

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

Administrative Law Court
(New Candidate)

Full Name: Michael Smoak Traynham

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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?

Substantive *ex parte* communications are strictly prohibited and to be avoided in all circumstances. Because of the number of pro se litigants before the Administrative Law Court, I could foresee a high likelihood that some non-lawyer litigants may attempt to engage in substantive *ex parte* communications from time to time. I would discourage such efforts and disclose any such communications to all parties involved in the case.

Certain non-substantive *ex parte* communications may be permitted for emergencies, and for administrative and scheduling purposes, under circumstances prescribed by the Code of Judicial Conduct and with appropriate timely notice given to all other parties. I can envision such circumstances justifying non-substantive *ex parte* communications, particularly where emergencies arise surrounding scheduled hearings. I would work with parties appropriately in those cases to balance the interests of all involved.

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 disqualify myself, or at minimum give the litigants the opportunity to waive or not waive the disqualification outside my presence, in circumstances that created a reasonable question of whether or not I could be impartial. Even if I sincerely believed I would not be prejudiced, I believe the appropriate action would be to grant a request for recusal under these circumstances, so long as the situation could cause my impartiality to *reasonably* be questioned. Strained arguments of bias made to delay proceedings should not be entertained. But the appearance of impropriety, partiality, and bias should be avoided at all times to promote confidence in the integrity of the judicial system.

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

I would not accept gifts or hospitality that are unusual (either in value or in source) or that otherwise violate the Code of Judicial Conducts' prohibitions. I would be disinclined to accept any gifts and hospitality from attorneys that practice regularly before the ALC or would be likely to appear before me. I otherwise believe my standards would remain where they currently are with respect to our present circles of friends and social acquaintances. My family frequently shares meals in our home and in friends' homes where we either take turns hosting and bearing the work/expense, or where everyone attending contributes some elements of the meal. Outside of immediate family members, I exchange gifts with very few friends, and these are generally of modest value. Our practice with larger hospitality-related expenses such as dinners out or shared vacations are that these expenses are split, with my wife and I bearing our family's portion of those expenses. I do not believe these practices conflict with judicial ethics or would need to change.

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?

Maintaining the integrity of our practice and the public's faith in the administration of justice requires all members of the profession – perhaps judges most of all – to take appropriate action on credible concerns of

misconduct or infirmity. Depending on the circumstances and my relationship with the individual involved, the appropriate response might range from communicating my concern directly with the individual or to making a referral to Lawyers Helping Lawyers or to the Bar. More severe misconduct may require a report to the Office of Disciplinary Counsel. Canon 3 of the Code of Judicial Conduct makes clear that judges are required to take appropriate action when they become aware of such situations, but there is significant latitude to determine what the appropriate response is based on the facts and circumstances.

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

No.

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

In the past ten years I have engaged in direct fundraising for the American Cancer Society (2019 Marine Corps Marathon Team), Pathways to Healing, formerly known as Sexual Trauma Services of the Midlands (Board Member 2014-2020), and Make-A-Wish Foundation (Trailblaze Challenge 2025).

I have indirectly helped raise funds for Scouting America for the past five years, more specifically for Troop 91 and Pack 95 of Irmo, South Carolina, primarily by facilitating my childrens' direct involvement in their fundraising activities.

10. How would you handle the drafting of orders?

In routine or procedural matters, I would draft orders directly or review and revise those drafted by my law clerk. In more complex matters, the final orders would similarly be drafted by myself, with assistance from law clerks and staff attorneys as needed, but would likely consider proposed orders submitted by the litigants in addition to the evidence in the record and the arguments raised in the courtroom. In my experience, it is a common practice in the Administrative Law Court in some more complex cases for the judge to request proposed orders from all parties at the close of a contested case hearing. Based on my own experience, I believe this practice is advantageous for the litigants, as it allows all sides an opportunity to present their arguments in the most coherent fashion possible – through the presentation of proposed findings of fact and

conclusions of law. This is particularly beneficial for those cases likely to be appealed beyond the ALC to allow for a clear record. While this practice would not fit all cases (such as some involving pro se litigants), where appropriate I would likely maintain this practice.

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

I would make a clear plan, including interim milestones or check-ins as needed, and communicate the plan to my staff up front. Where portions of the work required are delegated to a member of staff, we would communicate regularly regarding progress so that additional resources could be employed if necessary to meet the final deadline. In more complex contested case matters, I envision regularly employing scheduling orders to ensure the parties are working toward a hearing date that allows for timely final resolution of the contested case.

In my current practice, I regularly put reminders of upcoming deadlines, project milestones, and to-do lists on my digital calendar. This allows me to stay on pace and meet expected deadlines. I would continue this practice and expect my staff to use similar methods for their own workload.

