



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

**Administrative Law Court  
(New Candidate)**

Full Name: Nicole Thomas Wetherton

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

Yes, I plan to serve the full term if elected.

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

No, I do not plan to return to private practice. I would like to continue my career in public service.

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

Yes, I have met the statutory requirements for this position regarding age, residence, and years of practice.

4. What is your philosophy regarding *ex parte* communications?

All parties in a legal proceeding are entitled to fair and impartial treatment. In the area of administrative law, it is not uncommon for the parties to be a state agency and a *pro se* litigant. To preserve public confidence in the judiciary, especially when a governmental entity is involved, it is important to avoid the appearance of bias and maintain transparency. Therefore, *ex parte* communications should be prohibited apart from the limited circumstances allowed by law. When such communication(s) occur inadvertently, it must be promptly disclosed to all parties and any necessary corrective action should promptly occur to maintain the integrity of the proceeding.

Are there circumstances under which you could envision *ex parte* communications being tolerated?

Yes, limited circumstances permit *ex parte* communications. Pursuant to Rule 3(B)(7), CJC, Rule 501, SCACR, these exceptions include administrative matters or certain emergencies, communications with court personnel or other judges in the course of their official duties, consulting with a disinterested legal expert, or engaging in settlement discussions or mediation with the consent of all parties. Other exceptions may be allowed where specifically authorized by statute, court rule, or other binding legal authority. Even in these situations, such communications should be limited, ensuring it does not compromise the transparency, impartiality, or integrity of the judicial process, or create any perception of bias or favoritism.

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?

Under Rule 3(E)(1), CJC, Rule 501, SCACR, "a judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned." The phrase "might reasonably be questioned" suggests an objective standard, and not solely from the judge's viewpoint. Therefore, a judge should seriously consider the request for recusal even in the absence of actual bias.

Would you grant such a motion?

If a party requesting recusal does so in sincerity and good faith, it is important to consider whether continuing to preside would create a potential risk of undermining confidence in the proceeding. Unless when applying this objective standard, I determine the motion to be frivolous, wholly unfounded, or based on a connection too remote to rise to the level of bias, I would seriously consider the party's request to maintain both the integrity of the process and the public's trust in the judiciary even if the disclosure would have no impact on my impartiality to preside.

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

According to Rule 4(D)(5), CJC, Rule 501, SCACR, gifts or social hospitality may only be accepted in limited circumstances. These restrictions extend not only to the judge but also to members of the judge's household, particularly where acceptance might reasonably be perceived as an attempt to influence judicial conduct or compromise impartiality. Permissible exceptions include incidental gifts related to public speaking engagements or resource materials provided for official use, as well as invitations to bar-related functions.

The standard I would apply is whether a reasonable and objective observer could perceive a gift or act of hospitality as potentially influencing my impartiality or could potentially undermine the public's confidence in the judiciary. If the answer is yes, I will respectfully decline. The integrity, impartiality, and transparency of the judicial office must not be compromised even in situations where the gift is well-intentioned and not offered to influence judicial conduct.

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 made aware of possible misconduct or the appearance of infirmity involving a lawyer or a fellow judge, I would proceed in accordance with Rule 3(D), CJC, Rule 501, SCACR. This rule requires that a judge who receives information indicating a "substantial likelihood" that another judge or a lawyer has violated their respective ethical rules must take appropriate action, including reporting the matter to the appropriate authority.

However, the term "substantial likelihood" is a key concept indicating that the allegation must be thoroughly vetted before filing a complaint. The allegation should be verified to ensure that it is credible, reliable, and not based on rumor, speculation, or bad faith. I would evaluate the source, context, and content of the information to ensure it does not stem from personal animus or an attempt to solely damage an individual's reputation.

Reporting alleged misconduct is a serious responsibility, and any allegation of unethical conduct should be thoroughly researched. However, this consideration must be balanced with the importance of maintaining public confidence in the judiciary and the legal

profession. Therefore, if my due diligence supported a substantial likelihood of misconduct, I would report the matter to the appropriate disciplinary authority, as required by Rule 3(D), CJC, Rule 501, SCACR.

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

I am not affiliated with any political parties, boards or commissions that, if elected, would need to be re-evaluated.

