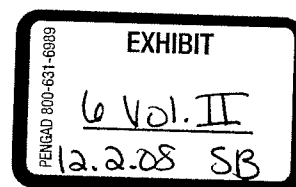


JUDICIAL MERIT SELECTION COMMISSION
Sworn Statement to be included in Transcript of Public Hearings

Circuit Court
(New Candidate)

Full Name: Frank Robert Addy, Jr.
Business Address: P.O. Box 1210
Greenwood, SC 29648
Business Telephone: (864) 942-8625

1. Why do you want to serve as a Circuit Court judge?
First, I am not running for this position out of a desire for prestige, money, power, or to otherwise better my personal station. My current judicial position more than adequately meets my personal, financial, and professional needs, and I have seriously deliberated on the implications for my family and myself in seeking this seat because success in the election would mean less freedom, a more exacting schedule, and substantial time away from my family.
My faith is very personal to me, and for that reason, I hesitate mentioning it, but being a person of faith I am running because I firmly believe that everyone is blessed with certain talents which are unique to that individual and that our obligation in this life is to apply those talents to our community's common betterment, in service to man and to our maker. Overall, I have enjoyed being a judge and practicing law, and I am confident that my unique talents and varied personal and professional experiences would serve the bench well.
Not only have I previously served in virtually all legal capacities in the circuit court, including serving as a circuit judge numerous terms by special appointment, I have had a wide variety of other jobs which gives me insight into other occupations. I have trucked vinyl siding, and I have worked in a warehouse; I traded bonds at one bank and processed cancelled checks at another; I have worked for an asbestos manufacturer and in a retail family business. In short, I have insight and understanding of all walks of life, which reaffirms my long-held belief that all honest labor, regardless of its perceived class or position, has value, dignity, and honor.
My greatest personal mentor was my father who owned a successful retail jewelry business. My father was a very humble but fun man blessed with incredibly good judgment about things, and he gave me two pieces of advice which I value. First, do what you love. There is no reason to spend a third of your life working in a job you hate. At its most basic, a judge's job is to apply the law to resolve problems. Luckily, I enjoy the intellectual demands of being a judge, applying the law, and working with lawyers and the public to resolve their problems.



I couldn't imagine doing anything else, and it is easy to do a job well when you are enthusiastic about it.

Second, "move your inventory." This is the most practical and true piece of professional advice I have ever received. You cannot make money in retail if your inventory doesn't sell. Similarly, courts break down if they can't move their cases. Docket backlogs have many causes, some of which are legitimate, but judges must consistently do everything they can to keep cases moving.

It is an undeserved honor for me to seek the seat which Judge Johnson held. He presided over the first complete trial I ever saw, and I remain in awe of his intellect, demeanor, and diligence. That this vacancy has occurred because of his untimely passing represents a personal loss to me and an inimitable loss to the bench and bar. He and Jim Moore are my professional role models, and I hope that I may continue my service as a jurist and someday match their abilities.

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

Yes.

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

I am uncertain, but if I retire from the bench, I may elect to return to private practice at that time.

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

Yes.

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

Ex parte communication is improper except in situations where the law expressly permits such contact, such as an *ex parte* TRO under Rule 65, SCRCP. Certainly, Rule 65 (b) contemplates circumstances where *ex parte* communication may be necessary to obtain a TRO.

6. What is your philosophy on recusal, especially in situations in which lawyer-legislators, former associates, or law partners are to appear before you?

It has been over ten (10) years since I was associated with any other lawyer or firm, and I have no outstanding financial interest with any lawyer or firm, so I doubt recusal would be necessary because of any such prior association. I recuse myself in any matter in which I could not reasonably be expected to be fair or impartial or where I would personally have some stake in the outcome. On those occasions that lawyer-legislators have appeared before me, neither they nor their client received special treatment. Additionally, as attorneys and officers of the court, I believe it is improper for them to attempt to use their position in such a manner.

7. 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 assume that the focus of this question relates to remittal of disqualification after the potential conflict has been disclosed and that the moving party still requests my recusal despite assurances that I could remain unbiased. The circumstances of each case are different, but I would give great thought and deference to the request for recusal simply to avoid the appearance of impropriety, especially in circumstances where my disclosure had the appearance of bias. Even if I knew that I could rule fairly, in all likelihood I would still recuse myself simply because the moving party might doubt the integrity of the judicial system and the outcome if I were to hear the matter and rule against them.

8. How would you handle the appearance of impropriety because of the financial or social involvement of your spouse or a close relative?

Of course, any matter involving my spouse or a close relative would likely require my recusal, regardless of whether the parties are willing to offer a remittal of my disqualification. Unless involving only a *de minimis* interest, I would decline to hear the matter.

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

Gifts from lawyers are inappropriate. Social hospitality, which I have always considered synonymous with common courtesy, may be accepted if not provided with the intention to or appearance of influencing the judge. Certainly, judges should be careful in their personal relationships and the potential public perception of same.

10. How would you handle a situation in which you became aware of misconduct of a lawyer or of a fellow judge?

This question deals with two possible scenarios: one in which I had actual knowledge of misconduct, the second where I merely suspected misconduct.

First, if I had actual knowledge of misconduct which substantially reflects on the person's fitness or honesty as an attorney or judge, I would speak with the lawyer or judge privately and discuss the fact that I have become aware of their misconduct and instruct them that disciplinary counsel would have to be informed. Contemporaneously with my informing the lawyer that I would have to report the matter, I would recommend that lawyer or judge self-report the matter to disciplinary counsel.

Second, if I merely suspected misconduct, I would again speak with the lawyer and get their input into my understanding of the facts. If I was completely satisfied that my suspicions were unwarranted, I would proceed no further. If I still harbored suspicions, I would take appropriate action as required under the rules. For example, if I had concern that a lawyer was developing a drinking problem but I was

confident that no harm had yet befallen his clients, I would likely confront the lawyer with my concerns, get the lawyer involved with Lawyer's Helping Lawyers, and make reasonable efforts to monitor the situation. Of course, any serious or substantial matters which reflect upon a lawyer's trustworthiness or fitness must be reported.

11. Are you affiliated with any political parties, boards or commissions that, if you were elected, would need to be re-evaluated?
Because my current position is subject to popular election, I am affiliated with a political party. That affiliation would cease upon election.
12. Do you have any business activities that you would envision remaining involved with if elected to the bench?
No, aside from continuing to manage my father's trust f.b.o. my mother.
13. If elected, how would you handle the drafting of orders?
Historically, I have drafted 95% of my orders, and would prefer to continue to do so in certain situations, such as when it would simply be more efficient to draft the order myself. In all likelihood, because of the increased volume of cases requiring orders, I will largely rely upon counsel to draft most of the orders in situations where a form order would not suffice.
14. If elected, what methods would you use to ensure that you and your staff meet deadlines?
Excel spreadsheets have proven very useful in my office for tracking pending cases and activity. A spreadsheet is also easy to access electronically when away from the office, and it provides a quick way to get an overview of what remains pending or what deadlines are approaching. Orders which are pending submission would be entered onto the spreadsheet, and my staff or I would contact the lawyer who was requested to prepare the order if the order is not submitted timely.
15. What is your philosophy on "judicial activism," and what effect should judges have in setting or promoting public policy?
Judicial activism is inappropriate for a judge in that judges should merely administer the law as written. Judges are charged with overseeing application of the law, not making law. However, judges do have an obligation to the greater community to make their concerns known discretely to those in government who might be able to improve upon a law or procedure. Therefore, if problems arise concerning how a particular law or rule of procedure works in practice, a judge has an obligation to write or speak with a legislator to inform them of the problem. Whatever action is subsequently taken is purely within the providence of the Legislature, and the judge must never publicly comment on the problem or any subsequent resolution.
16. Canon 4 allows a judge to engage in activities to improve the law, legal system, and administration of justice. If elected, what activities do you plan to undertake to further this improvement of the legal system?

I currently serve as judge for the Eighth Circuit Drug Court, and I will continue in this position if elected. Drug courts are a valuable tool in preventing recidivism by providing defendants with the opportunity to conquer their addiction, and I fully support the concept for certain defendants.

I also support any educational efforts, such as the high school moot court program and "Law School for Non-lawyers," which help inform and educate citizens on how the court system operates.

The Chief Justice's Advisory Committees are also a good way to communicate ideas for improvement through appropriate channels.

Finally, I would be willing to serve on any existing or *ad hoc* committees and offer my insight into matters concerning our state's courts.

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

My personal relationships would not be strained in any meaningful way.

My wife and I have a very strong and committed marriage, and my wife and my children are aware of what being elected to this seat would involve. My family knows that they are the most important people in my life, and this does not change simply because I change positions.

18. The following list contains five categories of offenders that would perhaps regularly appear in your court. Discuss your philosophy on sentencing for these classes of offenders.

a. Repeat offenders:

I sentence them more harshly than I do first time offenders. Repeat offenders have been through the criminal justice system and have usually had ample opportunities to conform their conduct to the requirements of the law. Therefore, they are generally more deserving of a harsher sentence if they reoffend.

b. Juveniles (that have been waived to the circuit court):

Certainly, they have to answer for their crimes, but so long as a genuine possibility for rehabilitation exists, I have an obligation to craft a sentence which speaks justice for the victim and the community while still providing for opportunities for rehabilitation and redemption.

c. White collar criminals:

I am aware that many judges and even solicitors do not consider white collar, financial crimes to be as deserving of retribution as "blue collar" crimes. My opinion differs. If you wipe out a person's savings or a nest egg by your illegal conduct, you have probably harmed that person more than if you had broken their arm or stolen their car. Wounds normally heal, but bilking a person out of their life savings is something from which most people will never recover. Certainly, white collar criminals should be treated *at least* as harshly as any other criminal, and the argument could be made, under proper facts, that they should be

sentenced with greater severity.

d. Defendants with a socially and/or economically disadvantaged background:

Although a defendant may be socially or economically disadvantaged, this fact does not excuse culpability. That a defendant may not have had the best opportunities should be taken into account at sentencing, but such factors certainly do not excuse the criminal nature of the defendant's conduct. In such circumstances, I attempt to craft a sentence which minimizes the likelihood of reoffending. For example, if the solicitor recommends probation and the defendant lacks job skills or did not finish high school, I may make it a condition of his probation that he goes to vocational rehab or obtains his GED. If the appropriate sentence involves prison time and his social history has contributed to the defendant's drug problem, I would strongly recommend screening for alcohol and drug abuse treatment while in prison.

e. Elderly defendants or those with some infirmity:

Again, being elderly or disabled does not excuse criminal conduct, but it is a factor to be taken into account at sentencing. Common sense dictates that a 10 year sentence for a 70 year old is not the same as a 10 year sentence for a 20 year old in that, for the older defendant, such a sentence may well constitute a life sentence. Otherwise, I would evaluate the sentence for an elderly person the same as I would for any other defendant: consider their criminal history, previous incarceration, severity of the crime, the victim's input, and any mitigating facts.

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

Most of my investments are in publicly traded companies, and the value of such investments is unlikely to be affected in any meaningful way by any rulings. If I had concerns about the appearance of impropriety in hearing a case concerning a publicly traded company in which I owned stock, I would discuss the possibility of remittal of disqualification with counsel.

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

Generally, a *de minimis* interest is not grounds for disqualification so long as my impartiality could not reasonably be questioned. I have heard such cases in the past, but my usual practice has been to disclose the facts on the record, reassure the parties that I would remain impartial, and give counsel an opportunity to discuss the matter with their client. In every instance which has arisen in the past, all concerned have agreed that there was no conflict in my hearing the case.

21. Do you belong to any organizations that discriminate based on race, religion, or gender?

No.

22. Have you met the mandatory minimum hours requirement for continuing legal education courses?

Yes.

23. What do you feel is the appropriate demeanor for a judge?

Patient, thoughtful, wise and knowledgeable; at times, a sense of humor is very helpful, too. A judge must never lose their temper or become angry or visibly frustrated with an attorney or a party. Every party must receive, and hopefully feel as if they have received, a full and fair hearing. The ability to listen, reason, and apply wisdom remains the most essential traits of a good jurist.

24. Would the rules that you expressed in your previous answer apply only while you are on the bench or in chambers, or would these rules apply seven days a week, twenty-four hours a day?

Being a judge is a full-time commitment, and it affects every aspect of your life. A judge should always make every effort to conduct himself or herself in a respectable manner, be slow to anger, and considerate of anyone with whom the judge comes into contact.

25. Do you feel that it is ever appropriate to be angry with a member of the public, especially with a criminal defendant? Is anger ever appropriate in dealing with attorneys or pro se litigants?

No. Judges sometimes have to be firm, but anger or acrimony should never be demonstrated. To show anger only damages the reputation of the bench as neutral administrators of the law.

26. How much money have you spent on your campaign? If it is over \$100, has that amount been reported to the House and Senate Ethics Committees?

\$156.00 has been spent on postage, bond paper, and envelopes. This amount has been reported to the Ethics Committees.

27. If you are a sitting judge, have you used judicial letterhead or the services of your staff while campaigning for this office?

No.

28. Have you sought or received the pledge of any legislator prior to this date?

No.

29. Have you sought or been offered a conditional pledge of support by any legislator pending the outcome of your screening?

No.

30. Have you asked any third parties to contact members of the General Assembly on your behalf before the final and formal screening report has been released? Are you aware of any friends or colleagues contacting members of the General Assembly on your behalf?

I am aware that friends and colleagues may have contacted members of the General Assembly, but I have been exceedingly attentive in

explaining the prohibition on seeking pledges to anyone offering to assist.

31. Have you contacted any members of the Judicial Merit Selection Commission?

No.

32. Are you familiar with the 48-hour rule, which prohibits a candidate from seeking pledges for 48 hours after the draft report has been submitted?

Yes.

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

s/Frank Robert Addy, Jr.

Sworn to before me this 24th day of September, 2008.

Notary Public for S.C.

My Commission Expires: 10/11/2014 _____

Frank R. Addy, Jr.
Candidate for Circuit Judge
Eighth Judicial Circuit, Seat 2

106 Arthur's Point
Greenwood, South Carolina 29649
Work (864) 942-8621
Home (864) 223-3714
Cell (864) 992-2144
frankaddy1@yahoo.com

November 26, 2008

Jane O. Shuler, Esquire
Judicial Merit Selection Commission
Post Office Box 142
Columbia, South Carolina 29202

Re: Amendment to Sworn Statement
Frank R. Addy, Jr., Judicial Candidate, 8th Circuit Court, Seat 2

Dear Ms. Shuler,

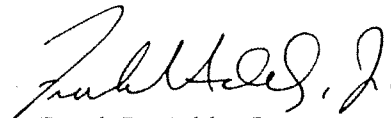
I would like to request the following correction to my sworn statement.

Question 26: In addition to the \$156 which I reported on my sworn statement, today I spent \$84.00 on stamps and \$26.70 on bond paper. Therefore, my total expenditure in this race has been \$266.70 to date.

By copy of this letter, I am informing Representative Smith and Senator Hayes of these additional expenditures.

Thank you for your kind attention.

Sincerely,



Frank R. Addy, Jr.

Cc: The Hon. J. Roland Smith
The Hon. Robert W. Hayes, Jr.

Frank R. Addy, Jr.
Candidate for Circuit Judge
Eighth Judicial Circuit, Seat 2

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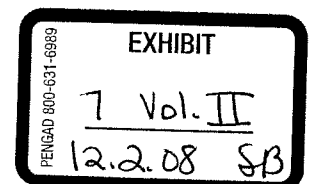
Cc: The Hon. J. Roland Smith
The Hon. Robert W. Hayes, Jr.

**JUDICIAL MERIT SELECTION COMMISSION
PERSONAL DATA QUESTIONNAIRE**

Court, Position, and Seat # for which you are applying: Circuit Court, Eighth Circuit, Seat 2

1. NAME: Mr. Eugene C. Griffith, Jr.
BUSINESS ADDRESS: 1207 Friend Street
Newberry SC 29108
BUSINESS NUMBER: (803) 321-0000

2. Date of Birth: 1964
Place of Birth: Newberry South Carolina
3. Are you a citizen of South Carolina? Yes.
Have you been a resident of this state for at least the immediate past five years? Yes.
5. Family Status: Married on August 17, 1991, to Elizabeth Rushing Griffith.
Never divorced. Three children.
6. Have you served in the military? No military service.
7. List each college and law school you attended, including the dates of your attendance, the degrees you received, and if you left an institution without receiving a degree, the reason for your departure.
 - (a) College of Charleston
Fall of 1983 - transferred to USC;
 - (b) USC
Spring of 1984 thru Fall of 1987
BS Business Administration - Finance;
 - (c) USC School of Law
Fall of 1988 to December, 1990
J. D.
8. List the states in which you have been admitted to practice law and the year of each admission. Also list any states in which you took the bar exam, but were never admitted to the practice of law. If you took the bar exam more than once in any of the states listed, please indicate the number of times you took the exam in each state.
South Carolina 1991. I am a member in good standing with the South Carolina Bar and have always been a member in good standing. I have not taken any other bar examinations.
9. List the significant activities in which you took part during your attendance at college, graduate, and law school. Give the dates you were involved in these activities and list any leadership positions you held.
 - (a) Student of South Carolina College 1985 thru 1987;
 - (b) Member Association of Honors Students 1985 thru 1987;
 - (c) Sigma Nu Fraternity 1985 thru 1987;
 - (d) Intra Fraternity Council - Chair - Scholarship Committee.



