



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

**Supreme Court/Court of Appeals
(Incumbent)**

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

Yes.

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

No, but I certainly would if I could no longer serve ~~as~~ a judge.

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

Yes.

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

For trial court judges, *ex parte* communications regarding scheduling and other administrative matters are at times necessary, particularly for a Chief Administrative Judge. On the Circuit Court, my office generally handled such scheduling by e-mail, with copies sent to all attorneys and unrepresented parties involved in a matter. Substantive *ex parte* communications are generally forbidden; however, in accordance with Canon 3(B)(7)(d), I did confer with attorneys (and occasionally, parties) to assist them with working toward settlement when all parties consented. Additionally, when I was Chief Administrative Judge for General Sessions in the Ninth Circuit, I handled funding requests from attorneys representing indigent

defendants. These requests were usually addressed *ex parte*. During this same time period, I once met *ex parte* with a defense attorney who was experiencing a mental health crisis during a hearing in a case in which the defendant was facing a murder charge. With the consent of the deputy solicitor, I met with the attorney in a conference room outside the courtroom. We then went back on the record, rescheduled the hearing, and later took steps to seek help for the attorney.

Ex parte communications are not necessary for scheduling and administrative purposes at the Court of Appeals as our Clerk's Office handles all scheduling of arguments. Although there are certain limited situations at the appellate level for which the rules reference *ex parte* communications, I have yet to encounter such a situation.

5. 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?

I would look to Canon 3(E), which addresses situations in which a judge's impartiality might reasonably be questioned. Generally, I would recuse myself unless the request was not reasonable. In those situations, recusal simply pushes a problem litigant off for another judge to have to handle. Canon 3(B)(1) requires a judge to hear and decide assigned matters except in those cases in which disqualification is required. I have not found recusal questions to be an issue at the Court of Appeals, but we did have some interesting parties and motions in Circuit Court.

Where there is no recusal motion, but I disclose something that might give an appearance of bias, I use the process of Canon 3F, which addresses remittal of disqualification. I automatically recuse myself from all matters involving a former law partner and her firm. My sister and several first cousins are also attorneys; I do not hear their cases. I recently became engaged to an attorney in Charleston; I recuse myself from all matters involving him or his law firm. For these individuals, my disqualification is noted in our C-Track case management system, and these cases are not assigned to me. If I discover a conflict when reading the materials in an assigned case, I email our Clerk of Court, she finds a substitute judge, and she assigns me a substitute case.

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

Many of my friends are attorneys, and we enjoy ordinary social hospitality. My attorney friends do not give me gifts, but I do accept invitations to attend dinners and conferences hosted by attorneys and organizations such as the South Carolina Bar Association, South Carolina Association for Justice, South Carolina Defense Trial Attorneys Association, Injured Workers' Advocates, and South Carolina Chapter of the American Board of Trial Advocates (ABOTA). I report any accommodations or conference fees provided by such groups on my annual Rule 501, SCACR, disclosure report. I follow Canon 4(D) when I am invited to attend an event where I, or others, might question whether my attendance is appropriate. If I continue to have a concern about an event, I simply decline the invitation. That being said, I think it is important that judges not isolate themselves from the legal community (and the community at large). We need to be accessible to attorneys and others to hear their input and concerns.

7. 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?

My response would depend upon whether I had actual knowledge of a violation raising a substantial question as to the fitness or trustworthiness of the lawyer or judge or whether I had simply received information suggesting that a violation or problem might have occurred. Under Canon 3(D), I would "take appropriate action" depending on the specifics of the situation.

Two such situations occurred while I was Chief Administrative Judge for General Sessions in Charleston and Berkeley Counties. In the first instance, I halted a guilty plea and continued the matter when it became apparent that an elderly attorney was experiencing a cognitive problem; we reached out to the gentleman's family to assist him, and the defendant was appointed substitute counsel. In the second situation, I met with the attorney outside the courtroom to see if she needed help with her medical issue, and we rescheduled the hearing. This meeting took place with the consent of the deputy solicitor. Lawyers Helping Lawyers stepped in before it became necessary to notify the Office of Disciplinary Counsel of any actual misconduct, and we were able to find additional counsel for the defendant.

