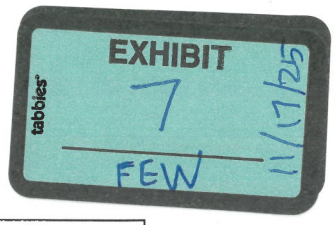

JUDICIAL MERIT SELECTION COMMISSION
Sworn Statement to be included in Transcript of Public Hearings

Supreme Court/Court of Appeals
(Incumbent)

Full Name: John Cannon Few

Business Address: 1231 Gervais Street
Columbia, SC 29201

Business Telephone: (803) 734-1925

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

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?

   My behavior in this regard is governed by Canon 3B(7) of the Code of Judicial Conduct, which provides I "shall not initiate, permit, or consider ex parte communications," except under the limited circumstances set forth in the Canon. Yes, I can envision tolerating ex parte communications in those specific limited circumstances set forth in Canon 3B(7). In my experience, however, for an Associate Justice, such communications are rarely—if ever—required by the circumstances.

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?

Whether or not something would "actually prejudice [my] impartiality" is not the primary consideration in this situation. The standard is whether my "impartiality might reasonably be questioned." The question states the "something" does have "the appearance of bias." Therefore, my recusal would be required whether it was requested or not, unless my disqualification were waived by all parties as provided for in Canon 3 F.

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

The acceptance of gifts and social hospitality is governed by Canon 4D(5). I have set the standard of strict compliance with this Canon, and I will continue to adhere to that standard.

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?

If I received information indicating a "substantial likelihood" of misconduct, then I would comply with Canon 3D(1) or (2).

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

No

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

As an Associate Justice of the Supreme Court, cases come before me in four general categories: (1) cases before the Court on petitions for a writ of certiorari to the Court of Appeals; (2) cases before the Court pursuant to Rule 203(d)(1)(A)(ii), SCACR, before the Court pursuant to Rule 204(b), SCACR, or in the Court's original jurisdiction; (3) attorney disciplinary cases and bar admissions; and (4) motions. I approach each category with the same determination to understand the true issues in the case and resolve it according to law.

My preparation for cases in the first category begins as I am preparing for the Court's monthly "Agenda" meeting, which is when we consider certiorari petitions for the first time. I read the petition, any return and reply, and if available, a memorandum from the central staff attorneys' office. To the extent helpful to determine my vote on whether the Court should grant the petition for certiorari, I also read important portions of the record on appeal and applicable constitutional, statutory, and case law.

If the Court denies the petition for certiorari at the Agenda meeting, the case is over. If the Court grants the petition, or takes the petition under advisement for further consideration, my work on the case continues after the Agenda meeting.

If the Court grants the petition for certiorari, I promptly discuss the case with my law clerks and share with them my ideas on the case and what research I want done during the period of time in which the parties are preparing their briefs. My senior law clerk then allocates the cases among my clerks for preparation. Each clerk will then spend a couple of hours with the case to gain a basic understanding of the facts, the issues on appeal, how those issues arose in the proceedings below, how the Court of Appeals resolved the case, and the legal principles that appear to govern the appeal. I will then discuss the case with the assigned law clerk to give her or him guidance on how to proceed. Usually within a week of when the case is placed on the Court's calendar for oral argument, I will have a conference with all my law clerks present in which each clerk explains his or her case. From this discussion, I continue to identify the true issues in each case. This is important because of the limited role of the Judiciary. Recognizing this limited role, a court must do as little as possible to resolve the case or controversy before it. In order to restrict the action of the Court in this manner, it is essential to identify the true issues before the Court.

I then direct my law clerk assigned to the case as to how I believe he or she should continue to analyze the case. This includes the task of collecting, understanding, and discussing with me, all of the constitutional, statutory, and case law that could relate to the resolution of the issues we have identified. For the next two to three weeks, my law clerk and I will have

frequent conferences by phone or in person on our progress in understanding the case. During this time, my law clerk will be working to prepare a bench memorandum. As needed during this time frame, I read the briefs or portions of the record. Through the course of these discussions, I lay out the structure with which I believe the bench memorandum should be written, and my law clerks will work with me to fill in that structure with the argument and discussion that appears necessary to resolve the case. Approximately three to four weeks into our analysis, my law clerk will give me a draft bench memorandum based on our discussions of the case and the law clerk's factual and legal research. At that point, I carefully read the draft bench memorandum, and reread the briefs and those portions of the record helpful to gain a full understanding of the facts, issues, and legal principles applicable to the case. I then have a series of meetings, phone conferences, and exchanges of edits to the bench memo designed to enable my law clerk to finalize the bench memo.