- (e) Senate Page Legislative session of 1984 for Senator Robert C. Lake, Jr.;
- (f) Senate Page Legislative sessions 1985 thru 1987 for Senator Thomas H. Pope, III.
10. Describe your continuing legal or judicial education during the past five years. Include **only** the title and date of any continuing legal or judicial education course completed.
- | | <u>Date</u> | <u>Class</u> |
|-----|-------------|--|
| (a) | 05/09/2002 | Rule 417 and The Bank; |
| (b) | 11/12/2002 | Stewart Title TIPS Seminar; |
| (c) | 12/10/2002 | Practical Refresher in Litigating the S.C. Auto Injury Case; |
| (d) | 09/19/2003 | Hot Tips From the Best; |
| (e) | 12/12/2003 | Tips from the Bench; |
| (f) | 02/11/2004 | Estate and Tax & Charitable; |
| (g) | 12/03/2004 | S.C. Family Court Bench Bar; |
| (h) | 12/20/2004 | Getting the Big Picture - History of Rules of Evidence; |
| (i) | 12/21/2004 | Ethic and the Oath; |
| (j) | 12/28/2004 | Getting the Big Picture - Part I; |
| (k) | 12/28/2004 | Field Sobriety Tests in DUI; |
| (l) | 12/30/2004 | Demonstrative Evidence in DUI - Part V; |
| (m) | 10/07/2005 | Real Life Solutions for Small Firms; |
| (n) | 11/11/2005 | Stewart Title TIPS Seminar; |
| (o) | 12/13/2005 | Sop: Sec. 1031 Transactions; |
| (p) | 09/24/2006 | SC Solicitors Association Conference - Prosecution Accountability; |
| (q) | 09/24/2007 | SC Solicitors Conference – Partners in Prosecution; |
| (r) | 08/09/2008 | SC Association for Justice – 2008 Summer Convention CLE. |
11. Have you taught law-related courses or lectured at bar association conferences, educational institutions, or continuing legal or judicial education programs? If so, briefly describe each course or lecture.
- (a) I taught the legal section in Newberry County to students who enrolled in the Reserve Police Officer Certification Classes. Over the past ten years, I have taught four or five groups of candidates.
- (b) In 1999, I taught the Legal unit to the Volunteers for the Newberry County Guardian ad Litem program.
12. List all published books and articles you have written and give citations and the dates of publication for each. No publications written.
13. List all courts in which you have been admitted to practice and list the dates of your admission. Give the same information for administrative bodies that require a special admission to practice.
- South Carolina - All state courts: May 15, 1991

- U.S. Federal District Court, District South Carolina, September 14, 1994.
14. Describe chronologically your legal experience since graduation from law school and include a list of all law firms with which you have been associated. Describe the general character of your practice and divide it into periods with dates if its character has changed over the years.
- (a) March 1991 thru July of 1991 – Clerk to the Honorable James E. Moore - Circuit Court;
 - (b) July 1991 thru June 1992 - Clerk to the Honorable John P. Gardner - S.C. Court of Appeals;
 - (c) July 1992 thru February 1997: solo practice as Griffith Law Firm - general practice of law. My office has handled real estate transactions, mortgage closings, magistrate's trial work, criminal trial defense, civil trial work, domestic relations trial work, and estate and probate matters;
 - (d) February 1997 thru present: In February of 1997, Rushing and Griffith, P. C. was formed by Eugene C. Griffith Jr. and Elizabeth R. Griffith. The scope and type of law practice did not change significantly and was operated as a general practice. Don S. Rushing bought into the corporation and opened an office in Lancaster, South Carolina. Don S. Rushing has operated a limited practice in the Lancaster office. Over the last several years, the scope and type of work performed in the Newberry office has changed slightly. In January of 2005, I agreed to work as a special prosecutor for the Eighth Judicial Circuit for the terms of General Sessions Court held in Newberry County. Since agreeing to act as special prosecutor, I have been unable to accept cases as a criminal defense attorney. In the last several years, I have handled numerous condemnation actions on behalf of the SCDOT. Additionally, I have been appointed under Circuit Court rules in numerous civil cases to act as special referee for non-jury matters, such as partitions and foreclosures.

If you are a judge and are not seeking a different type of judgeship, the following questions are inapplicable:

- (b) If you are a candidate for **Circuit Court**, please provide a brief written description of your experience in criminal matters, including any cases handled over the past five years and include a brief description of the issues involved. Further, please provide a brief written description of your experience in civil matters, including any cases handled over the past five years and include a brief description of the types of matters handled, issues involved, and procedural history. Please include information such as the primary areas in civil court in which you practice, whether you represent plaintiffs or defendants, or both. You may go back farther than five years if you feel it would assist the Commission with its assessment of your experience. If you lack experience in an area, describe how your background has prepared you to preside over such matters as a Circuit Court Judge, or how you

would compensate for your lack of experience in this area.

In regard to my experience in criminal matters, I have been fortunate to handle numerous cases in both the magistrate's court and the Court of General Sessions. I accepted representation and was appointed to many cases as a criminal defense attorney for more than thirteen years. My practice area was primarily Newberry County but I was retained by clients to appear in the counties tangent to Newberry County. Over the years, I have defended clients by plea or trail for various charges including: all drug offenses, burglaries of all levels, criminal domestic violence, driving offenses including felony DUI, Murder, assault and battery with intent to kill, assault and battery of high and aggravated nature, criminal sexual conduct, as well as a variety of other offenses.

In January of 2005, I agreed to accept the position of special prosecutor for the Eighth Judicial Circuit. My agreement with Solicitor Jerry Peace allows me to prosecute cases in Newberry County. As a prosecutor, I have had the opportunity to work closely with law enforcement and the victims of crimes in evaluation and preparation of cases for trials and pleas. The experience I have gained advocating as a prosecutor has given me a new perspective of the criminal justice system which I did not have prior to my taking the position as special prosecutor.

The experiences which I have gained as a prosecutor and defense attorney have taught me a great deal about the nature of people. First, I have learned that both victims and defendants want to be heard. Second, I have found that if one takes the time to listen to the whole story from a litigant, whether a victim or an accused, and let him or her explain his or her perspective of what happened, then most people will, in turn, listen to my advice as to how to proceed in prosecuting or defending the matter within the parameters of the law, its rules, and its procedures.

In regard to my experience in civil matters, I have handled a variety of matters, including condemnations, breach of contract, negligence, and other civil matters. I have had the opportunity to represent clients in personal injury/negligence cases as a plaintiff's attorney. I have handled several wrongful death actions, including a wrongful death of a 12 year old boy who was electrocuted in shallow water next to a dock which had electricity improperly wired upon it. On behalf of the boy's parents, we brought a negligence action against both the dock-owner/landowner and SCE&G. We alleged negligence against the dock owner for improper installation and maintenance of the dock and also alleged negligence against SCE&G for improper licensing and inspection of the dock. The homeowner settled prior to the trial. SCE&G prevailed on the issue that it owed no express or implied duty of protection to a person such as the plaintiff

Additionally, I have had several cases which allowed me to act as defense counsel, representing insurance carriers against personal injury claims. I represented a boat dealer involved in a products liability action. The dealer and manufacturer were both sued by the estate of a customer who purchased a "used" boat and drowned shortly after taking delivery of the boat. The boat manufacturer settled. I defended the boat dealer along with his liability insurance carrier on the issues of failure to disclose and negligence. The case was tried twice: the first trial resulted in a hung jury and the second trial ended in a defense verdict.

I have acted as the City Attorney for the City of Newberry for the past thirteen years. In my capacity as City Attorney, I have litigated several cases which have involved annexation issues and electrical service territory disputes between the City and the local Rural Electrical Cooperative. I was involved in a very complex case involving the forced sale of facilities, equipment, and customers from the local Rural Electrical Cooperative to the City. This case was brought by the local Cooperative under a statute which states that a cooperative can force a municipality to purchase facilities, equipment, and customers after the customers and facilities had been annexed by the City over a period of years. This case presented some unusual factual, legal and procedural questions for both of the parties. The case was tried before an arbitration panel, and then appealed by both parties to the circuit court and the appellate court.

I have appeared as local counsel for the South Carolina Department of Transportation in condemnation matters which involved the relocation and widening of several bridges and roads in Newberry County. The actions involved damages as a result of the acquisition of land, easements and construction easements from the affected property owners.

I have acted as Special Referee for numerous cases involving non-jury matters. Most of these actions involved the partition of land among joint land-owners or the foreclosure of mortgages.

I believe that my civil court experience is broad and well-balanced between plaintiff and defense work. I believe that the breadth of experience has allowed me to gain a wide perspective by representing clients who had small claims as well as clients who had severe injuries or death. I have represented large entities, such as small businesses, large corporations and government entities, which are protecting the business interests, shareholders' interest, or citizens' interests. The practice of law is interesting and challenging in that it is an occupation and profession, particularly in a small town, where the clients choose the lawyer and not the converse. I have been fortunate in my practice because I have been able to represent and advocate a wide variety of

cases. I have had the opportunity to advocate from both sides of the courtroom, so to speak, *ie.* for plaintiffs and defendants, in both civil court and the criminal court. I believe this diversity of experience is important in that it should provide me a wealth and breadth of understanding the differing perspectives of the litigants who appear in court and the advocates who represent them.

15. What is your rating in Martindale-Hubbell? BV.

Retired judges/justices and judges/justices applying for reelection to their current position may omit Questions 16-21. If a candidate is seeking a judgeship different than his or her current position, Questions 16-21 should be answered based on experience prior to serving on the bench.

16. What was the frequency of your court appearances during the last five years?

- (a) federal: none;
- (b) state: average 5-10 days per month.

17. What percentage of your practice involved civil, criminal, and domestic matters during the last five years?

- (a) civil: 60% (25% civil trial work and 35% real estate-transactional work);
- (b) criminal: 25%;
- (c) domestic: 15%.

18. What percentage of your practice in trial court during the last five years involved matters that went to a jury?

- (a) jury: 10%;
- (b) non-jury: 90%.

Did you most often serve as sole counsel, chief counsel, or associate counsel in these matters? Sole counsel.

19. List five of the most significant litigated matters that you have personally handled in either trial or appellate court or before a state or federal agency. Give citations if the cases were reported and describe why these matters were significant.

- (a) Newberry Electric Cooperative v. City of Newberry, 2005 UP-585 (2005). This case was brought by the Newberry Electric Cooperative (Coop) against the City of Newberry (City) under a statute which allows a Cooperative to force a municipality to purchase its facilities, equipment, and customers when the facilities, equipment, and customers have been annexed by the City over a period of years. This case is significant because statute under which the action was brought has not been widely used in the past. The use of the statute by the Cooperative can have implications in the planning process of municipalities and electrical cooperatives in building facilities for future customers and in future annexations of areas;
- (b) SCDOT v. Fretwell et al., C/A Nos. 2003 CP 36- 049, 050, 051, 052. This multi-parcel condemnation case involved the widening of an overpass along Interstate 26. The condemnation involved many issues

regarding economic loss, highest and best use, uneconomic remnants, and loss of access. This case is significant because of the large amount of land needed for the project as well as the variety of issues regarding damages to the landowner. This case was settled prior to trial;

- (c) State v. Randall Scott Foster, 354 S.C. 614, 582 S.E.2d 426 (2003) Thomas H. Pope, III and I defended for Randall Scott Foster on charge of murder and use of a deadly weapon in the commission of a violent crime. After a three day trial, the Defendant was acquitted of murder but was found guilty of manslaughter by the jury. Mr. Pope and I did not represent Foster on appeal. His conviction was reversed on appeal because a prior consistent written statement of the eyewitness (16 year old daughter of the deceased) was allowed to be admitted into evidence by the State in an attempt to bolster her credibility after her cross examination. The Supreme Court reversed the conviction of Manslaughter and remanded the case for a new trial. Foster was recently allowed to plead to Manslaughter and received time served;
- (d) State v. James Edward Wise, 98 GS 36 402. I was Court appointed counsel for Defendant on charge of Burglary 1st and Escape from Custody. This case is significant in that it was the first case tried before a jury in Newberry County under the amended statute where, if the defendant was convicted, the judge had to sentence him to life without parole because of his prior criminal history.
- (e) Thornhill v. SCE&G and Arnold, 99 CP 36- 421. I was co-counsel with Don Rushing and Samuel Price in this wrongful death action which involved the death of a 12 year old boy who was swimming in the edge of Lake Murray when he was electrocuted in the water near a dock. The action was brought alleging breach of multiple duties and negligence against the property owner, the tenant of the property and SCE&G. The Plaintiff alleged that SCE&G owed a duty under its FERC license to recreational users of the lake, the duty being to require any construction (docks) which it licensed within its property to be performed by a licensed contractor and under applicable building codes. The property owner and tenant settled with the plaintiff. The trial court granted SCE&G a directed verdict ruling that no duty was expressed or implied under the FERC license. The case was not appealed.

20. List up to five civil appeals that you have personally handled. Give the case name, the court, the date of decision, and the citation if the case was reported. **If you are a candidate for an appellate court judgeship, please attach one copy of briefs filed by you in each matter.**

- (a) Newberry Electric Cooperative, Inc. v. City of Newberry
Court of Appeals, 2005 UP 585 (2005)
Co-counsel for appeal with Robert T. Bockman, Esquire;
- (b) Betty J. Hancock v. Mid South Management Co. Inc.
Appealed from 2004-CP-36-171. Appeal still pending.

- Co-counsel for appeal with Samuel M. Price, Jr., Esquire;
(c) City of Newberry v. Newberry Electric Cooperative, Inc.
Court of Appeals – January 6, 2003 Opinion No. 3589
Co-counsel for appeal with Robert T. Bockman, Esquire;
(d) City of Newberry v. Newberry Electric Cooperative, Inc. and Wal-Mart
Stores, 2008 UP 200
Co-counsel for appeal with Robert T. Bockman, Esquire;
(e) Elizabeth Goodyear et al. v. Todd Clamp and Angie Drafts.
Court of Appeals – August 13, 1996, 96 UP 251
Handled appeal without co-counsel.
21. List up to five criminal appeals that you have personally handled. Give the case name, the court, the date of decision and the citation if the case was reported. Please attach one copy of briefs filed by you in each matter.
I have not undertaken any cases representing clients in any criminal appeals.
22. Have you ever held judicial office. No.
23. If the answer to question 22 is yes, describe or attach five of your most significant orders or opinions and give the citations if they were reported. Also list citations to any appellate review of these orders or opinions.
Not applicable.
24. Have you ever held public office other than judicial office? If so, list the periods of your service, the office or offices involved, and whether you were elected or appointed. Also, state whether or not you have timely filed your report with the State Ethics Commission during the period you held public office. If not, were you ever subject to a penalty? None.
25. List all employment you have had while serving as a judge (whether full-time or part-time, contractual or at will, consulting or otherwise) other than elected judicial office. Specify your dates of employment, employer, major job responsibilities, and supervisor. None.
26. Have you ever been an unsuccessful candidate for elective, judicial, or other public office?
(a) Yes, I was a candidate for House of Representatives District 40 in November 2002. I lost the general election to Walton J. McLeod;
(b) Yes, I was a candidate for the Circuit Court At-Large Seat No. 13 in February 2008. I withdrew to allow the Honorable Larry Hyman to be elevated unopposed to that seat.
27. Have you ever been engaged in any occupation, business, or profession other than the practice of law, teaching of law, or holding judicial or other public office?
I have had no other jobs or occupations, beyond part time jobs held during college and law school.
28. Are you now an officer or director or involved in the management of any business enterprise? Explain the nature of the business, your duties, and the term of your service.
No, other than my duties in:

- (a) Rushing and Griffith, P.C. President. Eugene C. Griffith, Jr. owns 50% interest and Elizabeth R. Griffith owns 50% interest in Rushing and Griffith, P.C. The corporation operates as a law practice. Eugene C. Griffith, Jr. is the President and primary attorney for the Newberry office. Elizabeth R. Griffith is a non-practicing attorney/owner. Eugene C. Griffith, Jr. is the statutory agent;
 - (b) Central United Methodist Church Treasurer- thru 2008;
 - (c) Weir Club, LLC. - Eugene C. Griffith, Jr. owns a 10% interest in the 10 member LLC. The Weir Club, LLC owns as its primary asset a 408 acre tract of land which is used as a hunting and fishing area for the members. The land is also managed for timber production. Eugene C. Griffith, Jr. is the statutory agent.
29. Provide a complete, current financial net worth statement that itemizes in detail:
- (a) the identity and value of all financial assets held, directly or indirectly, including, but not limited to, bank accounts, real estate, securities, trusts, investments, and other financial holdings;
 - (b) the identity and amount of each liability owed, directly or indirectly, which is in excess of \$1,000, including, but not limited to, debts, mortgages, loans, and other financial obligations.
- Attachment A.
30. Describe any financial arrangements or business relationships that you have, or have had in the past, that could constitute or result in a possible conflict of interest in the position you seek. Explain how you would resolve any potential conflict of interest. None.
31. Have you ever been arrested, charged, or held by federal, state, or other law enforcement authorities for violation or for suspicion of violation of any federal law or regulation; state law or regulation; or county or municipal law, regulation, or ordinance. None.
32. Have you, to your knowledge, ever been under federal, state, or local investigation for possible violation of a criminal statute?
Not to my knowledge.
33. Has a tax lien or other collection procedure ever been instituted against you by federal, state, or local authorities? Have you ever defaulted on a student loan? Have you ever filed for bankruptcy? No.
34. Have you ever been sued, either personally or professionally? No.
36. Are you now or have you ever been employed as a "lobbyist," as defined by S.C. Code § 2-17-10(13), or have you acted in the capacity of a "lobbyist's principal," as defined by S.C. Code § 2-17-10(14)? No.
37. Since filing with the Commission your letter of intent to run for judicial office, have you accepted lodging, transportation, entertainment, food, meals, beverages, money, or any other thing of value as defined by S.C. Code § 2-17-10(1) from a lobbyist or lobbyist's principal? No.

