

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

Administrative Law Court
(New Candidate)

Full Name: Jason Phillip Luther

Business Address: 300A Outlet Pointe Blvd, Columbia SC 29210

Business Telephone: (803) 898-5785

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

Yes.

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

No.

3. Have you met the statutory 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?

Canon 3B(7) of the Code of Judicial Conduct forbids a judge from initiating, permitting, or considering ex parte communications. I have followed that rule as a lawyer and would follow it as a judge. The Rule permits limited exceptions, but many of those exceptions (e.g. scheduling or administrative purposes) could be handled by the Clerk of Court and do not require direct communication with the judge. For all other permitted ex parte communications, I would comply with the appropriate rules. See, e.g., Canon 3B(7), Commentary, Rule 501, SCACR (describing examples of ex parte communications expressly authorized by law).

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?

In that scenario, I would give significant deference to a party that requested my recusal. If a party reasonably questions my impartiality, Canon 3E of the Code of Judicial Conduct requires me to disqualify myself—regardless of what I think of my ability to be impartial.

6. If elected, what standards would you set for yourself regarding the acceptance of gifts or social hospitality?

I would follow the standards set forth in Canon 4D of the Code of Judicial Conduct. I would not accept gifts from lawyers or parties who appear before me as a judge. I would only accept ordinary social hospitality as expressly permitted under Canon 4D, being careful to avoid any appearance of impropriety or conflict of interest.

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?

In the event I received information indicating a substantial likelihood that another judge or lawyer had committed a violation of the Code of Judicial Conduct or the Rules of Professional Conduct, I would do two things. First, I would advise the fellow judge or lawyer (respectfully, and in the appropriate setting) that I was aware of the misconduct, encourage the judge or lawyer to self-report, and remind them of my own obligations to report the misconduct. Second, in order to satisfy my duties under Rule 8.3 of the Rules of Professional Conduct, I would inform the appropriate authority. See Canon 3D(1).

8. Are you affiliated with any political parties, boards or commissions that, if you are elected, would need to be reevaluated?

No.

9. Have you engaged in any fundraising activities with any political, social, community, or religious organizations? Please describe.

Yes. My wife and I give regularly to our church, and I have occasionally encouraged other members to contribute financially to special church events or initiatives. I serve on the Midlands Board for Junior Achievement of Greater South Carolina, and from time to time have engaged in fund-raising activities for Junior Achievement such as charity golf tournaments, Midlands Gives, or the South Carolina Business Hall of Fame. My wife and I also donate to a number of other charitable organizations. If elected judge, I would follow the standards governing a judge's participation in fund-raising activities as set forth in Canon 4C(3).

10. How would you handle the drafting of orders?

On complex cases, I would begin with asking the litigants to prepare proposed orders within a clearly established timeframe. This is the current practice at the Administrative Law Court, and I believe it is an effective and efficient one. I would also draft my own outline of a final decision, and use the contents of the parties' proposed orders to fill out the contours of my final order. On more straightforward cases, I would draft the orders myself.

11. What method would you use to ensure that you and your staff meet deadlines?

I currently utilize Outlook for our team of attorneys and paralegals to manage deadlines, and I would continue to use this method as an administrative law judge. This allows me to calendar important dates, create alerts and reminders to ensure incremental progress, and intentionally schedule time to work on time-sensitive tasks.

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

The genius of the American republic—and South Carolina's own tripartite form of government—is that it is grounded in a written constitution that embodies the intertwined notions of separation of powers and "checks and balances." The South Carolina Constitution vests the legislative power in the General Assembly, the executive power in the Governor, and the judicial power in the unified judicial system. See S.C. Const. art. III, § 1; art. IV, §1; art. V, § 1. The legislative, executive, and judicial powers of the government are separate and distinct; yet in fulfilling their distinct roles, each branch serves as a check on the others. See S.C. Const., art. I, 8. The judiciary exercises its checking power by applying the law to the specific case or controversy before it.

The Administrative Law Court is a statutorily-created executive branch agency that sits in a quasi-judicial capacity. My role as an administrative law judge is to interpret and apply the law as written—not as I might wish it were written. As Alexander Hamilton put it, judges exercise "neither Force nor Will, but merely judgement." See The Federalist No. 78.