I renew my work on the case in the days before oral argument. That work will include, as the circumstances of the individual case warrant, re-reading the opinion of the Court of Appeals, re-reading the briefs and record, and studying the applicable legal principles. In particular, I will make sure I am prepared to discuss prior case law in detail with the lawyers at oral argument.

The second category of cases is those cases that are not decided by the Court of Appeals, but come directly to the Supreme Court. The only difference between my preparation for these cases and those in the first category is that I normally have no way of knowing about the case until it is placed on the Court's calendar for oral argument, or in the case of original jurisdiction, when the Court considers whether to hear the case in our original jurisdiction. From that point, my preparation is the same as when the senior law clear allocates the cases to the other clerks in the first category.

The third category of cases is attorney or judicial disciplinary cases and bar admissions. We normally learn of these cases in preparation for our monthly "Agenda" meeting. I read all of the materials provided to me, and then engage in discussion with the other justices at the meeting. In some instances, we

conduct oral argument on these cases, and I prepare for that argument in similar manner to the way I prepare for cases in categories one and two.

The fourth category is motions that come before the Supreme Court. These cases usually come before the Court during an Agenda meeting, and I prepare for them just as I do the previous category.

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

My philosophy is that I do not engage in judicial activism.

"Judicial Activism" is a term usually used to mean "making law," or to otherwise allow the work of the court to go beyond the properly limited role of the judiciary. I do not engage in judicial activism. Making law is for the Legislative Branch of Government. Judges and courts resolve actual cases or controversies, and in doing so they interpret and apply existing law.

As far as setting and promoting public policy, it is the province of the Legislative Branch, and to a lesser extent the Executive Branch. I have written about this in my opinions at the Supreme Court. In Nationwide Insurance Co. of America v. Knight, 433 S.C. 371, 376, 858 S.E.2d 633, 635 (2021), for example, I wrote:

> "To be clear, . . . this Court has no authority to invalidate an automobile insurance policy provision simply because we believe it is inconsistent with our own notion of 'public policy.' [citations omitted]. Rather, the General Assembly establishes the public policy . . . and enacts statutes to let the public and the courts know what that policy is. When an insured challenges a policy provision on the ground the provision violates public policy, the Court's authority is limited to determining whether the policy provision violates a statute."

Thus, while it is often necessary for the Supreme Court to "discern" public policy in order to resolve cases or controversies, it is rare the Supreme Court will "set" public

policy. In all situations involving public policy, the Supreme Court must be careful to stay within the role of deciding cases, and not allow itself to go beyond that role. To do so is judicial activism.

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?

I speak frequently in Continuing Legal Education seminars and to community groups. For example, I host several of the Chamber of Commerce's "Leadership" groups at the Supreme Court multiple times a year. I intend to continue doing that type of speaking. Being Chief Judge of the Court of Appeals and now an Associate Justice on the Supreme Court has brought opportunities to represent South Carolina in other parts of the country as well. Since joining the Court of Appeals in 2010, I have given speeches in Arizona, California, Georgia, Florida, Massachusetts, Nevada, and North Carolina. I have also given speeches to national and regional groups meeting in South Carolina. Further, being an Associate Justice has put me in a stronger leadership position with the Bar of our State. I have used that leadership position to increase my efforts to improve the quality of the Bar, both in terms of the qualifications of its lawyers and in terms of having a positive impact on the people they represent.

I also teach law. My experience teaching law at the USC School of Law and the Charleston School of Law has refocused my dedication to the duty of judges and lawyers to improve and teach the law. I plan to continue to seek opportunities to teach law.