38. S.C. Code § 8-13-700 provides, in part, that “[n]o public official, public member, or public employee may knowingly use his official office, membership, or employment to obtain an economic interest for himself, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated.” Please detail any knowledge you have of any formal charges or informal allegations against you or any other candidate for violations of these provisions. Include the disposition, if any, of such charges or allegations. None.
39. S.C. Code § 8-13-765 provides, in part, that “[n]o person may use government personnel, equipment, materials, or an office building in an election campaign.” Please detail any knowledge you have of any formal charges or informal allegations against you or any other candidate for violations of these provisions.
None.
40. Itemize (by amount, type, and date) all expenditures, other than those for travel and room and board, made by you, or on your behalf, in furtherance of your candidacy for the position you seek. None.
41. List the amount and recipient of all contributions made by you or on your behalf to members of the General Assembly since the announcement of your intent to seek election to a judgeship. None.
42. Have you directly or indirectly requested the pledge of any member of the General Assembly as to your election for the position for which you are being screened? Have you received the assurance of any public official or public employee that they will seek the pledge of any member of the General Assembly as to your election for the position for which you are being screened? No.
43. Have you requested a friend or colleague to contact members of the General Assembly on your behalf? If so, give details. Are you aware of any friends or colleagues contacting members of the General Assembly on your behalf?
No.
44. Have you or has anyone acting on your behalf solicited or collected funds to aid in the promotion of your candidacy? No.
45. Have you or has anyone acting on your behalf contacted members of the Judicial Merit Selection Commission about your candidacy or intention to become a candidate? No.
46. List all bar associations and professional organizations of which you are a member and give the titles and dates of any offices you have held in such groups.
- (a) Newberry County Bar Association, Secretary/Treasurer 1992, 1993, Vice-President 1994, 1995; President 1996, 1997, and 1998;
 - (b) South Carolina Bar Association, Member: 1991 to present;
 - (c) South Carolina Association for Justice (formerly SCTLA), Member: 1993 to present;

- (d) American Association for Justice (formerly ATLA), Member: 1995 to present;
 - (e) American Bar Association, Member: 1991 to present;
 - (f) Newberry County Public Defender Corporation Board: 1994 thru 2004.
47. List all civic, charitable, educational, social, and fraternal organizations of which you are or have been a member during the past five years and include any offices held in such a group, any professional honors, awards, or other forms of recognition received and not listed elsewhere.
- (a) Central United Methodist Church. Administrative Board, Chair 1998, 1999, and 2000; Church Treasurer 2005, 2006, 2007 and 2008; MYF Youth Parents – 2008;
 - (b) Newberry Country Club Board of Directors 2000-2002;
 - (c) Prosperity Recreation Department
Dixie Youth Baseball, Assistant Coach 2005, 2006, and 2007
Head Coach 2008;
 - (d) Newberry County Chamber of Commerce- Member 1998 to Present;
 - (e) Piedmont Citizens Committee on Judicial Qualifications – September 18, 2004 thru March 6, 2006;
 - (f) Newberry County Tax Advisory Committee - 2006 to present.
48. Provide any other information which may reflect positively or negatively on your candidacy, or which you believe should be disclosed in connection with consideration of you for nomination for the position you seek.
No other information.
49. References:
- (a) J. Thomas Johnson
First Community Bank
PO Box 417
Newberry, SC 29108
 - (b) S. Jahue Moore, Esquire
PO Box 5709
West Columbia, SC 29171
 - (c) James Lee Foster
1918 McHardy Street
Newberry, SC 29108
 - (d) Wayne K. Pratt
PO Box 424
Newberry, SC 29108
 - (e) Jackie S. Bowers
Post Office Drawer 10
Newberry, SC 29108

YOUR SIGNATURE WILL BE HELD TO CONSTITUTE A WAIVER OF THE CONFIDENTIALITY OF ANY PROCEEDING BEFORE A GRIEVANCE COMMITTEE OR ANY INFORMATION CONCERNING YOUR CREDIT.

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

s/ Eugene C. Griffith, Jr.

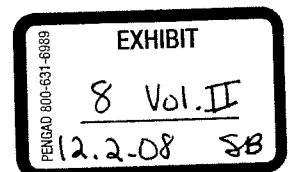
Date: 09/17/08

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

Circuit Court
(New Candidate)

Full Name: Eugene Cannon Griffith, Jr.
Business Address: Post Office Box 375
1207 Friend Street
Newberry, SC 29108
Business Telephone: (803)321-0000 phone
(803)321-0407 facsimile

1. Why do you want to serve as a Circuit Court judge?
My grandfather, Steve C. Griffith, was a Circuit Court Judge and whom I am told was greatly admired for his service as a circuit court judge in his intellect, impartiality, fairness and knowledge of the law. I have always had the greatest respect for the judiciary and the impact that it has upon the lives and businesses of our State. I hope that if given the opportunity to serve as a circuit court judge that I can do so with fairness, respect, and courtesy to all those who appear before me whether jurors, witnesses, parties, court officials, or lawyers. I believe that I have prepared myself as to knowledge and understanding of the law as well as the rules and procedures of our courts to serve effectively in this office.
2. Do you plan to serve your full term if elected? Yes
3. Do you have any plans to return to private practice one day?
No. If given the opportunity to serve, it is my wish to serve continuously until retirement therefrom.
4. Have you met the Constitutional requirements for this position regarding age, residence, and years of practice? Yes
5. What is your philosophy regarding *ex parte* communications? Are there circumstances under which you could envision *ex parte* communications being tolerated?
Ex Parte communications should always be avoided and discouraged. There are exceptions provided for in Cannon 3, B, 7(a-e) of Rule 501 Appellate Court Rules "Judicial Conduct". These provisions include (a) where required for scheduling of administrative purposes or emergencies that do not deal with substantive matters or issues provided it is reasonably believed that no party will gain a procedural or tactical advantage as a result thereof and all other parties are promptly notified of the substance of such communication and allows an opportunity for such other parties to respond; (b) where judge obtains the advice of a disinterested expert on the law and notifies the parties of the person "expert" consulted and the substance of the



- I would recuse without request.
9. What standards would you set for yourself regarding the acceptance of gifts or social hospitality?
From all but close personal non-lawyer friends, I would return with a clear statement, that while it was appreciated, such gifts or social hospitality are not permitted and to not do so in the future.
10. How would you handle a situation in which you became aware of misconduct of a lawyer or of a fellow judge?
I would report such offender to the Lawyer competence or Judicial standards. If the misconduct involved over indulgence of alcohol and I believed it was due to a drinking problem which had not affected such lawyer or judges ability to perform their duties, I would inform such lawyer or judge that I wanted them to contact Lawyers Caring About Lawyers and the similar committee of the judiciary for help in the dealing with their problem. I would follow up to make sure such contact was made and if not done so, I would inform such lawyer or judge that I was notifying the appropriate lawyer competence or judicial standards committee to investigate.
11. Are you affiliated with any political parties, boards or commissions that, if you were elected, would need to be re-evaluated?
I am not affiliated with any political parties or boards which I believe would create any improprieties.
12. Do you have any business activities that you would envision remaining involved with if elected to the bench?
I am the Trustee for the Ernest Brooks Trust. This trust was created by a former client of my father's for the benefit the University of South Carolina Gamecock Club. The assets of the trust are managed by a third party financial advisement firm. The income from the trust is paid over the Gamecock Club on an annual basis.
13. If elected, how would you handle the drafting of orders?
I would at the conclusion of a hearing request each side to submit a proposed order within so many days and to copy the other side when sent to judge. If I decided the matter at hearing and wanted the prevailing lawyer to submit a proposed order I would do so on the record in the presence of all parties as well as give direction on the matters to be addressed in such proposed order. If upon receipt of a proposed order there were matters I did not agree with, I would draft myself, or by letter to such lawyer and all other lawyers including any pro se parties (non-represented) requesting such lawyer to re-draft along certain lines. I would generally prefer to draft such orders myself with the assistance of my law clerk.
14. If elected, what methods would you use to ensure that you and your staff meet deadlines? I would keep of record using a calendaring system of any matters heard but not decided.

I would have both secretary and law clerk to maintain a system, both paper and computer, for keeping up with such matters which I would review periodically to make sure such system was working.

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

It is my belief that the trial bench (circuit court) should apply the law of a matter as determined by the appellate courts (Supreme Court or Court of Appeals). A party has a right to submit evidence at least 'in camera' for application of arguing against precedential law before an appellate body, however, where case law has been previously decided, a trial judge should follow the law. If it is a matter that has never been decided, then a trial judge should give full opportunity to present the matter for decision and appellate review. There is a process and procedure for attorneys and parties to present argument and evidence to change precedential law for which the trial bench should permit as indicated but not disregard the precedential law previously determined by the higher appellate courts.

As to 'public policy', trial judges should allow this to be decided by the legislature or Supreme Court, which is given this authority when deemed appropriate.

16. Canon 4 allows a judge to engage in activities to improve the law, legal system, and administration of justice. If elected, what activities do you plan to undertake to further this improvement of the legal system?

I would prepare materials and lecture at Continuing Legal Education Seminars when appropriate, encourage new and young lawyers who are not involved in matters to observe trials and discuss skills or tactics presented, participate in People's Law Courts when asked, serve on committees which seek to improve the legal system and/or judiciary and serve upon S.C. Bar Committees which seek to improve the system.

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

I am sure it can, however, informing such family, spouse, friends or relatives that the office of a judge is not mine but of the people and that I must at all times insure that all people who appear before me receive fair and impartial justice and treatment. I would also inform such people that matters which they are involved in cannot appear before me and that they should at all times conduct themselves appropriately and within law. Further, I would instruct and require that such people not use my name or office for obtaining a benefit or better position.

18. The following list contains five categories of offenders that would perhaps regularly appear in your court. Discuss your philosophy on sentencing for these classes of offenders.

a. Repeat offenders:

A person who has a prior record and a prior record for the same offense should be treated more severely than a non-repeat offender. Repeat offenders more than likely received some consideration for their first or prior offense for which no further consideration should be given.

b. Juveniles (that have been waived to the circuit court):

If the matter has been waived to circuit court generally means that such matter has substantial offensiveness. A judge should always consider the youthfulness of an offender and the likelihood of reforming such acts in order to be returned to society, however certain crimes which indicate mean spiritedness such as crimes of violence, murder, sexual conduct offenses, kidnapping, arson and hate crimes should be dealt with in sentencing that sends a message to not just the offender but to all others in the public that such acts will not be tolerated.

c. White collar criminals:

People who have used their position of trust or status to take advantage of others should be punished as much for such position of trust or status as the act or crime committed. A person who uses their education or position in life to take advantage of others less fortunate or with unequal opportunity in life, should be punished more so than an everyday offender of larceny for violation of public trust.

d. Socially and/or economically disadvantaged.

A judge should always consider the background of an offender to determine its effect upon the offender who committed the criminal act. If such social or economically disadvantaged defendant can be rehabilitated through probationary programs or other diversionary programs then should be highly considered as to the appropriate punishment.

e. Defendants with a socially and/or economically disadvantaged background:

A judge should always consider the background of an offender to determine its effect upon the offender who committed the criminal act. If such social or economically disadvantaged defendant can be rehabilitated through probationary programs or other diversionary programs then should be highly considered as to the appropriate punishment.

f. Elderly defendants or those with some infirmity:

This of course should be considered as to whether or not to incarcerate as to its effect not only upon the defendant but the state as well. Violent offense defendants no matter their age or infirmity should be incarcerated unless there is some over-riding consideration. Sexual offenders should be treated substantially.

19. Are you involved in any active investments from which you derive additional income that might impair your appearance of impartiality?
I do have personal investments from which I derive passive income. I do not believe that any of my investments or investment activity will adversely affect my impartiality. All of my investments are in publicly traded companies which I have no influence upon any of their management or decision making.
20. 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 not unless after disclosing to all parties all such parties agreed on the record to my hearing such matter. Once again, the appearance of impropriety is never measured by degree, 1% is as bad as 50%.
21. Do you belong to any organizations that discriminate based on race, religion, or gender? No.
22. Have you met the mandatory minimum hours requirement for continuing legal education courses? Yes
23. What do you feel is the appropriate demeanor for a judge?
A judge's demeanor should always be patient, courteous, and considerate.
24. Would the rules that you expressed in your previous answer apply only while you are on the bench or in chambers, or would these rules apply seven days a week, twenty-four hours a day? All the time
25. Do you feel that it is ever appropriate to be angry with a member of the public, especially with a criminal defendant? Is anger ever appropriate in dealing with attorneys or pro se litigants? No and No
26. How much money have you spent on your campaign? If it is over \$100, has that amount been reported to the House and Senate Ethics Committees? None
27. If you are a sitting judge, have you used judicial letterhead or the services of your staff while campaigning for this office? Not Applicable
28. Have you sought or received the pledge of any legislator prior to this date? No.
29. Have you sought or been offered a conditional pledge of support by any legislator pending the outcome of your screening? No.
30. Have you asked any third parties to contact members of the General Assembly on your behalf before the final and formal screening report has been released? Are you aware of any friends or colleagues contacting members of the General Assembly on your behalf? No and No.
31. Have you contacted any members of the Judicial Merit Selection Commission? No.
32. Are you familiar with the 48-hour rule, which prohibits a candidate from

seeking pledges for 48 hours after the draft report has been submitted?
Yes

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

s/Eugene C. Griffith, Jr.

Sworn to before me this 17th day of September, 2008.

Notary Public for S.C.

My Commission Expires: 3/14/2015 _____

**JUDICIAL MERIT SELECTION COMMISSION
PERSONAL DATA QUESTIONNAIRE**

Court, Position, and Seat # for which you are applying: Eighth Judicial Circuit-Seat 2

1. NAME: Mr. Donald Bruce Hocker
BUSINESS ADDRESS: Post Office Box 972, Laurens, SC 29360
BUSINESS NUMBER: (864) 984-4574

2. Date of Birth: 1952
Place of Birth: Waltham, MASS

3. Are you a citizen of South Carolina? Yes.
Have you been a resident of this state for at least the immediate past five years? Yes.

5. Family Status: Married on July 17, 1976, to Susan Gayle Lindler Hocker.
Never divorced, two children.

6. Have you served in the military. No.

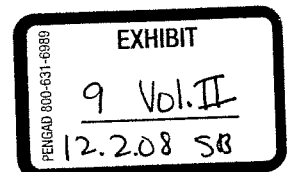
7. List each college and law school you attended, including the dates of your attendance, the degrees you received, and if you left an institution without receiving a degree, the reason for your departure.
 - (a) Clemson University, 1971-1975, Bachelor of Arts;
 - (b) Clemson University, 1975-1976, Masters in Education;
 - (c) University of South Carolina School of Law, 1978-1980, JD.

8. List the states in which you have been admitted to practice law and the year of each admission. Also list any states in which you took the bar exam but were never admitted to the practice of law. If you took the bar exam more than once in any of the states listed, please indicate the number of times you took the exam in each state.
South Carolina, 1981.

9. List the significant activities in which you took part during your attendance at college, graduate, and law school. Give the dates you were involved in these activities and list any leadership positions you held.
 - (a) (College) Clemson University: KAPPA ALPHA Fraternity, 1972-1975, Recording Secretary;
 - (b) (Graduate) Clemson University: Graduate Assistant/Instructor 1975-1976;
 - (c) (Law School) USC: Wig and Robe, 1980; Moot Court Board, 1980; Mock Trial Competition, 1980.

