



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

Circuit Court
(New Candidate)

Full Name: Amy McCulloch

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

I have been honored to serve the people of Richland County as Probate Judge for the last twenty-two (22) years having been elected six (6) consecutive times. I was born in Hooks, Texas in quite humble circumstances, but raised with the mindset that service to community is a duty. As a child, our family moved to Columbia, where I attended Richland One public schools, graduating from Dreher High School and later, the University of South Carolina. Throughout my life, I've strived to continually challenge myself by asking "Can I do this better with my God given skills, and what else can I do?" With this application, I am again challenging myself with this opportunity to grow and hopefully further serve my state.

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

Yes

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

I have often heard "you never say never", but my intention, if elected to this judgeship, would be to continue, if fortunate enough to be elected and re-elected, until the mandatory retirement age of seventy-two (72).

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?

During my years as a lawyer in the Solicitor's Office, in private practice, and as a sitting judge, I have become quite familiar with the purpose of that prohibition and the reasons for the rule. Probate practice frequently involves parties

represented by lawyers and unrepresented parties wholly unfamiliar with that rule. This presents challenges to ensure fairness to all parties involved. In our Court, I insist on email communications or alternatives, which provide the same information to all parties, whether represented or unrepresented. We review all communications received to ensure compliance with the rule and if all parties have not been included in the email or written communication, we forward the information to all. Our staff and judges are all trained and well versed in the importance of ensuring equal information to all and we preach the avoidance of any unfair advantage from ex parte communications.

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?

Our South Carolina judicial system places tremendous emphasis on the avoidance of impropriety and the avoidance of even the appearance of impropriety. In the course of a hotly contested matter, rulings and interaction with the parties can easily result in misunderstood remarks, especially in cases involving unrepresented parties who do not understand the judicial rules and processes. I explain my rulings on the record to avoid the possibility of a misperception of bias. In my written orders, I try very hard to communicate fully and clearly to those receiving the order, being mindful when there are no lawyers involved to assist with interpretation. Though infrequently occurring, I regard motions to recuse/disqualify with serious concern and I weigh the underlying basis for the concern of bias against the knowledge that these are contests in which one side will win and the other will lose. That underscores the reality of judicial contests, and the importance of seeing these contests to conclusion, rather than delaying finality unless the recusal motion is well-founded or the appearance of bias simply cannot be resolved. My goal in every case is to see it to its fair conclusion with no bias in favor of anyone. I strive to leave the litigant satisfied that the process was fair and even handed, even though they may be unhappy with the final decision.

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

Our Court rules provide the method for dealing with this issue. Judges should always report to the parties and their counsel such financial or social involvements when such a situation presents itself, engage with the parties on the subject, and seek their position on going forward once they have that information. If a party states opposition, then the hard decision to recuse or not must be made with a full explanation on the record.

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

Over my twenty-two (22) as Probate Judge, I have declined meals, offers of gifts, and honorariums for speeches. My standard approach is to explain my appreciation for the offer, along with my duty to avoid any appearance of impropriety. I often suggest they show their appreciation by making a donation to a charity of their choice, if they feel so inclined.

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?

Sadly, I have experienced both situations more than once as a judge. Regarding the occurrence of lawyer misconduct, I have met privately with the offending attorney and advised that he or she to self-report to the appropriate Bar and Court committees. I have also had to make such reports to the appropriate Bar and Court committees. To the extent required by circumstances, the information may have to be reported to opposing counsel or an unrepresented litigant, and the procedural rulings might have to be reconsidered or adjusted to rectify any injustice.

In situations in which a lawyer's ability and competence comes into question during a case, which sadly has also occurred, I have at times discussed my concerns with the lawyer directly, sometimes with the lawyer's partners or lawyer's friends, if I am aware of such, and sometimes all of the above. My goal is to insure first, the protection of the client's interests, and second, to help the lawyer address the problems. I have, on several occasions, contacted the Lawyers Helping Lawyers program of the Bar, who have been fantastic in their assistance and their intervention.

10. 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

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

No. In my capacity, I have not solicited or engaged in fundraising for any political, social, or religious organization. As a publicly elected judge, the only judgeship of that type in our judicial system, I have worked with the Bar and with our statewide Probate Association to ensure all probate judges are aware and adhere to the specific and unique limitations imposed on probate judges in their public elections. I have adhered carefully to the rules requiring me to form an election committee that raises campaign funds and have not personally solicited or accepted campaign contributions as our unique set of rules require.

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

I have none presently nor do I envision such.