I serve as the Chairman of the Access to Justice Commission, whose mission is to "bring together a broad range of legal system stakeholders—judges, court leaders, private lawyers, legal aid providers, policymakers, and funders—who work to address the significant civil justice gap in South Carolina by assessing essential civil legal needs, fostering collaboration, and identifying innovative solutions. The Commission is charged with identifying the scope of the need for civil legal services, and developing a long-term plan for ensuring that all South Carolinians can access our system of justice."

As an example of the types of things I have done in an effort to improve the administration of justice, in approximately 2017 to 2020, I designed an internet marketplace for pro bono services by lawyers to indigent civil litigants. With a committee of other lawyers, I obtained a grant from the S.C. Bar Foundation, and with the funds from that grant, retained a software firm to create what the software engineers of that firm called "Legal Uber." While we could not use that name, we completed the software and implemented it as a pilot program through the S.C. Bar in Greenville and York Counties. I spent many days in those Counties working with lawyers to get them to participate in the program. Ultimately, however, the program did not perform at the level we had hoped for, and the Bar abandoned the project.

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?

Serving as a judge definitely causes a strain on personal relationships. Being a judge is isolating and lonely in ways it is hard to anticipate. Judges must often refrain from socializing with certain individuals or groups because of cases or issues before the Court.

I handle it the best I can, by embracing the limitations being a judge imposes on me.

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

I serve as Chairman of the Access to Justice Commission.

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:

The most important evidence of the meaning of a constitutional provision is the text. Period. If the text is clear, there is no need to resort to other evidence of meaning, such as historical evidence. When the text is not clear, however, it can become important in interpreting the Constitution, or any other historical document, to understand the context in which it was written. It would also be important to understand the manner in which the Constitution has been interpreted in the past, and the effect that interpretation has had on the law and on the State.

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

The manner in which an agency has interpreted the Constitution has nothing to do with a Court's interpretation of the same provision. It is literally irrelevant.

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

If the text of the constitutional provision at issue is not clear, these documents could be useful in understanding the context in which the Constitution was written, and therefore its intended meaning. I wrote about this regarding the much-discussed 1969 "West Committee" report. I wrote: "When a constitutional provision is clear, we must discern the intent behind the provision only from its text, and should not resort to other evidence of intent."

Of the three listed, this (item (c)) would ordinarily be given the greatest weight.

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.

No

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?

A judge should be patient and courteous in court and should make a serious effort not to appear biased on issues or toward parties. This rule applies at all times, even in a judge's avocational or private activities.

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

There is no role for anger. Though judges are human, and are prone to feel emotion such as anger even when sitting on the bench or meeting with lawyers, the decisions a judge makes should never be based on anger or emotion. Judges owe a duty to control anger and emotion in such a way that litigants and lawyers do not see it, even if the judge feels it, and in such a way that neither anger nor emotion ever controls a judge's decision.

There can be a role for sternness in the sense of firmness. At the Supreme Court, I have seen way too many instances of lawyers appearing before us going to great lengths to avoid directly answering important questions presented to them by the Justices. Understandably, lawyers want to win cases, and if they can avoid answering questions that may harm their chances to win, they should avoid answering if possible. But judges—especially on the Supreme Court—owe a duty to get to the bottom of legal issues, and requiring lawyers to directly answer difficult questions can be very important to fulfilling that duty. It is entirely appropriate for a Justice to sternly insist that the question be answered directly, not evasively. That sternness may come across the lawyer as rude, but it is never intended that way. It is rather the Justice's sincere effort to fulfill the duty of getting the answer to the legal question right.

There is never a need for a judge to show sternness in a condescending or demeaning way. Judges must respect the role that lawyers, litigants, witnesses, court staff, and others play in the judicial system, and make every effort to treat them with respect and dignity at all times.

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

John Cannon Fleming

Sworn to before me this 20th day of August, 2025.

Kristen Porter

(Signature)

Kristen Porter

(Print name)

Notary Public for S.C.

My Commission Expires: 2-24-2027

KRISTEN PORTER
My Commission Expires
NOTARY PUBLIC
02-24-2027
STATE OF SOUTH CAROLINA