10. Describe your continuing legal or judicial education during the past five years. Include **only** the title and date of any continuing legal or judicial education course completed

<u>Conference/CLE Name</u>	<u>Date(s)</u>
(a) S.C. Association of Probate Judges	2/19/02;
(b) S.C. Probate Bench/Bar	9/13/02;



- | | | |
|-----|------------------------------------|-----------|
| (c) | Annual Judicial Conference | 9/22/02; |
| (d) | S.C. Association of Probate Judges | 3/25/03; |
| (e) | S.C. Association of Probate Judges | 5/16/03; |
| (f) | FN-Real Estate | 2/7/03; |
| (g) | S.C. Probate Bench/Bar | 9/12/03; |
| (h) | Annual Judicial Conference | 9/21/03; |
| (i) | S.C. Association of Probate Judges | 2/2/04; |
| (j) | Judicial Oath of Office | 10/11/04; |
| (k) | S.C. Probate Bench/Bar | 9/17/04; |
| (l) | Annual Judicial Conference | 10/10/04; |
| (m) | Lawyer's Oath of Office | 9/24/04; |
| (n) | S.C. Association of Probate Judges | 2/28/05; |
| (o) | LandAmerica-Title Insurance | 9/14/05; |
| (p) | S.C. Probate Bench/Bar | 9/16/05; |
| (q) | Annual Judicial Conference | 9/21/05; |
| (r) | S.C. Association of Probate Judges | 2/6/06; |
| (s) | LandAmerica-Title Insurance | 8/23/06; |
| (t) | S.C. Probate Bench/Bar | 9/15/06; |
| (u) | Annual Judicial Conference | 10/4/06; |
| (v) | S.C. Probate Bench/Bar | 9/14/07; |
| (w) | S.C. Association of Probate Judges | 2/13/07; |
| (x) | Annual Judicial Conference | 9/9/07; |
| (y) | S.C. Probate Bench/Bar | 9/14/07; |
| (z) | S.C. Association of Probate Judges | 2/5/08. |
11. Have you taught law-related courses or lectured at bar association conferences, educational institutions, or continuing legal or judicial education programs?
- 1999-Jury Trials in Probate Court;
 - 2000-Basic Evidence in Probate Court;
 - 2001-Order Writing;
 - 2002-Contempt issues in Probate Court;
 - 2003-Will Construction Cases;
 - 2006-Awarding Attorney's Fees in Probate Court;
 - 2007-Reopening the Record, Contempt Revisited, Pro Se Litigants, Brown v. Coe.
- Written materials were prepared and submitted at each conference.
12. List all published books and articles you have written and give citations and the dates of publication for each. None.
13. List all courts in which you have been admitted to practice and list the dates of your admission. Give the same information for administrative bodies that require a special admission to practice.
- South Carolina State Courts: May 14, 1981;
U.S. District Court: September 10, 1981;
U.S. Supreme Court: October 11, 1994.

14. Describe chronologically your legal experience since graduation from law school and include a list of all law firms with which you have been associated. Describe the general character of your practice and divide it into periods with dates if its character has changed over the years.

May 15, 1981 to current: I have been a sole practitioner in Laurens, South Carolina. I have had a general practice with significant experience in Circuit Court-both criminal and civil. I have also been the Associate Probate Judge for Laurens County since March of 1984 which will be discussed later.

If you are a judge and are not seeking a different type of judgeship, the following questions are inapplicable:

- (b) If you are a candidate for **Circuit Court**, please provide a brief written description of your experience in criminal matters, including any cases handled over the past five years and include a brief description of the issues involved. Further, please provide a brief written description of your experience in civil matters, including any cases handled over the past five years and include a brief description of the types of matters handled, issues involved, and procedural history. Please include information such as the primary areas in civil court in which you practice, whether you represent plaintiffs or defendants, or both. You may go back further than five years if you feel it would assist the Commission with its assessment of your experience. If you lack experience in an area, describe how your background has prepared you to preside over such matters as a Circuit Court Judge, or how you would compensate for your lack of experience in this area.

Criminal: I would incorporate by reference my response to Question 19 (c) and (d) concerning two significant cases in General Sessions that I have handled. I have represented criminal clients in General Sessions (and even Magistrate's Court) my entire practice. I typically will receive 8-12 court appointments a year and approximately at least this same number of privately-paid cases annually. I have represented clients charged with a variety of offenses, i.e. murder, felony DUI, possession and distribution of drugs. The vast majority of criminal cases result in a guilty plea but I have had experience throughout my 27½ years in trying cases before a jury. A sampling of what I currently have pending in General Sessions Court practice is as follows: Assault and Battery of an High and Aggravated Nature, Resisting Arrest/CDV of an High and Aggravated Nature, Manufacturing Methamphetamine, and Lynching.

Civil: I would incorporate by reference my response to Question 19 (a), (b), and (e) concerning three significant cases in Common Pleas that I have handled. I have extensive experience dealing with a wide variety of cases, both jury and non-jury. The two most recent cases that I have tried in Court were (1) A breach of contract/fraud case dealing with a sale of an antique automobile. I represented the Defendant. The case was tried before a jury with a verdict in favor of the Defendant. (2) A

deed-set-aside case. I represented the Plaintiff. The case was tried non-jury with a verdict in favor of the Plaintiff. My practice has been more Plaintiff-oriented but I do represent Defendants. A sampling of what I currently have pending in my Common Pleas practice is as follows: Wrongful-death and Survival case representing the deceased's family, Mechanic's lien foreclosure case representing the contractor, and a Fraud action over the sale of a piece of property representing the purchaser. I also represent The Palmetto Bank and The City of Laurens Commission of Public Works which provides additional cases in the civil area.

15. What is your rating in Martindale-Hubbell? BV.

Retired judges/justices and judges/justices applying for reelection to their current position may omit Questions 16-21. If a candidate is seeking a judgeship different than his or her current position, Questions 16-21 should be answered based on experience prior to serving on the bench.

16. What was the frequency of your court appearances during the last five years?

- (a) federal: None;
- (b) state: Average of five times a week.

17. What percentage of your practice involved civil, criminal, and domestic matters during the last five years?

- (a) civil: 25%;
- (b) criminal: 25%;
- (c) domestic: 40%.

18. What percentage of your practice in trial court during the last five years involved matters that went to a jury?

- (a) jury: 5%;
- (b) non-jury: 95%.

Did you most often serve as sole counsel, chief counsel, or associate counsel in these matters? Sole Counsel.

19. List five of the most significant litigated matters that you have personally handled in either trial or appellate court or before a state or federal agency. Give citations if the cases were reported and describe why these matters were significant.

- (a) Charles Gray and Corey Gray vs. Georgia Pacific Corp., 97-CP-30-110, 111, 112.

I represented the Plaintiffs. This case involved a horrible vehicle accident with these two brothers. They both sustained severe 2nd and 3rd degree burns over most of their bodies. Suit was filed and a settlement was reached in 1997. This case is significant for several reasons. One, novel computer technology was used by the Plaintiff in the mediation process. Secondly, it is significant because the Plaintiffs were and are a living example of a true will to live and remain productive citizens which they are today. Thirdly, significant discovery took place.

- (b) Glen Meadows, LLC, et. al. vs. The Palmetto Bank, et. al., 03-CP-23-4541
I represented the Defendant Palmetto Bank. This case involved a suit by the Plaintiff-employer against three Banks. The Plaintiff had an employee who stole \$145,000.00 over several years by making out and endorsing numerous checks written on accounts with the Defendants. These checks were made payable to the Bank and each time a deposit was made to The Palmetto Bank. Extensive discovery took place. The case was significant because the law was very competitive between the UCC code and the requirements and duty of care placed upon a customer in contrast to the basic principals governing a banking institution's duty of care.
- (c) State of South Carolina vs. Allenna Ward, 07-GS-30-359, 362, 364, 365,369
This criminal case dealt with a teacher charged with criminal sexual misconduct with five underage students. There was a tremendous amount of publicity nationwide. I was one of the two lawyers representing this Defendant. The case was significant for several reasons. One, the vast majority of teachers charged in this state and other states were only involved with one student and this case had five. Secondly, it was significant simply because of the media attention it had from the day of the arrest to the sentencing.
- (d) State of South Carolina v. Comest S. Allen, 99-GS-30-661
I represented the Defendant who had been charged with armed robbery. He had been in jail/prison the majority of his life. He was accused of going into a Subway restaurant in Clinton, S.C. at midnight (closing time) and robbing the store. The robbery was on surveillance video. The Defendant was very accustomed to the legal system so he continuously filed Motions, briefs, objections, etc. contrary to my advice. This case was significant for several reasons. First, he required me to file a Motion with the Court to allow a "re-enactment" of the crime wherein he would be allowed to wear what the "person" was wearing and would act out exacting as the person on the video in an attempt to offer the comparison of the videos as not being him. To the shock of everyone, the Court granted the Motion. The "re-enactment" was done but was never an issue. This is due to the fact the only real evidence that the State had (and it was not the video) was the identification by the store clerk. However, under legal principles, we were successful in getting the photo identification line-up and the resulting testimony/in-court identification suppressed. The trial Judge agreed with our defense that the identification was clearly tainted hereby justifying a suppression of the clerk's testimony. Consequently, a motion for directed verdict was made and granted.
- (e) Ernest Sullivan vs. John Walk, et. al., 06-CP-30-890.

A lady died and left a significant life insurance policy naming, not her husband-the Plaintiff, but an uncle-the Defendant. This lady died of cancer and made the beneficiary change from the Husband to the uncle in the latter stages of her illness. I represented the Defendant uncle. He claimed that she made the change to him because she trusted him to insure that her three children (not all by the Husband) would be taken care of. The significant issue in the case was whether or not she had the mental capacity to effectuate the change of beneficiary. Significant also was the fact that we had to recreate the last months of this cancer-stricken lady's life on the issue of competency. The case was resolved with the Plaintiff receiving nothing and the Defendant receiving the entire policy proceeds (He agreed to put a portion of the money in trust for the children). Also, it should be noted that a companion Interpleader action was filed by the Insurance Carrier.

20. List up to five civil appeals that you have personally handled. Give the case name, the court, the date of decision, and the citation if the case was reported. **If you are a candidate for an appellate court judgeship (please attach one copy of briefs filed by you in each matter).**

(a) Shorb v. Shorb, 372 S.C. 623 (Ct.App 2007)

I was the trial lawyer but associated another lawyer for the appeal. I was not shown as counsel but was copied with all correspondence from the Court of Appeals and I assisted counsel with the appeal. The case was novel on the issue of equitable division of Walmart stock options in a divorce. I represented the Wife who was awarded 55% of the Husband's stock options along with a monetary award concerning these options. The Wife prevailed on the amount of stock options awarded her by the trial court.

(b) South Carolina Department of Social Services vs. Defendants, (Court of Appeals 2000-unpublished opinion)

I represented the father of a teenage daughter who accused him of sexual abuse. The significance of this case was the Court's defining "sexual abuse" to the facts of the case. We were successful in obtaining a reversal and remand in the case.

(c) Hellams v. Harnist, 284 S.C. 256 (1985)

I represented the Defendants in this deed reformation case. I was successful in getting the Court to reverse the trial court's reformation of the subject deed. The case sets out good law with respect to deeds, mutual mistakes in deeds, and property descriptions. (Note: I had only been out of law school four years when the appeal was decided).

(d) Bobby Tucker vs. Debra Wasson, 90-759

This case was appealed by the mother in a visitation case. I represented the father. The issue being whether the father's previously ordered supervised visitation should be changed. The Lower Court ruled in favor of the father. The Court of Appeals affirmed. The case was significant

for several reasons. During the time the case was tried, issues of visitation being supervised or unsupervised were fairly uncommon. Too, the Guardian ad Litem played a role in this case possibly somewhat differently than a Guardian ad Litem today.

(e) Flinn v. Crittenden, 287 S.C. 427 (1985)

I represented the Plaintiff in a nursing home liability suit against the Defendant nursing home. The Lower Court granted summary judgment in the Defendant's favor. The appellate court affirmed the ruling finding no liability. Justice Goolsby gave a strong dissent which is significant because it sets out a good review of nursing home liability.

21. List up to five criminal appeals that you have personally handled. Give the case name, the court, the date of decision and the citation if the case was reported. Please attach one copy of briefs filed by you in each matter. None.

22. Have you ever held judicial office?

I have been the Associate Probate Judge for Laurens County since March of 1984 (24½ years) and appointed by the elected Probate Judge. Probate Courts in South Carolina have jurisdiction over Estates, Mental Commitments, Conservatorships and Guardianships. During my tenure on the bench, I have presided over numerous cases not only in Laurens County but across the State. I have had the honor and privilege of being appointed by the Supreme Court to preside over many cases in other counties for a variety of reasons. I have had the opportunity to preside over jury trials as well as non-jury cases during my tenure. Even though non-jury cases are the most prevalent in Probate Court, I would like to give some of the following examples of jury trials I have presided over (non-exclusive list). (Note: Probate jury trials are identical to Circuit Court jury trials in all respects. A jury trial in Probate Court is conducted either in conjunction with a term of Common Pleas Court in Circuit Court or a special Probate jury term is authorized by the Supreme Court. In either situation, a Circuit Court jury pool is utilized).

Examples: (1) Barnett Estate-Anderson County: Six day jury trial with five lawyers and numerous lay and expert witnesses. Since this was the only case for that week of Circuit Court, I did all of the initial jury pool qualification before the jury pool was voir dired for the particular case.

(2) Owings Estate-Laurens County: Four day jury trial with five lawyers and numerous lay and expert witnesses. The same is true in this case concerning jury pool qualification.

(3) Lester Estates-Scheduled in Newberry County for the end of September 2008. A special term of court is scheduled with a Circuit Court jury pool being summoned and used. As in the above cases, I will preside over all aspects of the trial including pre-trial and post-trial matters.

The point being to the above summary of jury trial Judicial experiences is that I exercised the same role as that of a Circuit Court Judge and did everything that is required of a Circuit Court Judge presiding over a civil jury trial. It should also be noted that the Probate Court handles a wide variety of civil

- issues. The rules of evidence are the same in Probate Court as in Circuit Court. The Probate Court follows the South Carolina Rules of Civil Procedure.
23. If the answer to question 22 is yes, describe or list five of your most significant orders or opinions and give the citations if they were reported. Also list citations to any appellate review of these orders or opinions.
- (a) Melvin Weathers v. Robert P. Bolt as Administrator of the Estate of Virginia B. Morris, 293 S.C. 486
The Primary issue in this case was whether the Plaintiff had a common-law marriage with the decedent thus allowing him to inherit from the Estate. I ruled against the Plaintiff and my Order was appealed to Circuit Court and then to the Court of Appeals. Both appellate Courts affirmed my ruling.
- (b) Department of Health and Human Services vs. Moses L. Miller, Personal Representative of the Estate of Genobia Washington, 2005-UP-154
There were several issues in this case: 1. Jurisdiction of the DHHS claim; 2. The distinction between a Medicaid lien for nursing home services and a Medicaid lien for medical services provided as a result of an accident; 3. The right of the Court to sua sponte reopen the record. Both the Circuit Court and Court of Appeals affirmed my ruling.
- (c) In the Matter of Mildred Williams, 97-ES-30-035
An emergency action was filed by a banking institution seeking a Protective Order and seeking a declaration as to the competency of Ms. Williams with respect to a very substantial investment account held by the bank. Several hearings were held in the case. At one time eight lawyers were involved. Ms. Williams also filed an extraordinary Writ of Prohibition in the S.C. Supreme Court (case number unknown) objecting to my jurisdiction over the case. This Writ action was ultimately dismissed. The merits of the case before my court were ultimately dismissed after the competency issue was resolved.
- (d) In the Matter of Merrilee O. DeVinney, 01-GC-100/104
This case involved a very significant and somewhat novel issue related to the effect, if any, of a Trust on a spouse's claim to an elective share in the Estate. My Order was appealed to the Court of Appeals.
- (e) In the Matter of the Estate of Bobby Gene Barnett, 03-ES-04-174
This case is ongoing which involves a large Estate and a substantial controversy among the family members along with a companion case involving two bonding companies which had bonds in place when a prior Personal Representative was in office. There have been 15-20 separate hearings along with a six day jury trial on the issue of the validity of the Last Will and Testament.
24. Have you ever held public office other than judicial office? If so, list the periods of your service, the office or offices involved, and whether you were elected or appointed. Also, state whether or not you have timely filed your report with the State Ethics Commission during the period you held public

office. If not, were you ever subject to a penalty? If so, give details, including dates.

Since I am appointed by the elected Probate Judge, I have been required to file an Annual Report with the State Ethics Commission and I have always been timely without penalty. (Note: Several weeks ago for the very first time in 24½ years, the State Ethics Commission said that I did not have to file a Report).