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

Other than giving personal charitable donations and assisting my mother with her donations, I have not engaged in fund-raising activities since my election to the Circuit Court.

9. How do you prepare for cases that come before you?

At the Court of Appeals, we receive our list of panel cases a few months before we hear the oral arguments. Initially, we do a conflict review to make sure we have no disqualification before the law clerks put their time and work into the matter. The cases assigned to our panel are distributed among my law clerks, and I let them know my early inclinations on a matter as they review and research the issues. This evolves as we all become more familiar with the case.

My law clerks and I discuss the cases and any questions they have as they prepare their bench memos. They exchange, review, and edit their draft bench memos and then send them to me for review, revising, and supplementing as needed. I review the briefs and records on appeal, and I review any cases relating to the issues raised. I then edit and update the bench memos and send them back to my clerks for final editing before we distribute them to our panel.

For cases assigned to our panel for which I am not the author, my review is similar, but I also review the bench memos prepared by the chambers of the authoring judge, as well as any cases and statutes I find pertinent before we have oral argument.

On the Circuit Court, we would pull the file to learn about the case and any prior motions or orders that might impact the pending issue. I reviewed the memoranda submitted by the parties and ran my own Westlaw searches to check for applicable statutory or appellate authority that the lawyers may not have provided. I found that hearings and trials ran much more smoothly when the judge was familiar with the file and applicable law.

I have served as a substitute judge at our Supreme Court on several occasions; my preparation there is similar to my preparation for cases authored by other judges at the Court of Appeals.

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

“Judicial activism” is inappropriate. The role of the judiciary is limited to hearing justiciable “cases and controversies” that come before the particular court. A judge’s duty is to interpret the law, according to the Legislature’s intent, and in accordance with the United States and South Carolina Constitutions. The primary source for the declaration of public policy in South Carolina is the General Assembly. Our “courts assume this prerogative only in the absence of legislative declaration.” *Citizens’ Bank v. Heyward*, 135 S.C. 190, 133 S.E. 709, 713 (1925).

11. 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?

As noted in my Personal Data Questionnaire, I am often asked to speak or to serve as a panelist at law-related events in our community and across the state. I participate in the Judicial Observation (JOE) Program every year and attend luncheons, dinners, and other events hosted by South Carolina legal organizations. I often participate as a judge in law school Moot Court competitions and other events, and I try to be approachable and available to attorneys and trial judges. During the early months of the COVID-19 shutdown, I met frequently with our Clerk of Court in Charleston and fielded questions almost daily from attorneys and judges across the State. This was a difficult time, and attorneys were confused (and frustrated) by the differing approaches various counties and individual judges took regarding the handling of hearings and docket issues. This same frustration persists with respect to protection requests and docket management across the state. I have spoken in past years with members of the Supreme Court about this problem and, more recently, at a Bar committee meeting seeking to address the protection issue. A centralized process for attorney protection requests remains in the pilot stage.

From 2016-2018, I served on an ad hoc committee chaired by Judge John Geathers to streamline and update the Internal Operating Procedures of the Court of Appeals.

12. 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?

Until the last few years, no. On occasion, I need to remind friends or family members that I am not permitted to discuss politics, but most are very supportive. It can be a little awkward when I have to explain to someone why I cannot attend a particular event or participate with a fundraising effort, but people are generally understanding about this. I am also careful about making sure I understand the nature of some of the events friends invite me to attend (i.e., nothing partisan or political, nothing that would require me to fundraise, nothing concerning under the Canons, etc.).