In my view, judicial activism is anti-democratic because it upends this constitutional balance. It turns the court into a super-legislature, wherein judges impermissibly inject their preferences into important policy decisions reserved for the people's elected representatives. Moreover, judicial activism often results in certain matters being removed from beyond the reach of the democratic process indefinitely. The General Assembly, on behalf of South Carolina citizens, sets policy. Thus, as our courts have routinely held—correctly so—once the legislature has made a

choice, there is no room for the court, including the ALC, to second guess the wisdom or folly of those public policy determinations. The court's duty is to uphold the law absent a clear constitutional infirmity, with all reasonable doubt resolved in favor of the constitutionality of the act. Of course, administrative law judges lack the authority to rule on any facial challenges to the constitutionality of a statute; they can only rule on as-applied challenges.

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

I have enjoyed participating in continuing legal education programs, serving as a volunteer judge in moot court competitions, reviewing applications and providing mock interviews for law students applying for clerkships, mentoring younger lawyers, and continuing to support the South Carolina Law Review. I find it especially rewarding to engage with and invest in students who are interested in the law because my decision to become a lawyer was the result of individuals who intentionally and graciously invested in me as a young person. I would continue these activities as a judge. I also enjoy teaching and writing, and will continue to pursue opportunities to do both in a way that (hopefully) improves our legal system.

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

My wife and I have both managed to balance our legal careers with the responsibility and joy of raising our three sons, making time for family and friends, and honoring other commitments in our community—in part because we both empathize with the demands that come with each other's law practice. There are certainly unique pressures that come with serving as a judge, but I do not think they will strain these relationships. If anything, I believe the strong relationships I have with my family and close friends will serve as a necessary and indispensable support system for me as I experience the pressures of serving as a judge.

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

No.

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

Rule 501, Canon 3E requires a judge to disqualify himself in a proceeding in which the judge's impartiality might reasonably be questioned, including if a member of his family has an economic interest in a party to the proceeding. Although Canon 3E does appear to draw a distinction between interests that are *de minimis* v. more than *de minimis* in some situations, I read the Canon to require recusal in this particular situation (a family member has a financial interest in a party involved) irrespective of whether that interest is *de minimis*. Thus, I believe recusal is both the prudent and required course of action.

17. 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.

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

Yes.

19. What percentage of your legal experience has dealt with cases that appear before the Administrative Law Court? Please describe to the Commission your experience in these areas.

Since 2017, I have served as the general counsel/chief legal officer of the South Carolina Department of Revenue. This constitutes roughly half of my legal career. Among other things, my role at the Department includes managing our Office of General Counsel and providing senior leadership, oversight, and direction on all of our civil, criminal, and administrative litigation. On average, our Office handles approximately 300 litigation matters each year, the vast majority of which are contested case hearings at the Administrative Law Court. I serve as co-counsel on many of these ALC cases, although my level of involvement varies widely depending on the complexity and policy implications of the case. In the majority of cases, my involvement is limited primarily to assisting with developing case strategy and reviewing significant pleadings and filings. I am more involved in the matters we have deemed complex or significant, including actively participating in discovery and on our trial team. I also maintain a limited caseload in which I serve as sole counsel or chief counsel for certain ALC cases. I have personally handled both tax and regulatory

cases at the ALC, which have varied in complexity from half-day to week-long hearings/trials.

Since 2022, I have also served on the Administrative Law Court Rules Committee.

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

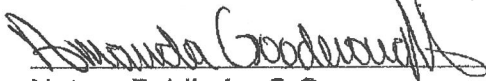
A judge should be even-tempered, patient, dignified, respectful, and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity. See Canon 3B(4), Rule 501, SCACR. Ultimately, a judge is tasked with deciding a controversy or resolving a conflict between competing parties, so the judge should demonstrate a willingness to hear and consider the views of all sides with attentiveness, respect, open-mindedness, understanding, and humility. These rules extend beyond the courtroom, because a judge is expected to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. See Canon 2A, Rule 501, SCACR.

21. Do you feel that it is ever appropriate to be angry with a member of the public who would appear before you? Is anger ever appropriate in dealing with attorneys or a pro se litigant?

A judge can be stern or firm without being angry. In meetings with attorneys, circumstances may dictate the former, but not the latter. All attorneys—including judges—have taken the Oath of Office that includes a pledge to integrity and civility, both in the courtroom and elsewhere. Anger toward attorneys, whether in the courtroom or in meetings, is inconsistent with this commitment to civility. As the commentary to Canon 3B suggests, judges can and should be efficient and businesslike—perhaps sternly, if necessary—while still demonstrating patience.

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


Sworn to before me this 22 day of August, 2025.


Notary Public for S.C.
My Commission Expires: 2-24-2030