25. List all employment you had while serving as a judge (whether full-time or part-time, contractual or at will, consulting or otherwise) other than elected judicial office. Specify your dates of employment, employer, major job responsibilities, and supervisor.
Practicing attorney representing clients such as the City of Laurens Commission of Public Works and The Palmetto Bank.
26. Have you ever been an unsuccessful candidate for elective, judicial, or other public office? No.
27. Have you ever been engaged in any occupation, business, or profession other than the practice of law, teaching of law, or holding judicial or other public office?
 - (a) 1976-1978: Juvenile Probation Office with Laurens County;
 - (b) 1976-1978: Adjunct Instructor for Piedmont Tech.
28. Are you now an officer or director or involved in the management of any business enterprise? Explain the nature of the business, your duties, and the term of your service. No.
29. A complete, current financial net worth statement was provided to the Commission.
30. Describe any financial arrangements or business relationships that you have, or have had in the past, that could constitute or result in a possible conflict of interest in the position you seek. Explain how you would resolve any potential conflict of interest. None.
31. Have you ever been arrested, charged, or held by federal, state, or other law enforcement authorities for violation or for suspicion of violation of any federal law or regulation, state law or regulation, or county or municipal law, regulation, or ordinance, or any other law, including another country's law? No.
32. Have you, to your knowledge, ever been under federal, state, or local investigation for possible violation of a criminal statute? No.
33. Has a tax lien or other collection procedure ever been instituted against you by federal, state, or local authorities? Have you ever defaulted on a student loan? Have you ever filed for bankruptcy? No.
34. Have you ever been sued, either personally or professionally?
Several years ago, a disgruntled "litigant" (actually it was a non-lawyer who was trying to represent a party in a Probate Court case) sued me in my judicial capacity because I would not allow him to make an appearance in the case. The case was dismissed with prejudice in the Circuit Court. (Note: This person

has had a history of filing lawsuits against judges and lawyers all without any success).

36. Are you now or have you ever been employed as a "lobbyist," as defined by S.C. Code § 2-17-10(13), or have you acted in the capacity of a "lobbyist's principal," as defined by S.C. Code § 2-17-10(14)? No.
37. Since filing with the Commission your letter of intent to run for judicial office, have you accepted lodging, transportation, entertainment, food, meals, beverages, money, or any other thing of value as defined by S.C. Code § 2-17-10(1) from a lobbyist or lobbyist's principal? No.
38. S.C. Code § 8-13-700 provides, in part, that "[n]o public official, public member, or public employee may knowingly use his official office, membership, or employment to obtain an economic interest for himself, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated." Please detail any knowledge you have of any formal charges or informal allegations against you or any other candidate for violations of these provisions. None.
39. S.C. Code § 8-13-765 provides, in part, that "[n]o person may use government personnel, equipment, materials, or an office building in an election campaign." Please detail any knowledge you have of any formal charges or informal allegations against you or any other candidate for violations of these provisions. None.
40. Itemize (by amount, type, and date) all expenditures, other than those for travel and room and board, made by you, or on your behalf, in furtherance of your candidacy for the position you seek.
 - (a) Postage/Stationary: \$158.60.
41. List the amount and recipient of all contributions made by you or on your behalf to members of the General Assembly since the announcement of your intent to seek election to a judgeship. None.
42. Have you directly or indirectly requested the pledge of any member of the General Assembly as to your election for the position for which you are being screened? Have you received the assurance of any public official or public employee that they will seek the pledge of any member of the General Assembly as to your election for the position for which you are being screened? No.
43. Have you requested a friend or colleague to contact members of the General Assembly on your behalf? Are you aware of any friends or colleagues contacting members of the General Assembly on your behalf? No.
44. Have you or has anyone acting on your behalf solicited or collected funds to aid in the promotion of your candidacy? No.
45. Have you or has anyone acting on your behalf contacted members of the Judicial Merit Selection Commission about your candidacy or intention to become a candidate?
 - (a) On August 13, 2008, Sandy Bridges, an attorney from Florence, and I had a phone conversation about a case we are working on which

involves a wrongful death. At the conclusion of our phone conversation, I told Sandy that I was interested in being a candidate for this seat. I then learned from him that in fact Sandy had been asked to serve on the Merit Selection Commission which I did not know as I had never seen his name on the list. Consequently, our discussion stopped. It was completely inadvertent. I have since learned that formal appointments to the Commission may not take place until November.

- (b) On August 11, 2008, I sent out a mass mailing (introduction and qualifications letter) to members of the House and Senate, opposed and unopposed in the November election, as well as nonincumbants, opposed and unopposed in the November election. I did not realize that in fact this mailing would go to a very few members of the Merit Selection Commission. This was not intentional. The mailing went to them because of their being in the Legislature and not because of their serving on the Merit Selection Commission.
46. List all bar associations and professional organizations of which you are a member and give the titles and dates of any offices you have held in such groups.
- (a) Laurens County Bar Association;
 - (b) South Carolina Bar Association;
 - (c) S.C. Trial Lawyers Association;
 - (d) S.C. Association of Probate Judges;
 - (e) Certified Circuit Court Mediator/Arbitrator (ADR).
47. List all civic, charitable, educational, social, and fraternal organizations of which you are or have been a member during the past five years and include any offices held in such a group, any professional honors, awards, or other forms of recognition received and not listed elsewhere.
- I am active in my church which is First United Methodist Church in Laurens. I serve as Chairman of the Church Council and I teach an adult Sunday school class. I have been active with the Boy Scouts serving as Troop Committee Chairman. I belong to the KAPPA ALPHA Order Court of Honor which is an elite organization of men across the State who are KAPPA ALPHA alumni. Finally, several years ago I received the South Carolina Pro Bono Service Award.
48. Provide any other information which may reflect positively or negatively on your candidacy, or which you believe should be disclosed in connection with consideration of you for nomination for the position you seek. This information may include how your life experiences have affected or influenced the kind or type of judge you have been or plan to be.

I believe that I am qualified for the position of Circuit Court Judge for the following reasons:

- (a) I have 27½ years experience practicing in Circuit Court both in Common Pleas-civil and General Session-criminal. I have tried cases jury and non-

jury. I believe that I have more than sufficient legal experience to qualify me for this position.

- (b) I have 24½ years on the Judicial Bench as the Associate Probate Judge for Laurens County. I have tried cases jury and non-jury. I have presided over cases across this State. I believe that I have more than sufficient judicial experience to qualify me for this position.
- (c) I have never had any grievances or ethical complaints filed against me in the 27½ years I have been a practicing attorney.
- (d) I have never had any grievances or ethical complaints filed against me in the 24½ years I have been a Judge.
- (e) I am a Christian and active in my Church and community to the extent that my part-time judicial position allows.
- (f) I have a stable and loving marriage of 32 years with two wonderful children who are both adopted.
- (g) I believe that I have the right judicial temperament and sense of fairness and compassion that will allow me to be a good Circuit Court Judge.
- (h) That I meet the nine criteria used by the Commission in determining that I am qualified:
 - 1. I meet the Constitutional qualifications;
 - 2. I am ethically fit;
 - 3. I have the necessary academic and professional abilities;
 - 4. I have the required character;
 - 5. I have a positive reputation;
 - 6. I have excellent physical health;
 - 7. I have no mental health problems;
 - 8. I have the necessary legal and judicial experience;
 - 9. I have the necessary judicial temperament.

Finally, I am humbled in having the opportunity to apply for this position. I believe that the above factors that I have listed have influenced me in being the type of Judge I have been and the type of Judge that I will continue to be whether (and hopefully) in the Circuit Court arena or continue in the Probate Court arena.

49. References:

- (a) Rev. William F. Rogers, III (Preacher)
First United Methodist Church
Post Office Box 203
Laurens, SC 29360
864-984-7696
- (b) Thomas K. Hardy (Banker)
The Palmetto Bank
Post Office Box 49
Laurens, SC 29360
864-984-8333
- (c) A. King Dixon, II (Friend)

1200 Dixon Road
Laurens, SC 29360
864-682-3374

- (d) Gregory P. Harris (Attorney)
Attorney at Law
1529 Laurel Street
Columbia, SC 29201
803-779-7080
- (e) William J. Craine, Sr. (Friend and Colleague)
103 Left Bank
Laurens, SC 29360
864-682-9611

YOUR SIGNATURE WILL BE HELD TO CONSTITUTE A WAIVER OF THE CONFIDENTIALITY OF ANY PROCEEDING BEFORE A GRIEVANCE COMMITTEE OR ANY INFORMATION CONCERNING YOUR CREDIT.

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

s/Donald Bruce Hocker

Date: 09/08/08

SHARON SCHOLL - Fwd: Letter

From: JANE SHULER
To: SHARON SCHOLL
Date: 11/19/2008 11:06 AM
Subject: Fwd: Letter
Attachments: Let-BGoldsmith.doc

Amendment

>>> "Don Hocker" <dbhattorney@backroads.net> 11/17/2008 4:11 PM >>>
Bonnie: Is this what I need? If so, will put original on letterhead and mail to you. Thanks for your help. Don Hocker

November 17, 2008

Ms. Bonnie B. Goldsmith
Assistant Chief Counsel
House Judiciary Committee
P.O. Box 11867
Columbia, S.C. 29211

RE: Amendment of Question 40-PDQ

Dear Ms. Goldsmith:

I am amending my answer to Question 40 to increase my expenses by \$46.62 in postage and stationary making a total of \$205.22.

Thanking you, I am

Cordially,

Donald B. Hocker

DBH/dh

November 17, 2008

Ms. Bonnie B. Goldsmith
Assistant Chief Counsel
House Judiciary Committee
P.O. Box 11867
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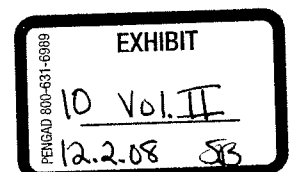
DBH/dh

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

Circuit Court
(New Candidate)

Full Name: Donald Bruce Hocker
Business Address: Post Office Box 972
Laurens, SC 29360
Business Telephone: 864-984-4574

1. Why do you want to serve as a Circuit Court judge?
I am humbled and honored to have the opportunity to apply for this Circuit Court Judge's position. I want to serve as Circuit Court Judge for several reasons. I want to be able to apply my skills I have learned and developed as a practitioner over the past 27 ½ years and as a part-time Judge for the past 24 ½ years all in a full-time judicial capacity. Secondly, I want to serve the public and the legal community. Finally, I truly enjoy being a Judge and I take being a Judge very seriously.
2. Do you plan to serve your full term if elected? Yes.
3. Do you have any plans to return to private practice one day? No.
4. Have you met the Constitutional requirements for this position regarding age, residence, and years of practice? Yes.
5. What is your philosophy regarding ex parte communications? Are there circumstances under which you could envision ex parte communications being tolerated?
I would follow Canon 3B(7) to govern how I would handle these situations. They are to be avoided to every extent possible. However, ex parte communications would be tolerated in emergency situations so long as notice and disclosure are afforded as soon thereafter as possible. Also, purely ministerial/administrative matters or scheduling issues can cause ex parte communications to be warranted. The Court must make sure that substantial matters clearly within the merits of the case are not involved. Also, the Judge needs to further make sure that the other side is not prejudiced in any way by the ex parte communication.
6. What is your philosophy on recusal, especially in situations in which lawyer-legislators, former associates, or law partners are to appear before you?
I have always taken the position, during my tenure on the bench, that if there is any hint of a need for a recusal, it is better to "err on the side of caution" and recuse oneself from a case. The Judge must always appear to be fair and impartial. A Judge must always allow the litigants to feel they have been treated fairly and given every opportunity to present their case knowing that they were given every consideration. I have never had a law partner or associate so that would never be an issue. Lawyer-legislators, on the other hand, practice across the state in every Court everyday. If a Judge believes he



or she can not be fair or impartial because counsel is a legislator, then recusal is warranted. If the opposite is true, then recusal is not warranted. The issue should be controlled by Canon 2 of the code for Judicial Conduct as it sets forth the test for the existence of an "appearance of impropriety". It must be determined whether the conduct would create in reasonable minds a perception that the Judge's ability to carry out his responsibilities with integrity, impartiality, and confidence is impaired.

7. 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?
More likely than not, I would grant the Motion for Recusal but would require the moving party to make a clear record of why recusal was necessary. I, as the Judge, would also make a clear record why I did not believe there was any prejudice but out of fairness, I would grant the Motion. This in actuality happens very rarely.
8. How would you handle the appearance of impropriety because of the financial or social involvement of your spouse or a close relative?
I would handle it in accordance with number seven (7) above.
9. What standards would you set for yourself regarding the acceptance of gifts or social hospitality?
I believe Canon 4(D)(5) must be followed. Ordinary social hospitality is certainly acceptable in most situations and gifts from a relative or friend for a special occasion likewise would be acceptable in most situations. Gifts not intended or perceived to influence the Judge in the performance of his duties are also acceptable. These gifts and acts of hospitality must not be intended or perceived to influence the Judge in the performance of his duties. If they are given for that purpose, they must be avoided.
10. How would you handle a situation in which you became aware of misconduct of a lawyer or of a fellow judge?
Canon 3D(1) and (2) provides for "misconduct" to be substantial that affects a Judge's fitness for office or a lawyer's fitness to practice law. Therefore, if the act fits the definition of "misconduct" then a report must be made. However, a very careful and thorough review must be made before a formal report is filed.
11. Are you affiliated with any political parties, boards or commissions that, if you were elected, would need to be re-evaluated? No.
12. Do you have any business activities that you would envision remaining involved with if elected to the bench? No.
13. If elected, how would you handle the drafting of orders?
Because of the volume of work, I would direct counsel to prepare most Orders with the opportunity by opposing counsel to review the same. However, in some situations, I prefer to prepare my own Orders.
14. If elected, what methods would you use to ensure that you and your staff meet deadlines?
I would install paper and computer "tickler" systems.

15. What is your philosophy on "judicial activism," and what effect should judges have in setting or promoting public policy?
Judges, first and foremost, must follow and enforce the law. They should, however, be able to engage in activities that promote the law or advance the teachings of the law. Judges should not promote public policies that would often times create a conflict between the teachings of the law and public sentiment. As stated in number 16 below and Canon 4, Judges should be able to teach, lecture, and speak on matters advancing the improvement of the law, the legal system and the administration of justice. Going beyond that would not be proper for a Judge to engage in.
16. Canon 4 allows a judge to engage in activities to improve the law, legal system, and administration of justice. If elected, what activities do you plan to undertake to further this improvement of the legal system?
I would continue to speak and lecture at seminars and I would enjoy teaching law related courses.
17. Do you feel that the pressure of serving as a judge would strain personal relationships (i.e. spouse, children, friends, or relatives)? How would you address this? No. It has not ever been a problem over my 24½ years on the bench.
18. The following list contains five categories of offenders that would perhaps regularly appear in your court. Discuss your philosophy on sentencing for these classes of offenders.
Canon 5 only allows me to state that I will make a faithful and impartial performance of the duties of my office. I could not make statements that the public would view as a commitment to a particular decision or course of conduct in a particular case or fact situation. I can and will give my general judicial views and overall philosophies.
- a. Repeat offenders: I am a firm believer that in many cases (not all) everyone is entitled to some leniency if it is a first-time offense or first-time offender situation. However, if a Defendant violates that privilege and commits a subsequent crime, then he or she must be dealt with more severely. The Court must follow those sentencing statutes where enhanced penalties are applicable for repeat offenders.
- b. Juveniles (that have been waived to the circuit court): Once a Family Court determines that the statutory requirements are met to transfer a juvenile case to Circuit Court, I do not believe that sentencing should be viewed any differently just because the Defendant is a juvenile. Also we have certain mandatory sentences where the Court is without discretion. I am mindful, however, that some juveniles are in fact children and others are closer in reality to adults. Certainly in those situations where the Court has discretion, the age of the Defendant would certainly be taken into consideration along with all other applicable facts.
- c. White collar criminals: I believe applicable to any sentencing situation, the Court can not be influenced by whether the Defendant is white or black, poor or rich, young or old. The Court has to consider: Type of offense;

Defendant's criminal history; Sentencing statute; Remorse on behalf of the Defendant; Whether the crime is victimless or not.

d. Defendants with a socially and/or economically disadvantaged background: I believe that this can be one factor among many factors that the Court would look at in determining an appropriate sentence. This in and of itself would not be a basis to apply a more strict sentence or a more lenient situation in a case. I have been a defense lawyer my entire career and this fact alone generally does not mitigate an otherwise applicable sentence by the Court but again must be taken into account along with all other factors.

e. Elderly defendants or those with some infirmity: This is a "special" area that I know gives Judges a lot of concerns when faced with imposing an appropriate sentence. The Court has to be cognizant of the fact of whether or not the advanced age of the Defendant or the Defendant's physical or mental infirmity would in fact actually enhance the punishment while in prison in contrast to a Defendant who is not elderly or one who does not have some infirmity. This would create additional concerns for the Court in determining an appropriate sentence along with consideration of all applicable factors.

