first page is copied and maintained for further documentation. Third, for cases under advisement a report is filed monthly with court administration accounting for those matters. As a final check my administrative assistant will periodically reach out to counties where I have held court to be sure they are not showing work incomplete.

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

I particularly believe in stare decisis. I believe in the three branches of government. I believe that it is incumbent upon the legislature to enact the laws and upon our Supreme Court to define and interpret where necessary the statutory and common law. It is my job to enforce the plain language of legislation interpreted and if a matter has been interpreted by the Appellate Courts the circuit court by stare decisis must follow. I do not believe it is the role of the Circuit Court to set public policy.

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?

I am currently honored to instruct at the new Circuit Judge's School and the new Magistrate's school; I have participated in the SC Supreme

Court Institute in the past. I currently serve on the Circuit Judges Advisory Committee. I am a panel chair for the Commission on Judicial Conduct. I am so honored to participate in the mentoring of new judges and have presided with the following during one of their four week mentoring period: Hon. Deadra Jefferson, Hon. Michelle Childs, Hon. Carmen Mullen, Hon. Benjamin Culbertson, Hon. Larry Hyman, Hon. R. Knox McMahon, Former Hon. Kristin Harrington, Hon. Edgar Dickson, Hon. Rob Stillwell, Hon. Deandra Benjamin, Hon. Craig D. Brown, Hon. Stephanie McDonald, Hon, Maite Murphy, Hon. Scott Sprouse, Hon. Letitia Verdin, Hon. Jocelyn Newman and Hon. Courtney Clyburn Pope.

I have also participated in numerous observations with many magistrates. I have treasured these experiences and look forward to continuing in these roles so long as I am helpful. I have taught civics to high schoolers, participated in moot court and mock trials and helped grade submitted papers on topics involving the law. I have been the circuit court's representative to the ABA Convention and participate in seminars in Business Court conferences. I have also had the opportunity to guest lecture at Charleston School of Law and participate in practice court exercises. I have also lectured and participated in discussion panels for many legal seminars. I hope to continue in all these activities.

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

I believe that serving as a judge does not strain personal relationships.

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:
- b. Juveniles (that have been waived to the Circuit Court):
- c. White collar criminals:
- d. Defendants with a socially and/or economically disadvantaged background:

e. Elderly defendants or those with some infirmity:

I have reviewed this question repeatedly and I have come to the conclusion that I cannot address these individuals as "classes of offenders". I cannot see the people who I sentence as "classes of individuals". They are individuals that I try in the time available to know as much about them as I can. These characteristics along with others, such as ability to access community resources, degree of mental illness, physical illness, maturity, educational background, family support opportunity for treatment and especially the facts of each occurrence are all essential along with other relevant information in assessing the reprehensibility of the conduct and the likelihood of recidivism. I believe that if a lesser sentence will accomplish what a longer one will, one ought to impose the lesser. I believe most times the worst crimes are those of violence to innocent victims.

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?

Yes. This participation is allowed by canon 3E(1)(d)(iii) which allows the court to hear such a matter so long as the interest is de minimis and could not be substantially affected by the proceedings. If the interest known to the judge is more than de minimis that could be substantially affected, the interest must be disclosed and disqualification considered very strongly. If the interest was more than de minimis I would refrain from hearing.

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.

No.

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

Yes.

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

As I consider this question, I am mindful of Canon 3B (3) and (4) as well as Canon 4A (1-3).

In accordance with the Canons while a judge must maintain order and decorum, she must be patient, dignified and courteous to all the judge deals within an official capacity.

With regards to a judge's extra judicial activities a judge must conduct all the judge's extra-judicial activities so that they do not:

1. Cast reasonable doubt on the judge's capacity to act impartially as a judge.
2. Demean the judicial office, or
3. Interfere with the proper performance of judicial duties.

Finally, whether officially or in one's personal life it is very important to never express bias or prejudice particularly as it relates to race, sex, religion, national origin, disability or age. Offhand remarks or jokes must be free from remarks which could be perceived as expressing bias or prejudice.

Finally, Canon 1 establishes that a judge is to participate in establishing, maintaining, and enforcing high standards of conduct and "shall personally observe these standards so that the integrity and independence of the judiciary will be preserved."

A Judge should always be patient and respectful to all who appear before her or him. A Judge should listen to those who come before her or him. I think a Judge should be mindful that litigation is stressful,

frightening and can be very expensive. I think a Judge should create as best as possible a structured, calm and efficient environment to allow for parties and their attorneys to work. I believe this environment supports greatly the quest for the truth and justice. A Judge's conduct both on and off the bench must endeavor to be such that generates public confidence in the integrity of the judiciary.

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?

Anger no. In my experience it is difficult to be angry and think. I do believe that a judge can use a measure of strictness to control her or his courtroom, impress upon counsel or a litigant appropriate conduct, underscore expectations of the court and the like. True anger on the part of a judge can be a precursor to a loss of control in the courtroom. I think that when as a sitting judge you become angry it is imperative to take a break, assess and compose before reconvening.

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

Shane A. Hodges

Sworn to before me this 19th day of July, 2021.

Karen M. Parker

(Signature)

Karen M. Parker

(Print Name)

Notary Public for South Carolina

My commission expires: 4/20/2026