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

I have not engaged in any fund-raising activities with any political, social, community, or religious organizations.

10. How would you handle the drafting of orders?

As the Chief Hearing Officer at the South Carolina Department of Health and Human Services, I oversee the administrative appeals process for the state's Medicaid program. This role requires me not only to draft numerous orders but also review and edit the final administrative decisions of all the hearing officers working in this office. This experience has taught me that effective order-drafting must be organized, efficient without sacrificing quality, and well-reasoned.

Initially, I promptly organize the appeal file and review all materials submitted. Early assessment identifies jurisdictional or preliminary issues, determines the need for additional information, and allows for the issuance of interlocutory orders. These orders are issued as soon as practicable, with clear instructions, appropriate legal authority, and notice of potential sanctions for noncompliance. For routine matters such as scheduling, I utilize standardized templates to promote efficiency and consistency, while still tailoring each order to the specific facts of the appeal.

If the appeal will proceed to a hearing, I begin drafting sections of the final order as soon as it is scheduled. This process helps organize the procedural history, ensures familiarity with the record, highlights any missing facts that may need further development at the hearing, and allows ample time to research any novel legal or policy issues.

It is important to note that I will not decide the merits before the hearing. I remain impartial and open to any evidence or argument that may be presented. However, by preparing a partial draft in advance, I can efficiently finalize the order post-hearing without compromising quality.

Following the hearing and after the evidentiary record closes, I revisit and refine the draft to include the appropriate Findings of Fact and Conclusions of Law. All findings are based solely on the official record, and I review applicable state and federal law for any recent changes that could impact the decision.

I then edit the draft for clarity, conciseness, and accuracy. Typically, I request a peer review from another hearing officer to identify any missed issues or areas needing clarification. After receiving feedback, I revisit the order one to two days later with a fresh perspective before issuance to the parties. This final pause allows for thorough reflection and, if needed, further revision or research to ensure the highest quality decision. From there, if satisfied with the decision, it is then sent to the parties.

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

As Chief Hearing Officer for the South Carolina Department of Health and Human Services, I am responsible for ensuring that all Medicaid appeals are adjudicated within federal statutory deadlines. Federal regulations require that eligibility and beneficiary service appeals be resolved within ninety days of receipt, unless the Petitioner requests an extension. I also determine whether a request for expedited review meets the federal criteria.

To ensure compliance with these deadlines, I meet weekly or bi-monthly with each hearing officer, or their direct supervisor, to conduct a comprehensive case review of all open appeals. During these meetings, we identify any outstanding issues, discuss case progress, and strategize to overcome potential delays. I document these discussions and follow up at the next meeting to ensure accountability.

I also conduct bi-monthly staff meetings with all hearing officers to review performance metrics, identify workload trends, and assess

how changes in policy or law may have an impact on case volume. These meetings also serve as a platform for collaboration. I have implemented staff suggestions that improved operational efficiency, including a reorganization of both substantive responsibilities and administrative processes.

Each morning, I review the open appeal statistics in our case management system to monitor progress. I assign appeals based on each hearing officer's workload and the complexity of their open cases. I also maintain an open-door policy, making myself available to address any issues that may impact the timely resolution of appeals.

This proactive, collaborative, and data-informed approach ensures that we consistently meet our statutory obligations while maintaining a high standard of quality and fairness in decision-making.

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

Although a court may influence public policy through its rulings, especially in resolving cases of first impression, this should occur as a byproduct of interpreting the law impartially and not to direct societal outcomes based on personal beliefs. Judges must remain objective and not impose their views on the legislature or administrative agencies, except where certain actions clearly contravene the law or constitutional principles.

Judicial decisions should never be used as a tool to promote personal, political, or social agendas. To do otherwise risks compromising the integrity of the judicial system in its role as an independent arbiter and could potentially violate the separation of powers between the legislative and executive branches of government.

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?

If elected, I would like to continue to pursue opportunities to engage in activities that further the improvement of the law, the legal system, and the administration of justice, as permitted under Pursuant to Rule

4, CJC, Rule 501, SCACR. If time permits, I will continue to serve as a speaker on various areas of the law. I have participated in approximately six continuing legal education (CLE) programs in Pennsylvania and South Carolina. These presentations focused on important legal topics, including updates in criminal law, the Sexually Violent Predator Act, and issues related to the Medicaid program.