19. Are you involved in any active investments from which you derive additional income that might impair your appearance of impartiality? No.

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

If I believed I could not be fair and impartial then I would not hear the particular case. I believe it would be a rare occurrence where this de minimis financial interest issue would be involved. If I elected to hear the case it would be conditioned upon counsel and litigants providing their consent on the record.

21. Do you belong to any organizations that discriminate based on race, religion, or gender? No.

22. Have you met the mandatory minimum hours requirement for continuing legal education courses? Yes.

23. What do you feel is the appropriate demeanor for a judge?

At all times, the Judge must show respect, courtesy, fairness, and impartiality to litigants, lawyers, staff, jurors, and others in the Courtroom.

24. Would the rules that you expressed in your previous answer apply only while you are on the bench or in chambers, or would these rules apply seven days a week, twenty-four hours a day?

It should apply seven days a week, twenty-four hours a day.

25. Do you feel that it is ever appropriate to be angry with a member of the public, especially with a criminal defendant? Is anger ever appropriate in dealing with attorneys or pro se litigants?

No. Anger is never appropriate with attorneys or litigants.

26. How much money have you spent on your campaign? If it is over \$100, has that amount been reported to the House and Senate Ethics Committees?

I have spent \$158.60 on postage and stationary for letters of introduction and qualification. Yes, I have made the necessary reporting.

27. If you are a sitting judge, have you used judicial letterhead or the services of your staff while campaigning for this office? No.
28. Have you sought or received the pledge of any legislator prior to this date? No.
29. Have you sought or been offered a conditional pledge of support by any legislator pending the outcome of your screening? No.
30. Have you asked any third parties to contact members of the General Assembly on your behalf before the final and formal screening report has been released? Are you aware of any friends or colleagues contacting members of the General Assembly on your behalf?
I have not asked for support or pledges and I have not asked anyone to gain support or pledges on my behalf from anyone in the General Assembly.
31. Have you contacted any members of the Judicial Merit Selection Commission? No.
(1) On August 13, 2008, Sandy Bridges, an attorney from Florence, and I had a phone conversation about a case we are working on which involves a wrongful death. At the conclusion of our phone conversation, I told Sandy that I was interested in being a candidate for this seat. I then learned from him that in fact Sandy had been asked to serve on the Merit Selection Commission which I did not know as I had never seen his name on the list. Consequently, our discussion stopped. It was completely inadvertent. I have since learned that formal appointments to the Commission may not take place until November.
(2) On August 11, 2008, I sent out a mass mailing (introduction and qualifications letter) to members of the House and Senate, opposed and unopposed in the November election, as well as nonincumbants, opposed and unopposed in the November election. I did not realize that in fact this mailing would go to a very few members of the Merit Selection Commission. This was not intentional. The mailing went to them because of their being in the Legislature and not because of their serving on the Merit Selection Commission.
32. Are you familiar with the 48-hour rule, which prohibits a candidate from seeking pledges for 48 hours after the draft report has been submitted? Yes.

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

s/Donald Bruce Hocker

Sworn to before me this 9th day of September, 2008.

Notary Public for S.C.

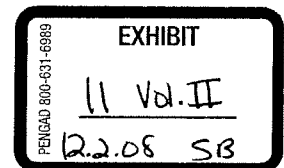
My Commission Expires:10-06-2009 _____

**JUDICIAL MERIT SELECTION COMMISSION
PERSONAL DATA QUESTIONNAIRE**

Court, Position, and Seat # for which you are applying: Circuit Court, Eight
Judicial Circuit Seat 2

1. NAME: Mr. Walter Rutledge Martin
BUSINESS ADDRESS: 528 Monument Street
E-MAIL ADDRESS: rutledgem@co.greenwood.sc.us
BUSINESS NUMBER: (864) 942-8655

2. Date of Birth: 1963
Place of Birth: Greenwood, SC
3. Are you a citizen of South Carolina?
Yes, I am a South Carolina Citizen.
Have you been a resident of this state for at least the immediate past five years?
Yes, I have been a resident in South Carolina for most of my life.
5. Family Status: Married on June 9, 2007, to Cynthia Susan Martin. Never divorced. One child.
6. Have you served in the military? No, I have not served in the military.
7. List each college and law school you attended, including the dates of your attendance, the degrees you received, and if you left an institution without receiving a degree, the reason for your departure.
 - (a) Duke University, 1981-1985 BA;
 - (b) Stanford University, 1985-1988 JD;
 - (c) Bryn Mawr College, 1989 No degree obtained due to decision not to pursue career in medicine;
 - (d) University of Michigan, 1991-1992 No degree obtained due to decision not to pursue career in academics;
 - (e) New York University, 1992-1993 LLM in Taxation.
8. List the states in which you have been admitted to practice law and the year of each admission. Also list any states in which you took the bar exam but were never admitted to the practice of law. If you took the bar exam more than once in any of the states listed, please indicate the number of times you took the exam in each state.
 - (a) California, 1993;
 - (b) South Carolina, 1994 (2).
9. List the significant activities in which you took part during your attendance at college, graduate, and law school. Give the dates you were involved in these activities and list any leadership positions you held.
 - (a) Moot Court, 1988;
 - (b) East Palo Alto Community Law Project, 1986-1988.



10. Describe your continuing legal or judicial education during the past five years. Include **only** the title and date of any continuing legal or judicial education course completed.

	<u>Conference/CLE Name</u>	<u>Date(s)</u>
(a)	SCSCJA Judges' Annual Conference	09/4/08;
(b)	Magistrates' Intensive Training	08/21/08;
(c)	Mandatory School for Magistrates	11/02/07;
(d)	Magistrates' Orientation School	07/23/07;
(e)	Annual SC Solicitors' Association Conference	09/24/06;
(f)	Annual SC Solicitors' Association Conference	09/25/05;
(g)	SC Drug Court Training Conference	02/25/05;
(h)	20 th Annual Criminal Law Update	01/21/05;
(i)	Revised Lawyer's Oath CLE	08/20/04;
(j)	Real Estate Mortgage Fraud in SC	03/11/04;
(k)	19 th Annual Criminal Law Update	01/23/04;
(l)	Happiness: Living with Ethics, Productivity and Stress Management	12/13/03;
(m)	18 th Annual Criminal Law Update	01/24/03.

11. Have you taught law-related courses or lectured at bar association conferences, educational institutions, or continuing legal or judicial education programs? If so, briefly describe each course or lecture.

I presented a Continuing Legal Education seminar on DUI prosecution.

12. List all published books and articles you have written and give citations and the dates of publication for each.

I have not published any books or articles.

13. List all courts in which you have been admitted to practice and list the dates of your admission. Give the same information for administrative bodies that require a special admission to practice.

I became an inactive member of the California bar in 1993 and an active member of the South Carolina bar in 1994. I have not been admitted to practice in any federal courts.

14. Describe chronologically your legal experience since graduation from law school and include a list of all law firms with which you have been associated. Describe the general character of your practice and divide it into periods with dates if its character has changed over the years.

- (a) 1990, Nelson, Mullins Research and writing in Products Liability;
- (b) 1990, Oakland, California Public Defender's Office Legal Research Assistant;
- (c) 1994-1995 York County, SC Public Defender's Office, Assistant Public Defender;
- (d) 1995-1998 Greenwood/Abbeville Public Defender's Office, Deputy Public Defender;
- (e) 1998-2001 Eighth Judicial Circuit Solicitor's Office, Assistant Solicitor;
- (f) 2001-2005 SC Attorney General's Office, Assistant Attorney General,

Criminal Appeals Division;

- (g) 2005-2007 Eight Circuit Solicitor's Office, Assistant Solicitor;
- (h) 2007- Present, Greenwood County Magistrate, Magistrate Office.

If you are a judge and are not seeking a different type of judgeship, the following questions are inapplicable:

(b) If you are a candidate for **Circuit Court**, please provide a brief written description of your experience in criminal matters, including any cases handled over the past five years and include a brief description of the issues involved. Further, please provide a brief written description of your experience in civil matters, including any cases handled over the past five years and include a brief description of the types of matters handled, issues involved, and procedural history. Please include information such as the primary areas in civil court in which you practice, whether you represent plaintiffs or defendants, or both. You may go back further than five years if you feel it would assist the Commission with its assessment of your experience. If you lack experience in an area, describe how your background has prepared you to preside over such matters as a Circuit Court Judge, or how you would compensate for your lack of experience in this area.

My experience in criminal law is vast and multi-faceted. As a public defender, I handled cases ranging in severity from driving under suspension to murder. As an assistant solicitor, I handled cases covering the same range. As an assistant attorney general in the criminal appeals division, I handled all types of criminal appeals to the SC Court of Appeals and the SC Supreme Court except for appeals from murder convictions.

I also have experience in civil law, due mainly but not exclusively to my tenure as a magistrate in Greenwood County. As an assistant solicitor, I handled drug forfeitures. Doing so gave me a hands-on experience with the fundamentals of civil procedure: drafting and filing of summons and complaint, service of process, trial if necessary, and judgment.

In the magistrate's offices, I handle almost all the Civil Court. This responsibility has provided me experience with a multitude of contract and tort cases.

15. What is your rating in Martindale-Hubbell?

Because I am not in private practice I have not asked to be listed.

Retired judges/justices and judges/justices applying for reelection to their current position may omit Questions 16-21. If a candidate is seeking a judgeship different than his or her current position, Questions 16-21 should be answered based on experience prior to serving on the bench.

16. What was the frequency of your court appearances during the last five years?

- (a) federal: None;
- (b) state: Most.

While at the South Carolina Attorney General's office in the Criminal Appeal Division, I appeared approximately five to ten times a year in front of the South Carolina Supreme Court or the South Carolina Court of Appeals. While at the Eighth Circuit Solicitor's office, I appeared in court almost daily while General Sessions Court was in session.

17. What percentage of your practice involved civil, criminal, and domestic matters during the last five years?

- (a) civil: 20%;
- (b) criminal: 80%;
- (c) domestic: 0%.

18. What percentage of your practice in trial court during the last five years involved matters that went to a jury?

- (a) jury: less than 10%;
- (b) non-jury: more than 90%;

Did you most often serve as sole counsel, chief counsel, or associate counsel in these matters?

I was always sole counsel.

19. List five of the most significant litigated matters that you have personally handled in either trial or appellate court or before a state or federal agency. Give citations if the cases were reported and describe why these matters were significant.

- (a) State v. Lawrence Moore, 343 S. C. 282, 540 S. E. 2d 445 (2000).

I was Mr. Moore's Public Defender.

This Case gives an example of an identification procedure that offended due process and lacked sufficient indicia of reliability for the identification to be admissible;

- (b) In the Interest of Christopher P., 328 S. C. 545, 492 S. E. 2d 820 (S. C. App. 1997)

I was Christopher's public defender.

This case established that charring is an element of arson;

- (c) State v. Ricky Prince, 335 S. C. 466, 517 S. E. 2d 229 (S. C. App. 1999)

I was Mr. Prince's public defender.

This case established that malicious injury to property can be an act of violence for the purpose of the stalking statute;

- (d) State v. Marion Parris, 363 S. C. 477, 611 S. E. 2d 501 (2005)

I represented the state in the South Carolina Court of Appeals and the South Carolina Supreme Court.

This case reaffirmed that the existence of a fiduciary relationship between the perpetrator and the victim is an element of breach of trust;

- (e) State v. Leroy Dupree, 354 S. C. 276, 583 S. E. 2d 437. I represented the state in the South Carolina Court of Appeals. This case established that a properly conducted controlled drug buy can establish probable

cause for a search warrant despite the affiant's lack of knowledge of the informant's history of reliability.

20. List up to five civil appeals that you have personally handled. Give the case name, the court, the date of decision, and the citation if the case was reported. **If you are a candidate for an appellate court judgeship (please attach one copy of briefs filed by you in each matter).**

Greenwood Urological v. Salter Circuit Court, May 27, 2008.

This was an appeal to Circuit Court from my decision as a magistrate. I of course drafted the magistrate's return. The issue in this case was whether Greenwood Urological's cause of action was legal or equitable.

21. List up to five criminal appeals that you have personally handled. Give the case name, the court, the date of decision and the citation if the case was reported. Please attach one copy of briefs filed by you in each matter.

(a) State v. Nicholson, 366 S. C. 568, 623 S. E. 2d 100 (S. C. 2005);

(b) State v. Thompson, 363 S. C. 192, 609 S. E. 2d 556 (S. C. App. 2005);

(c) State v. Flowers, 360 S. C. 360 S. C. 1,598 S. E. 2d (S. C. App. 2004);

(d) State v. Mathis, 359 S. C. 450, 597 S. E. 2d 872 (S. C. App. 2004);

(e) State v. Smith, 359 S. C. 481, 597 S. E. 2d 888 (S. C. App. 2004).

22. Have you ever held judicial office?

I am presently a full-time Magistrate Court Judge in Greenwood County. I began serving as such in May of 2007. My criminal jurisdiction is limited to crimes which do not carry possible penalties of more than thirty days in jail or a five hundred dollar fine. My civil jurisdiction extends to law cases in which neither party seeks more than seven thousand five hundred dollar in damages.

23. If the answer to question 22 is yes, describe or list five of your most significant orders or opinions and give the citations if they were reported. Also list citations to any appellate review of these orders or opinions.

(a) Richard Grooms v. Jessica Crawford;

(b) Clarence Young v. David Johnston;

(c) Oliver Baylor v. Coldwell Baker;

(d) Wynetta Hill v. Danita Goodman;

(e) Scott Buist v. Tommy Mc Cutsheon.

24. Have you ever held public office other than judicial office?

No, I have never held a public office other than judicial office.

25. List all employment you had while serving as a judge (whether full-time or part-time, contractual or at will, consulting or otherwise) other than elected judicial office. Specify your dates of employment, employer, major job responsibilities, and supervisor.

My job as a magistrate judge precludes me from other employment.

26. Have you ever been an unsuccessful candidate for elective, judicial, or other public office?

- No, I have never been an unsuccessful candidate for elective, judicial, or other public office.
27. Have you ever been engaged in any occupation, business, or profession other than the practice of law, teaching of law, or holding judicial or other public office?
No, I have you ever been engaged in any occupation, business, or profession other than the practice of law and the holding a judicial office.
28. Are you now an officer or director or involved in the management of any business enterprise?
Yes, I am on the Board of Directors of Bilbub Incorporated. Bilbub owns and leases commercial real estate. A trust of which my mother is the sole beneficiary owns forty-five percent of the stock. I do not receive any compensation from this position. The other two board members and I have not had a formal meeting since 2001 or 2002.
29. A complete, current financial net worth statement was provided to the Commission.
30. Describe any financial arrangements or business relationships that you have, or have had in the past, that could constitute or result in a possible conflict of interest in the position you seek. Explain how you would resolve any potential conflict of interest.
Other than my affiliation with Bilbub Incorporated, I do not have any possible sources of conflicts of interest. If Bilbub Incorporated had any financial interest in the outcome of any case before me I would recuse myself from the case.
31. Have you ever been arrested, charged, or held by federal, state, or other law enforcement authorities for violation or for suspicion of violation of any federal law or regulation, state law or regulation, or county or municipal law, regulation, or ordinance, or any other law, including another country's law?
No, I have not been arrested, charged, or held by federal, state, or other law enforcement authorities for violation or for suspicion of violation of any federal law or regulation, state law or regulation, or county or municipal law, regulation, or ordinance, or any other law, including another country's law.
32. Have you, to your knowledge, ever been under federal, state, or local investigation for possible violation of a criminal statute?
No, I have never to my knowledge ever been under federal, state, or local investigation for possible violation of a criminal statute.
33. Has a tax lien or other collection procedure ever been instituted against you by federal, state, or local authorities? Have you ever defaulted on a student loan? Have you ever filed for bankruptcy?
No, I have never had a tax lien or other collection procedure instituted against me by federal, state, or local authorities. I have not defaulted on a student loan nor have I filed for bankruptcy.
34. Have you ever been sued, either personally or professionally?
No, I have never been sued personally or professionally.