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

I am a firm believer in the separation of powers and the role of the judiciary to interpret law, not create it. While the Administrative Law Court is technically situated in the Executive Branch and not the Judicial Branch, the role of its judges with respect to public policy remains the same as that of all other judges – to give effect to the policy set by the political branches, and not to create public policy directly.

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 participated in a number of such activities over the past seventeen years, and – to the extent consistent with my responsibilities on the bench and time permitting – would plan to continue such participation. These activities have included: serving on Bar Committees and in Section Councils, mentoring law students, volunteering with middle/high school

mock trial programs, and presenting at CLEs and other law related presentations.

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?

While serving as a judge will certainly involve a change in responsibilities and expectations from my current role, working successfully in private practice also involves significant pressure and time commitments, and learning to balance work requirements with family and personal relationships is a necessary part of any lawyer's life. In the short-term there would likely be an adjustment period, which I have discussed with my family and believe we are as prepared for as anyone can be who has not served as a judge previously. In the long-term, I expect I will find the appropriate balance such that there will be no adverse impacts on family or personal relationships.

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?

I would have to determine that on a case-by-case basis, but in general I believe I would likely hear such a case. My investments, like those of many others, include shares in exchange-traded funds and index funds, which themselves hold fractional shares of thousands of companies across hundreds of industries. Under a strong enough microscope, it is unlikely any judge with a healthy retirement account could not be found to have a *de minimis* interest in the outcome of some of the cases that come before them. Unless the interest is large enough to create a reasonable appearance of partiality or bias, I do not believe it would be necessary or appropriate to recuse myself.

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.

I am a partner (member) of Crossroad Church, Columbia, a non-denominational Christian church. The church's services are open to all, regardless of race, sex, religion, or national origin, but as with most (if not all) places of religious worship, full partnership in the church is limited to those who profess specific beliefs (in this case, those of the Christian faith). I do not believe the practices of Crossroads constitute invidious discrimination.

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.

My legal experience, and the mix of litigation and non-litigation work within my personal practice, has fluctuated significantly over the years depending on my professional role. Between 2007 and 2010, the overwhelming majority of my legal work dealt with litigation on behalf of the South Carolina Department of Revenue, and the vast majority of that litigation took place in the Administrative Law Court. From 2010 until 2014, while working for the South Carolina Attorney General's Office and Howser, Newman, and Besley, my litigation experience was overwhelmingly (nearly 100%) in state Circuit and Magistrate/Municipal Courts. From 2014 until the present, my legal workload has been a mix of litigation and non-litigation, with the mix varying significantly from year to year. On average, litigation has made up about 50% of my workload during this time period, and roughly half of my litigation work has dealt with cases appearing before or originating out of the Administrative Law Court.

In total since 2007, I have personally appeared before the Administrative Law Court in over twenty distinct matters, with more than ten resulting in what I would consider to be substantive final decisions. Four of these substantive matters have taken place in the past five years.

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

I believe a judge's demeanor should exemplify the Lawyer's Oath in all interactions with litigants, attorneys, and court personnel. A judge should

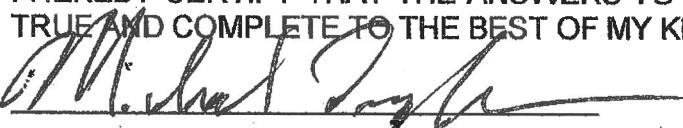
show respect and courtesy to all, and demonstrate fairness, integrity, and civility. Courtesy and dignity encourages the public's confidence in the courts – hostility diminishes it.

Judges must also maintain decorum, so the patience and civility a judge shows should be balanced against the fairness due to *all parties* that is maintained by keeping an orderly courtroom, and requiring parties and witnesses to adhere to appropriate procedures, rules of evidence, and – themselves – to the oath of civility.

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?

No, it would not be appropriate for a judge to become angry with a member of the public, lawyers, or pro se litigants, and even less appropriate to act out of that anger. Depending on the provocation, it might be appropriate to provide clarifying instructions regarding courtroom behavior, take a brief recess, or provide warning regarding potential sanctions (if the action rises to a level where sanctions could be appropriate). Becoming visibly angry, lashing out, or berating those in the courtroom does not serve the interests of justice or instill confidence in the judiciary. Canon 3 of the Code of Judicial Conduct requires judges to be courteous, dignified, and patient with those he or she interacts with in an official capacity. Angry outbursts toward those in the courtroom are incompatible with this requirement.

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 14 day of August, 2025



Sharon A. Werdenie

Notary Public for S.C.

My Commission Expires: 6/19/2030