In addition, I have served as a mock trial judge for both high school and college students. This experience has allowed me to contribute to legal education at the grassroots level and hopefully foster an early appreciation for the rule of law and courtroom procedure among future legal professionals. I would be honored to continue participating in mock trial competitions and similar educational initiatives.

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?

I recognize that the demands of serving as a judge have the potential to strain personal relationships. However, I believe I am well-equipped to manage these challenges due to my strong support system and my commitment to maintaining clear boundaries between my professional and personal life.

I have been married for approximately twenty-five years and am fortunate to have a husband and son who are extremely supportive of this endeavor. They understand the significance of public service and the responsibilities that come with this opportunity.

While I anticipate that time may be more limited than before, I will continue to prioritize quality time with my family and close friends. With open communication, mutual understanding, and intentional time management, I believe any additional strain can be addressed in a way that supports both professional excellence and personal fulfillment.

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

I do not have any active investments from which I derive additional income that might impair or give the appearance of impartiality.

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

According to Rule 3(E)(1)(c), CJC, Rule 501, SCACR, a judge must disqualify themselves only when they or a member of their family has more than a *de minimis* financial interest in a party. However, Rule 3(E)(1), CJC, Rule 501, SCACR it also states that a judge must disqualify themselves in any proceeding where their impartiality might reasonably be questioned.

Considering these principles in tandem, even if the financial interest is *de minimis*, I would still carefully consider whether recusal is appropriate to preserve the integrity of the judicial process and maintain public confidence in the courts. If there is any reasonable appearance of bias when considering the circumstances objectively, I would consider erring on the side of caution and 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 not 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.

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

Yes, I have met the mandatory minimum hours requirement for continuing legal education course for the past reporting period.

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 January 2017, 100% of my legal practice has been focused on administrative law. I have served as an Attorney III/Lead Litigator with the South Carolina Department of Health and Human Services in the Office of General Counsel, where I represented the agency in both the Office of Appeals and Hearings and before the South Carolina Administrative Law Court. I have drafted numerous briefs filed in the



Administrative Law Court, participated in administrative hearings at the agency level, and gained familiarity with the Administrative Procedures Act and the South Carolina Administrative Law Court Rules.

In addition, as the Chief Hearing Officer, I preside over administrative appeals, issuing decisions with detailed Findings of Fact and Conclusions of Law, and review all final decisions issued by the hearing officers before issuance to the parties. I also observe hearings and provide the hearing officers with guidance on issues relating to administrative law.

Earlier in my career, I worked briefly with the South Carolina Department of Probation, Parole, and Pardon Services, where I became acquainted with the administrative regulations applicable to their agency. Furthermore, during my time at the South Carolina Office of the Attorney General, I had some exposure to environmental administrative law while serving as a criminal prosecutor.

This breadth of experience has provided me with a comprehensive understanding of the administrative process and a strong foundation in the substantive and procedural aspects of administrative law practice in South Carolina.

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

A judge must perform their duties with integrity, competence, and treat all individuals, regardless of their role or background, with patience, dignity, and courtesy. A judge must remain impartial, respectful, and composed, ensuring that each party is heard and afforded due process under the law. These expectations apply not only during judicial proceedings, but also in interactions with court staff, attorneys, the public, and further apply to their conduct outside the courtroom.

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?

According to Rule 3, CJC, Rule 501, SCACR, a judge must be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity. Judges are

also required to ensure that lawyers, court staff, and others under their direction uphold the same standard of conduct. Additionally, it further states that a judge must require order and decorum in all proceedings before the court.

With these provisions in mind, it is never appropriate for a judge to display anger toward any individual appearing before them. While frustration may naturally arise in challenging circumstances, a judge must always maintain a professional demeanor and exercise self-control.

When individuals behave in a manner that is disrespectful or disruptive to the court, the appropriate response is not an emotional reaction, but rather a calm and measured enforcement of courtroom rules. The role of the judge demands impartiality, restraint, and a steadfast commitment to fairness and decorum, regardless of the behavior of others.

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

Nicole J. Wetherston

Sworn to before me this 7<sup>th</sup> day of August, 2025.

Mary E.

Notary Public for S.C.

My Commission Expires: March 1st, 2031