36. Are you now or have you ever been employed as a "lobbyist," as defined by S.C. Code § 2-17-10(13), or have you acted in the capacity of a "lobbyist's principal," as defined by S.C. Code § 2-17-10(14)?
No, I am not now and have never been employed as a lobbyist and I have never acted as a "lobbyist's principal."
37. Since filing with the Commission your letter of intent to run for judicial office, have you accepted lodging, transportation, entertainment, food, meals, beverages, money, or any other thing of value as defined by S.C. Code § 2-17-10(1) from a lobbyist or lobbyist's principal?
No, I have not accepted lodging, transportation, entertainment, food, meals, beverages, money, or any other thing of value from a lobbyist or lobbyist's principal ever.
38. S.C. Code § 8-13-700 provides, in part, that "[n]o public official, public member, or public employee may knowingly use his official office, membership, or employment to obtain an economic interest for himself, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated." Please detail any knowledge you have of any formal charges or informal allegations against you or any other candidate for violations of these provisions.
I do not have any formal charges or informal allegations against me for violations of the provisions listed above.
39. S.C. Code § 8-13-765 provides, in part, that "[n]o person may use government personnel, equipment, materials, or an office building in an election campaign." Please detail any knowledge you have of any formal charges or informal allegations against you or any other candidate for violations of these provisions.
I am not aware of any formal charges or informal allegations against me for violations of these provisions.
40. Itemize (by amount, type, and date) all expenditures, other than those for travel and room and board, made by you, or on your behalf, in furtherance of your candidacy for the position you seek.
I have not incurred any expenditures in the furtherance of my candidacy for this position.
41. List the amount and recipient of all contributions made by you or on your behalf to members of the General Assembly since the announcement of your intent to seek election to a judgeship.
No contributions have been made on my behalf to the General Assembly ever.
42. Have you directly or indirectly requested the pledge of any member of the General Assembly as to your election for the position for which you are being screened? Have you received the assurance of any public official or public employee that they will seek the pledge of any member of the General Assembly as to your election for the position for which you are being screened.

No, I have not requested the pledge of any member of the General Assembly for a Circuit Court position nor have I received the assurance of a public official or employee that he or she will seek such a pledge.

43. Have you requested a friend or colleague to contact members of the General Assembly on your behalf? Are you aware of any friends or colleagues contacting members of the General Assembly on your behalf?

No, I have not requested a friend or colleague to contact any members of the General Assembly on my behalf nor am I aware of anyone contacting members on my behalf.

44. Have you or has anyone acting on your behalf solicited or collected funds to aid in the promotion of your candidacy?

No, neither have I nor has anyone else solicited or collected funds to aid in the promotion of my candidacy.

45. Have you or has anyone acting on your behalf contacted members of the Judicial Merit Selection Commission about your candidacy or intention to become a candidate?

No, no one has contacted members of the Judicial Merit Selection Commission about my candidacy or intention to become a candidate.

46. List all bar associations and professional organizations of which you are a member and give the titles and dates of any offices you have held in such groups.

(a) South Carolina Bar;

(b) South Carolina Summary Court Judges' Association.

47. List all civic, charitable, educational, social, and fraternal organizations of which you are or have been a member during the past five years and include any offices held in such a group, any professional honors, awards, or other forms of recognition received and not listed elsewhere.

Lions Club.

48. Provide any other information which may reflect positively or negatively on your candidacy, or which you believe should be disclosed in connection with consideration of you for nomination for the position you seek. This information may include how your life experiences have affected or influenced the kind or type of judge you have been or plan to be.

I have had the privilege in my career to experience many perspectives in the court room, as a prosecutor, public defender, judge, and an assistant attorney general. I believe this range of experience would help me be fair and even-handed. I have stood in each one's shoes and I understand each one's pressures and concerns.

49. References:

(a) Harry Dest

P.O. Box 691

York, SC 29745

803-628-3031

(b) Lafayette Bluford Adams, III

- 4 Heather Court
Iowa City, IA 52245
319-337-4597
- (c) Daniel Curtis Crosby
993 Rocky Springs Church RD
Laurens, SC
864-872-0441
- (d) Charles Richardson
P. O. Box 11549
Columbia, SC 29201
803-734-39
- (e) Alan L. Titus
702 Montague Ave.
Greenwood, SC 2964
864-943-2674

YOUR SIGNATURE WILL BE HELD TO CONSTITUTE A WAIVER OF THE CONFIDENTIALITY OF ANY PROCEEDING BEFORE A GRIEVANCE COMMITTEE OR ANY INFORMATION CONCERNING YOUR CREDIT.

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

s/ Walter Rutledge Martin

Date: 09/22/08

W. RUTLEDGE MARTIN

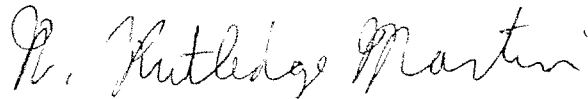
416 Dogwood Drive
Greenwood, SC 29646
(864) 992-8205
rutledgem@co.greenwood.sc.us

December 12, 2008

To Whom It May Concern:

My PDQ needs to be amended. My response to question number forty should now be that I have spent \$5.20 at the Post Office and \$36.33 at Quick Copies of Greenwood. I have also spent \$6.00 at Executive Services of Greenwood.

Sincerely,



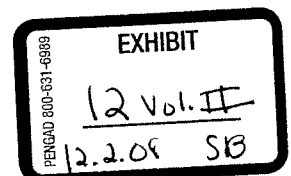
Walter Rutledge Martin

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

Circuit Court
(New Candidate)

Full Name: Walter Rutledge Martin
Business Address: 528 Monument Street Room 500
Greenwood, SC 29646
Business Telephone: (864) 942-8655

1. Why do you want to serve as a Circuit Court judge?
I would like to serve the people of the state of South Carolina by using my legal abilities to do my part to insure that all litigants receive a fair trial under the law. I would do so without favoritism to plaintiffs or civil defendants, prosecutors or criminal defendants. I am a stickler for the rules and I pledge to make all of my decisions based on the law. I would be respectful and courteous to both sides but I would also demand that both sides show respect to the court and the rule of law. Because I am currently a judge, I have first-hand knowledge that judges are sometimes faced with dilemmas that do not have clear-cut answers. However, my ability to understand and research the law and my experience in the court room in many different roles would give me the confidence to make the tough decisions. I would be honored to be given this important role and understand my decisions would have extremely important ramifications outside the court room in the lives of real people. My primary goal in practicing law has never been to reap large profits but to ensure that justice has been served.
2. Do you plan to serve your full term if elected?
Yes, I do plan to serve my full term if elected and would like to retire as a judge one day.
3. Do you have any plans to return to private practice one day?
No, I do not presently have any plans to enter private practice.
4. Have you met the Constitutional requirements for this position regarding age, residence, and years of practice?
Yes, I have met the Constitutional requirements.
5. What is your philosophy regarding *ex parte* communications? Are there circumstances under which you could envision *ex parte* communications being tolerated?
Canon 3B(7) provides that a "judge shall not initiate, permit or consider *ex parte* communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding" with some exceptions. An example of an exception is that a law enforcement officer may contact a judge *ex parte* for the purpose of securing an arrest or search warrant.



6. What is your philosophy on recusal, especially in situations in which lawyer-legislators, former associates, or law partners are to appear before you?
My philosophy on recusal is that it is best to err on the side of caution. In other words, if I have a doubt as to whether my impartiality might reasonably be questioned pursuant to Canon 3E(1), my tendency would be to recuse myself.
7. 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 grant the party's motion. Canon 2 of the Code of Judicial Conduct commands that a judge avoid not just actual impropriety but also the appearance of impropriety. Canon 3E(1) requires that a judge "disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned," whether or not the judge is in reality impartial.
8. How would you handle the appearance of impropriety because of the financial or social involvement of your spouse or a close relative?
If my spouse or a close relative appeared to have a financial or social involvement in the case, I would recuse myself pursuant to Canon 3E(1).
9. What standards would you set for yourself regarding the acceptance of gifts or social hospitality?
Canon 4D(5) provides that a judge should not accept gifts unless an exception to this general rule applies. Canon 4D(5)(c) allows a judge to accept ordinary social hospitality. I would define "ordinary social hospitality" as hospitality I would have received even if I were not a judge.
10. How would you handle a situation in which you became aware of misconduct of a lawyer or of a fellow judge?
Canon 3D would guide my response. If I were to receive information indicating a substantial likelihood that another judge or a lawyer had engaged in misconduct, I would take "appropriate action." In some circumstances, "appropriate action" could simply be discussing the matter with the offending judge or lawyer. If I knew that another judge had committed a violation of the Canons raising a "substantial question as to the other judge's fitness for office," I would report the matter to the appropriate authority. If I knew that a lawyer had committed a violation of the Rules of Professional Conduct raising a "substantial question as to the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects," I would report the matter to the appropriate authority.
11. Are you affiliated with any political parties, boards or commissions that, if you were elected, would need to be re-evaluated?

- No, I am not affiliated with any political parties, boards or commissions.
12. Do you have any business activities that you would envision remaining involved with if elected to the bench? I am on the Board of Directors for Bilbub Incorporated. Circumstances might force me to resign from this board.
13. If elected, how would you handle the drafting of orders?
As is customary, I would request that the prevailing party draft an order. But I would closely read the draft and make any changes necessary to insure that written order accurately reflected the ruling(s) I made in open court.
14. If elected, what methods would you use to ensure that you and your staff meet deadlines?
To meet deadlines I would use a computer calendar such as Outlook or Outlook Express. I would also use a physical calendar as a back-up. I would review the calendars routinely at the beginning of each day.
15. What is your philosophy on "judicial activism," and what effect should judges have in setting or promoting public policy?
I believe that the judge's role is to apply the law as it actually is and not the law as the judge wishes it to be.
16. Canon 4 allows a judge to engage in activities to improve the law, legal system, and administration of justice. If elected, what activities do you plan to undertake to further this improvement of the legal system?
I would like to participate in activities aimed at speeding up the resolution of criminal cases. It is ridiculous for run-to-the-mill cases to routinely sit on the docket for years.
17. Do you feel that the pressure of serving as a judge would strain personal relationships (i.e. spouse, children, friends, or relatives)? How would you address this?
Serving as a circuit court judge would entail making many high pressure decisions. I would take comfort in the fact that I would faithfully apply the law and treat similarly situated parties consistently. I would do my best to keep my work life and family life separate. My experience as a magistrate judge would help me adjust to the pressures of being a circuit court judge.
18. The following list contains five categories of offenders that would perhaps regularly appear in your court. Discuss your philosophy on sentencing for these classes of offenders.
- a. Repeat offenders:
I would tend to punish repeat offenders more severely than first time offenders on the ground that the repeat offender has already had a second chance.
- b. Juveniles (that have been waived to the circuit court):
I would tend to sentence juvenile offenders keeping in mind my belief that juvenile offenders tend to be more amenable to rehabilitation than the matured offenders.

c. White collar criminals:

Some white collar criminals do extreme harm to others and should be sentenced accordingly.

d. Defendants with a socially and/or economically disadvantaged background:

I sympathize with anyone with a socially and/or economically disadvantaged background and would consider such factors in fashioning an appropriate sentence, but I do not believe such circumstances give one a license to commit crime.

e. Elderly defendants or those with some infirmity:

I would consider advanced age and infirmity in fashioning an appropriate sentence, but I certainly do not believe that either condition gives one a license to break the law.

19. Are you involved in any active investments from which you derive additional income that might impair your appearance of impartiality?
No, I am not involved in any active investments from which I derive additional income that might impair my appearance of impartiality.
20. Would you hear a case where you or a member of your family held a *de minimis* financial interest in a party involved?
Canon 3E(1)(c) requires a judge to recuse himself from a case where the judge or a member of the judge's family "has an economic interest in the subject matter in controversy or in a party to the proceeding or has any other more than de minimis interest that could be substantially affected by the proceeding." The Preamble to the Canons defines "economic interest" as "ownership of a more than de minimis legal or equitable interest."
In a case where I or a member of my family held merely a de minimis financial interest in a party involved, Canon 3E(1)(c) would not require me to disqualify myself.
Canon 3B(1) requires a judge to "hear and decide matters assigned to the judge except those in which disqualification is required."
Because neither Canon 3E(1)(c) nor any other rule would disqualify me from hearing the case, Canon 3B(1) would require me to hear the case.
21. Do you belong to any organizations that discriminate based on race, religion, or gender?
No, I do not belong to any organizations that discriminate based on race, religion, or gender.
22. Have you met the mandatory minimum hours requirement for continuing legal education courses?
Yes, I have met the mandatory minimum hours requirement for continuing legal education courses.
23. What do you feel is the appropriate demeanor for a judge?
A judge must be firm to maintain control of the courtroom. But a judge should not be pompous or gratuitously abusive.
24. Would the rules that you expressed in your previous answer apply only

while you are on the bench or in chambers, or would these rules apply seven days a week, twenty-four hours a day?

The rules of ethics apply twenty four hours a day, seven days a week, three hundred and sixty five days a year,

25. Do you feel that it is ever appropriate to be angry with a member of the public, especially with a criminal defendant? Is anger ever appropriate in dealing with attorneys or pro se litigants?

As a judge, one should strive to maintain a demeanor befitting the seriousness of his or her role. I do not believe anger resolves problems.

26. How much money have you spent on your campaign? If it is over \$100, has that amount been reported to the House and Senate Ethics Committees?

I have yet to spend money on my campaign.

27. If you are a sitting judge, have you used judicial letterhead or the services of your staff while campaigning for this office?

No, I have not used judicial letterhead or the services of my staff while campaigning for this office.

28. Have you sought or received the pledge of any legislator prior to this date?

No, I have not sought or received the pledge of any legislator.

29. Have you sought or been offered a conditional pledge of support by any legislator pending the outcome of your screening?

No, I have not sought or been offered a conditional pledge of support by any legislator pending the outcome of my screening.

30. Have you asked any third parties to contact members of the General Assembly on your behalf before the final and formal screening report has been released? Are you aware of any friends or colleagues contacting members of the General Assembly on your behalf?

No, I have not asked any third parties to contact members of the General Assembly on my behalf nor am aware of any friends or colleagues contacting members of the General Assembly on my behalf.

31. Have you contacted any members of the Judicial Merit Selection Commission?

No, I have not contacted members of the Judicial Merit Selection Commission.

32. Are you familiar with the 48-hour rule, which prohibits a candidate from seeking pledges for 48 hours after the draft report has been submitted?

Yes, I am familiar with the 48-hour rule, which prohibits a candidate from seeking pledges for 48 hours after the draft report has been submitted.

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

s/Walter Rutledge Martin

Sworn to before me this 22nd day of September, 2008

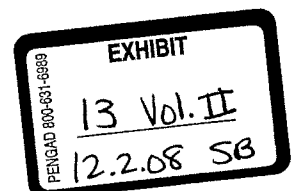
Notary Public for S.C.
My Commission Expires: 10/27/2015_____

JUDICIAL MERIT SELECTION COMMISSION
PERSONAL DATA QUESTIONNAIRE

Court, Position, and Seat # for which you are applying: Circuit Court, Eighth
Judicial Circuit, Seat 2

1. NAME: Mr. Joseph C. Smithdeal
BUSINESS ADDRESS: 409 Main Street
Greenwood, South Carolina, 29646
E-MAIL ADDRESS: jcsasb@metanetis.com (w)
BUSINESS NUMBER: (864) 229-1947
2. Date of Birth: 1967
Place of Birth: Patuxent River Naval Air Station
St. Mary's Co., Maryland
3. Are you a citizen of South Carolina? Yes.
Have you been a resident of this state for at least the immediate past five
years? Yes.
5. Family Status: Married on August 22, 1992, to Elizabeth Clark Smithdeal.
Never divorced. Five children.
6. Have you served in the military? N/A.
7. List each college and law school you attended, including the dates of your
attendance, the degrees you received, and if you left an institution without
receiving a degree, the reason for your departure.
 - (a) The Citadel, 1985-1989, BA English;
 - (b) The University of South Carolina, 1989-1992, Juris Doctor.
8. List the states in which you have been admitted to practice law and the year of
each admission. Also list any states in which you took the bar exam but were
never admitted to the practice of law. If you took the bar exam more than
once in any of the states listed, please indicate the number of times you took
the exam in each state.
South Carolina, 1992.
9. List the significant activities in which you took part during your attendance at
college, graduate, and law school. Give the dates you were involved in these
activities and list any leadership positions you held.
 - (a) The Citadel: Honor Court, 1988-1989;
 - (b) Summerall Guards, 1988-1989;
 - (c) Writing Lab instructor, 1986-1988;
 - (d) Rugby Team, 1985-1988.
10. Describe your continuing legal or judicial education during the past five years.
Include only the title and date of any continuing legal or judicial education
course completed.