13. If elected, how would you handle the drafting of orders?
My general practice is to request that the prevailing party in a matter submit a proposed order and to simultaneously provide it to opposing counsel. From time to time, I have requested that both counsel submit proposed orders to assist me in ruling, much like an additional oral argument. I prepare the order myself in situations in which an unrepresented party prevails or there is no represented party, which is the majority of our cases. We are fortunate to have a law clerk, who sometime may provide a working draft of an order to further their educational experience, but all orders are reviewed and finalized by me.
14. If elected, what methods would you use to ensure that you and your staff meet deadlines?
In my current capacity as the elected Probate Judge for Richland County, I have a number of administrative duties in addition to my judicial duties. I am responsible for organization of the docket, supervision of two associate probate judges, personnel matters for all twenty-four (24) members of my staff, budgeting, and calendaring and scheduling of court matters with the assistance of our staff. If elected, I would likely carry over many of the calendaring and follow up procedures we use daily, adjusting for the changes of organization in transitioning to the circuit bench situation. I currently utilize and would likely continue, the case and order timeline auditing to track case progress, age of cases, timeliness of orders after motions or trials to ensure the efficient disposition of case business. Interaction with litigants to keep case progress moving forward is a key component of the judicial system that I would continue as a Circuit Court Judge.
15. What is your philosophy on "judicial activism," and what effect should judges have in setting or promoting public policy?
In my capacity as Probate Judge, I have promoted greater awareness and emphasis on the specific area of mental illness, especially in my interaction with law enforcement agencies, as that is one of our Court's primary areas of work. I view the circuit bench in a wholly different perspective. I do not believe it is appropriate to promote social or public policy issues from the circuit bench position.
16. Canon 4 allows a judge to engage in activities to improve the law, legal system, and administration of justice. If elected, what activities do you plan to undertake to further this improvement of the legal system?
If elected and after the orientation period, I would hope to be able to continue my involvement with the Bar through participating in their continuing education seminars and events, as well as other permissible activities that benefit the profession and the public's appreciation of our judicial system.

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

As a sitting judge for the last twenty-two (22) years, my family, including my attorney husband and my son, is well acquainted with the job, its pressures and nuances. My family has been and continue to be understanding and supportive. My friends and relatives are also aware of my commitment to the role of judge and respectful of the boundaries the job entails.

18. 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:

People offend for a variety of reasons and recidivism is a serious problem. As a judge, I have always made the effort to master the facts of every case in an effort to “do justice”. As a prosecutor, my goals were to understand the facts, try to understand the motivations that caused the offender’s actions, and to present the jury, trial judge, or sentencing judge with the information necessary to serve the ends of justice. My experience as a prosecutor, practicing attorney, and judge has given me an appreciation for the multiplicity of factors that bring an offender to Court. Certain repeat offenders may need significant punishment, while other offenders’ offenses may be the consequence of undetected or untreated mental conditions, addiction, or other environmental conditions that may suggest less punitive measures would be appropriate. Victim input is always a critical, but not a defining component of sentencing decisions. Having prosecuted many serious offenders, I will not shirk from my duty to impose what the law requires or the facts suggest, but I will be mindful of the axiom of “tempering justice with compassion” where appropriate.

b. Juveniles (that have been waived to the Circuit Court):

Generally, only the most serious juvenile offenders are waived to General Sessions to be treated as an adult. Again, the same factors and considerations including victim impact and input come into play. Youthful offenders may be more susceptible to rehabilitation efforts, so those avenues should be considered in fashioning an appropriate resolution for all parties.

c. White collar criminals:

From a public perception, white collar crime and sentencing present real challenges in order to ensure public confidence in our system of justice. In all white collar crimes, restitution to those victimized is a priority. After that, the factors of motive or causation, likelihood of recidivism, and imposition of a properly punitive sentence all must be considered. White collar offenders should not receive a free pass just because they regret the offense and can make restitution.

d. Defendants with a socially and/or economically disadvantaged background:

Social or economic disadvantage, as well as age or infirmity are certainly important factors in fashioning an appropriate sentence. Obviously, the situations of a shoplifter of food, who steals to feed his family, or a shoplifter with a mental illness or mental disability offer dramatically different sentencing considerations. Facts matter, as do motivations. I believe my previous experience as a prosecutor and a judge will allow for a fairer “world view” at sentencing.

e. Elderly defendants or those with some infirmity:

Please see above for my answer to both d. and e.

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

No

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

No

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

Yes

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

A judge has the responsibility to maintain control of their courtroom all while providing each party a fair and full opportunity to be heard. This is not always an easy task, but the judge should remain patient and respectful while maintaining control. Many times, a person’s perception of court may come from movies or television shows where drama and theatrics rule the day. However, in real life, parties look to the judge in the courtroom to maintain civility and dispense justice. A judge can do this by maintaining a calm demeanor, along with a dispassionate and patient, but firm disposition. Lawyers offer up a wide range of skills, tactics, theatrics and personality. My duty as a judge is to control the courtroom and lead the parties through an organized presentation of their cases, while pushing the process to a fair conclusion, all the while being aware of the public interest and perception and expectations. It is not always an easy task.

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 pro se litigants?

Anger is not appropriate in a courtroom with any party. However, there is an appropriate time in which a judge must exercise control over escalation within a courtroom and sometimes that involves purposeful volume. Parties in a courtroom can become emotional and it is the judge's role to temper that emotion and deescalate it. I have had to tell people in my courtroom to lower their voices and to take their seat. I have had to order a break in the proceedings to regain control and decorum, and to give the parties a chance to calm down and regroup. When situations like that arise, it is the judge's role to be "the adult" in the room to refocus the parties on the important issues at hand while maintaining the proper respect and decorum within the courtroom.

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

Ayu. McCulloch

Sworn to before me this 12th day of July, 2021.

Lori Elrod
(Signature)

Lori Elrod
(Print Name)

Notary Public for South Carolina

My Commission Expires: 6-28-2022