Last year, I became engaged to an attorney in Charleston, and he is often involved in contentious legal matters. I recuse myself in cases involving him or his law firm. Despite this, I have been made aware that a young opposing attorney in one of his pending Circuit Court matters has made comments impugning the integrity of the judicial process when she experiences frustration in the litigation. I became concerned after statements made in a court filing, at a deposition, and in a website article were brought to my attention because the statements "indicated a substantial likelihood" that the young lawyer's actions triggered the judicial disciplinary responsibility set forth in Canon 3(D) of the Canons of Judicial Conduct. *See* Canon 3D(2)(“A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct contained in Rule 407, SCACR, should take appropriate action.”). I responded as Canon 3(D) requires and will provide additional information and documentation should the Commission need it.

13. Are you currently serving on any boards or committees? If so, in what capacity are you serving?

At the request of Clerk of Court Julie J. Armstrong, I currently sit on the Security Committee for the Charleston County Judicial Center.

14. Please describe your methods of analysis in matters of South Carolina’s Constitution and its interpretation by explaining your approach in the following areas. Which area should be given the greatest weight?
 - a. The use and value of historical evidence in practical application of the Constitution:

South Carolina courts and the United States Supreme Court have given great weight to past practices and historical evidence when interpreting constitutional provisions. *See e.g., Williams v. Morris*, 320 S.C. 196, 464 S.E.2d 97 (1995) (noting the Governor presented “overwhelming” historical evidence in his brief). I analyze such information in the context of the particular case or controversy before our Court and according to the text of the legislative enactment.

b. The use and value of an agency’s interpretation of the Constitution:

Although we may give deference to an agency’s interpretation of its own regulations, to permit an agency to interpret the Constitution would allow improper executive encroachment into judicial responsibilities. This would implicate (and likely violate) the “separation of powers” doctrine. *See S.C. Const. Art. I, Section 8*. Nor may an agency overstep the powers that the General Assembly has lawfully delegated to it. As the United States Supreme Court recognized last year in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 412 (2024), “[c]ourts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority as the [Administrative Procedures Act] requires.” *See also Colonial Pipeline Co. v. SCDOR*, 443 S.C. 448, 458-59, 905 S.E.2d 129, 134-35 (Ct. App. 2024) (acknowledging *Loper Bright’s* overruling of *Chevron*).

c. The use and value of documents produced contemporaneously to the Constitution, such as the minutes of the convention:

In interpreting the Constitution (or a statute), the cardinal rule of statutory construction is to ascertain and effectuate the intent of the Legislature. This begins with an examination of the text of the statute or constitutional language. Committee minutes are not controlling as to the intent behind, or the interpretation of, the Constitution, but they may be of significant use in providing historical context and interpreting ambiguous language where the text itself is unclear.

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

No.

16. 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.

Yes. I am a sustaining member and past president of the Junior League of Charleston, Inc., which is an organization of women committed to promoting voluntarism, developing the potential of women, and improving the community through the effective action of trained volunteers. Its purpose is exclusively educational and charitable, and membership is open to all women.

I am also a member of the South Carolina Women Lawyers Association. In December 2019 and April 2023, I was honored to present the South Carolina applicants for admission to practice before the United States Supreme Court.

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

Yes.

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

I strive to be courteous and patient and to treat everyone with dignity and respect. While this can difficult at times because a judge must also maintain order in the courtroom, there is never an excuse for rudeness or "robitis." These rules apply twenty-four/seven, and they are important to a judge's credibility.

19. Is there a role for sternness or anger with attorneys?

There is no role for anger, but sternness is, at times, necessary. This is less of an issue at the appellate level as the environment there is more formal than in the trial courts. Judges must recognize that even seasoned trial attorneys may react oddly to the circumstances of a difficult trial or oral argument. Court proceedings can be emotionally charged and stressful for parties, attorneys, jurors, and court staff. A judge must understand this while still maintaining control of the courtroom for purposes of decorum, to preserve the integrity of the proceeding, and to better work with court personnel

to provide a safe environment for everyone involved in the process. Candor to the court and respect for others is critical; sternness is sometimes required if an attorney or party persists in lacking an understanding of this.

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

Stephanie L. McDonald

Sworn to before me this 19 day of August, 2025.

Sarah W. Thornton

(Signature)

Sarah W. Thornton

(Print name)

Notary Public for S.C.

My Commission Expires: 11/4/30