<u>Conference/CLE Name</u>	<u>Date(s)</u>
(a) E-Discovery After 12/1/06 Changes	04/20/07



- | | | |
|-----|--|--------------------|
| (b) | SCTLA Annual Convention | 08/02/07 |
| (c) | 25 th SCIWA Conference | 11/01/07 |
| (d) | Title Insurance Claims and Underwriting | 11/06/07 |
| (e) | Fundamentals of Elder Law | 11/27/07 |
| (f) | SCCAWC Spring Seminar | 5/12/06 |
| (g) | SCACDL 2 nd Annual Criminal Law | 7/14/06 |
| (h) | SCTLA Annual Convention | 08/03/06 |
| (i) | Attorney ECF Training | 01/19/05 |
| (j) | SCTLA Annual Convention | 08/04/05 |
| (k) | Newly Adopted Med Mal | 10/14/05 |
| (l) | Dove Shoot | 11/21/05 |
| (m) | Electronic Courtrooms | 01/01/04 |
| (n) | SCTLA Lunch and Learn | 01/30/04 (speaker) |
| (o) | Negotiating the Hazards Real Est | 06/11/04 |
| (p) | Winning with Multi-media | 06/25/04 |
| (q) | SCTLA Annual Convention | 08/05/04 |
| (r) | New Lawyer's Oath | 08/06/04 |
| (s) | SCCAWC Spring Seminar | 05/02/03 |
| (t) | SCTLA Annual Convention | 08/07/03 |
| (u) | ASCCAWC Annual Convention | 11/06/03 |
11. Have you taught law-related courses or lectured at bar association conferences, educational institutions, or continuing legal or judicial education programs? If so, briefly describe each course or lecture.
S.C. Bar – Law School for Non – Lawyers, Workers' Compensation – volunteer program that helps the general public understand various types of and aspects of the law.
12. List all published books and articles you have written and give citations and the dates of publication for each. N/A.
13. List all courts in which you have been admitted to practice and list the dates of your admission. Give the same information for administrative bodies that require a special admission to practice.
S. C. Supreme Court, November 18, 1992;
U.S. District Court, Dist. of S.C., September 23, 1993.
14. Describe chronologically your legal experience since graduation from law school and include a list of all law firms with which you have been associated. Describe the general character of your practice and divide it into periods with dates if its character has changed over the years.
- (a) Judson Ayers & Associates, P.C. 1992-1995, practice focused on general civil litigation, Family Court, Workers Compensation, criminal defense, personal injury – plaintiff's, social security disability, real estate closings;
- (b) Ayers & Smithdeal, P.C. 1995-1997, practice areas substantially the same but fewer real estate closings;

- (c) Ayers, Smithdeal & Bettis, P.C. 1997-present, practice areas substantially the same although I have not done as much Family Court work over the past five years.

If you are a judge and are not seeking a different type of judgeship, the following questions are inapplicable:

- (b) If you are a candidate for Circuit Court, please provide a brief written description of your experience in criminal matters, including any cases handled over the past five years and include a brief description of the issues involved. Further, please provide a brief written description of your experience in civil matters, including any cases handled over the past five years and include a brief description of the types of matters handled, issues involved, and procedural history. Please include information such as the primary areas in civil court in which you practice, whether you represent plaintiffs or defendants, or both. You may go back further than five years if you feel it would assist the Commission with its assessment of your experience. If you lack experience in an area, describe how your background has prepared you to preside over such matters as a Circuit Court Judge, or how you would compensate for your lack of experience in this area.

Criminal Experience - Over the past five years and I have handled cases involving CSC with a minor, armed robbery, burglary, accessory before the fact to murder (death penalty notified), trafficking various drugs, forgery, DUI, ABHAN, ABWIK and many other types of cases. Most notably, I was appointed on the notorious State v. Rita Bixby case. The Solicitor filed notice that the State intended to seek the death penalty. I therefore requested death penalty certified co-counsel to assist. I was the second or third attorney appointed to represent Rita Bixby as each of the previous attorneys claimed some sort of conflict. I took the case and fought for my client because I have taken an oath to protect and preserve the Constitution. I take that oath very seriously. I knew that the case would take a tremendous amount of time and that I may lose some friends in the law enforcement community as the victims in the case were a Sheriff's Deputy and a State Constable - both of whom were widely respected and loved in Abbeville County.

The most pressing issue in the case was the death penalty. Without precedent in South Carolina or in any other State, the question was whether a person charged as an accessory before the fact to murder was subject to the death penalty. Co-counsel and I filed a motion to dismiss and took the position that pursuant to the Death Penalty Statute, the answer was "no." The trial court agreed with the defense and the State took a direct appeal to the South Carolina Supreme Court. The Court affirmed the trial court (Toal dissent) and our client was no longer facing the death penalty if convicted.

My co-counsel and I filed and argued many other pre-trial motions including: reasonable bail; speedy trial (not granted but deadline given to State to try case); change of venue (granted with consent of State); exclusion of confessions or other inculpatory statements (several granted over objection); motions to compel discovery; various ex parte motions for costs and fees; and a motion to dismiss for insufficiency of the indictment. All motions were researched and argued by us.

The case was tried during the Fall of 2007 amidst a great deal of publicity. There were numerous witnesses called by the State including: fingerprint; firearms; crime scene; pathology; DNA and computer experts. There were also lay witnesses and police officers who were examined. Dozens of exhibits were entered into evidence and/or marked for identification. My co-counsel and I divided the trial equally between us. One of the more interesting issues that arose during the trial was the admissibility of statements made by a co-defendant that tended to incriminate our client. This is one of the issues from the case that is currently on appeal. The client was convicted and was sentenced to life in prison.

While some of the major issues in the Bixby case were new to me and to the State of South Carolina, many of the issues were the same ones I look at on a regular basis in making decisions and advising clients. The vast majority of my criminal cases result in a plea, but anticipating issues such as those that arose in the Bixby case help me to provide the best representation I can offer.

Civil Experience - The largest percentage of my practice involves civil matters. I represent people in the Court of Common Pleas most often however. At any given time I have 5-10 cases in litigation in Common Pleas. Currently, I am representing a lady who alleges that her OB/GYN stapled her ureter shut with resulting kidney loss. I am representing a gentleman who was injured when a drunk driver crossed the center line and into my client's path. The defendant's blood alcohol level was over three times the legal limit. I represent a lady who as undergone seven surgeries and has over three hundred thousand dollars in medical bills. She was rear ended and her vehicle totaled by a commercial vehicle. I represent a trustee who is being sued for breach of trust. My client has brought counter claims for declaratory relief. I represent a large national corporation in a zoning appeal. These are just a few examples of my civil practice.

Unlike criminal cases, civil trial work allows for extensive pre-trial discovery which gives all the parties a chance to fully evaluate their strengths and weaknesses. While this is time consuming and expensive, the justice system is usually the beneficiary of more settlements and fewer trials. Most of my cases utilize expert testimony in some form. From the very beginning of my career I have been in the

courtroom trying predominantly civil cases. Issues range from pleading deficiencies, service problems, discovery abuse, expert qualifications, pretrial, evidentiary, in limine and dispositive motions to scheduling witness appearances, judge preferences, jury selection, and post trial motions and appeal. While most cases settle, all cases must be prepared as if a trial will be necessary.

I have represented clients at every stage of civil litigation from initial client/case evaluation to appeal to post judgment supplemental proceedings and collections. Besides the cases in which litigation is necessary, I have over one hundred active cases at any given time. I mostly represent plaintiffs. I have represented several past employees of the Clerk of Court's office, and also derive a fair portion of my practice from attorney referrals. These two sources are a point of pride for me as both referral sources have the opportunity to interact with and observe many attorneys and select the one whom they consider most qualified.

15. What is your rating in Martindale-Hubbell? BV.
Retired judges/justices and judges/justices applying for reelection to their current position may omit Questions 16-21. If a candidate is seeking a judgeship different than his or her current position, Questions 16-21 should be answered based on experience prior to serving on the bench.
16. What was the frequency of your court appearances during the last five years?
(a) federal: no federal ct appearances in last five years;
(b) state: Monthly.
17. What percentage of your practice involved civil, criminal, and domestic matters during the last five years?
(a) civil: 75%;
(b) criminal: 20%;
(c) domestic: 5%.
18. What percentage of your practice in trial court during the last five years involved matters that went to a jury?
(a) jury: 5% most criminal and civil matters settle before trial;
(b) non-jury: 95%.
Did you most often serve as sole counsel, chief counsel, or associate counsel in these matters? I most often served as sole counsel or if the matter was referred to me by another lawyer, chief counsel.
19. List five of the most significant litigated matters that you have personally handled in either trial or appellate court or before a state or federal agency. Give citations if the cases were reported and describe why these matters were significant.
(a) Fisher, as Pers. Rep. v Fielder, MD, Baarcke, DMD, and Wallace Thompson Hospital. This was my first medical malpractice trial. Rodney Fisher was a 28 year old, poor, uninsured man who died from an improperly treated abscess tooth. The infection spread to his lower

jaw and throat and he suffocated to death while in the hospital. He was unemployed and lived with his parents. He had no children. The defendants were a highly visible and popular family physician who had delivered and/or treated a large portion the population of the small county for forty years, a popular dentist and the county's sole hospital. The physician had been sued for malpractice in two prior cases. One jury was hung 11-1 in favor of the defendant and the other was a defense verdict hung by the trial judge under the 13th juror doctrine. The trial courts in each case later changed venue in these prior cases for an inability to find an impartial jury.

I moved for a change of venue in the Fisher case pre trial based upon the events of the previous trials, the popularity of the three defendants and the ex parte communications between the decedent's treating physicians and the defendants. I submitted dozens of affidavits from ordinary citizens of the county, newspaper articles extolling the good deeds of the defendants and a memorandum of law supporting my motion. The motion was denied.

One of the defense experts who was a local physician, in his deposition and again during the trial, testified that he had never heard of a particular medical term which was crucial to my theory of the case. Fortunately, during the discovery phase, I had located a woman whose home was in a very remote section of the county and who had suffered the same condition as my client and was also treated by this expert. I traveled to this woman's home, listened to her story and obtained a medical authorization for her records. I also subpoenaed this woman to trial. During the cross examination of this doctor, he stuck with his feigned ignorance of my "outlandish theory". I then presented him with his former patient and his own records showing clearly that this expert was not only aware of the medical condition and terminology but that he was willing to lie to the jury to protect his local buddy.

The trial lasted a week and the jury returned a verdict on Saturday afternoon. The issue was whether the defendants had deviated from the accepted standard of care in their respective professions and if so, whether those deviations were the direct cause of the decedent's death. The courtroom was full of local physicians who were there to lend moral and visible support to the defendants. The defense attorneys were much older and vastly more experienced than me. Despite the odds, the plaintiff's mom and dad prevailed in true David v. Goliath fashion and the jury's verdict was for the plaintiffs.

- (b) Ukadike v SC Department of Corrections, Kenneth Ukadike had a PhD, two bachelor degrees and an associate's degree. He taught continuing education courses to the employees of the Department of Corrections. He had an exemplary record of annual evaluations. Mr. Ukadike had been working in same job with the Department for over ten years. He

had been passed over for promotion numerous times. He was even passed over for a job previously held by inmates. His problem? He was black and from Nigeria. He also spoke with an accent.

On behalf of my client, I filed a lawsuit in U.S. District Court for violation of Title VII of the 1964 Civil Rights Act. The case was of particular concern for my client because he was still employed by the Department at the time of the litigation and the main perpetrator of the illegal discrimination according to my client was the warden himself. He was therefore in a very precarious position.

Discovery was extensive with the plaintiff's deposition alone lasting three days. Both sides named numerous witnesses and the documentary evidence was voluminous. The case was put together with a mixture of direct and circumstantial evidence some of which was excluded by the trial judge. Mediation was attempted but the parties were apart by many thousands of dollars.

The trial lasted for three days. There were approximately twenty total witnesses called to testify. Some of the plaintiff's witnesses were current or former employees of the Department and were examined pursuant to Rule 611 SCRE. The testimony and evidence proved that Mr. Ukadike had been the subject of ridicule and humiliation at the hands of his supervisors in the Department. They had told him to "go back to Africa" and had mimicked the way he spoke to inmates and other employees. They had passed him over for junior, white employees with only high school diplomas. In the end the plaintiff prevailed and he broke down in tears in release of the tension and stress he had been through over the years. This was the first and only time the Department of Corrections had been sued and lost on a nation of origin claim. Mr. Ukadike was able to go back to work with his head held high. He still works in the same job today.

- (c) State v Bixby – a brief description of this case is set forth above.
- (d) North Carolina Mutual Life Insurance Company v Effie Gant - Effie Gant had purchased a whole life insurance policy on her daughter's life through the plaintiff corporation. The daughter passed away at an early age and the insurance company sued Ms. Gant requesting a declaratory judgment that the policy was void because she had defrauded the company by failing to inform the company that the daughter had diabetes among other conditions. Ms. Gant came to our office with the lawsuit and we started investigating the allegations. We discovered that the application for insurance was actually completed and forged by the insurance agent. A counter claim was filed for breach of contract, breach of contract accompanied by a fraudulent act and fraud. The insurance company defaulted and after giving it ample time to remedy the problem, an entry of default was granted and the case was set for a damages hearing.

The jury verdict was and continues to be one of the largest in Greenwood County history. Issues in the case included: Rule 55 SCRPC set aside of entry of default; admissibility of the plaintiff's net worth; election of remedies; post trial motions for new trial absolute and remittur; and then the appeal. The case was ultimately settled while the appeal was pending.

- (e) Rainey v SC Department of Transportation – This was the case that nobody wanted. A young girl and her friends were traveling back to the Governor's School in Greenville after having visited a Lander University art exhibit. They were driving on Highway 25 North at Ware Shoals, SC when they ran head on into a south bound car driven by a Greenwood lady and her friends returning home from a shopping trip in Greenville. Three people were killed and the rest were seriously injured. The young girl was charged with failure to yield after she ran through a "Y" configured intersection into oncoming traffic. The young girl and her family went to several attorneys before finding one who would take her case.

The case took many months to investigate pre-suit. My partners and I went to the intersection and surveyed it carefully. We determined that the intersection was dangerous as Highway 25 which was two lanes coming from Greenwood split with one lane crossing Highway 25 Southbound like an "y" and going into Ware Shoals and the second lane continuing north towards Greenville. A person who happened to be in the left lane was forced to exit across Highway 25 Southbound towards Ware Shoals.

The yield sign facing traffic going into Ware Shoals resembled an onramp yield sign except the traffic being yielded to was oncoming instead of going in the same direction as is the situation with an onramp. There were no signs to indicate in which direction to expect traffic. There were no signs informing a driver that the left lane would take him off of Highway 25. The young girl, having never driven in the area was in the left hand lane. The road veered off to the left and she spotted the yield sign. The oncoming lane was at such an acute angle that instinctively she looked over her left shoulder for traffic with which she may have been merging. She saw no cars coming and continued for an instant when a she ran head on into the other car which was topping the hill coming south. The results were catastrophic.

Because of the severity of the collision and injuries the young girl was charged criminally in Family Court. My firm and I knew however that this child was not at fault. We started digging. Through our research and investigations we were able to determine that there had been numerous wrecks and even fatalities at the same intersection in the years preceding this wreck. Without exception, the person charged in these prior wrecks was heading north and was forced into Ware Shoals

by the split in the highway and failed to yield. Even more interesting was the fact that the prior "at fault" drivers were all from out of town and unfamiliar with the intersection.

As a result of the investigation we were asked to act as lead counsel for all the people in both cars. We proceeded with discovery involving dozens of depositions of out of state witnesses, local witnesses, physicians and experts of various types. The individual cases were consolidated and prepared for trial. Pretrial motions were extensive. A special term was set in Greenwood County as we had over fifty witnesses subpoenaed and prepared to testify. The case settled for well in excess of the statutory caps on the day the trial was scheduled to begin. The young girl was vindicated and shortly after that the highway was reconfigured with simple remedial measures. To my knowledge there has not been another accident in that location since. That means more than any verdict.

20. List up to five civil appeals that you have personally handled. Give the case name, the court, the date of decision, and the citation if the case was reported. If you are a candidate for an appellate court judgeship (please attach one copy of briefs filed by you in each matter).
 - (a) Schenk v National Health Care, 322 S.C. 316, 471 S.E.2d 736, S.C.App., April 29, 1996;
 - (b) Vaughn v Salem Carriers and Virginia Surety Co., Court of Appeals decided November 30, 2005, unpublished;
 - (c) Young v S.C. Department of Corrections, 333 S.C. 714, 511 S.E.2d 413, S.C.App., February 01, 1999.
21. List up to five criminal appeals that you have personally handled. Give the case name, the court, the date of decision and the citation if the case was reported. Please attach one copy of briefs filed by you in each matter.

I have only assisted with two criminal appeals, was not lead counsel on the appeals and did not argue either of them.
22. Have you ever held judicial office? No. Describe the jurisdiction of each of the courts and note any limitations on the jurisdiction of each court. N/A.
23. If the answer to question 22 is yes, describe or list five of your most significant orders or opinions and give the citations if they were reported. Also list citations to any appellate review of these orders or opinions. N/A.
24. Have you ever held public office other than judicial office? No.
25. List all employment you had while serving as a judge (whether full-time or part-time, contractual or at will, consulting or otherwise) other than elected judicial office. Specify your dates of employment, employer, major job responsibilities, and supervisor. N/A.
26. Have you ever been an unsuccessful candidate for elective, judicial, or other public office? No.

27. Have you ever been engaged in any occupation, business, or profession other than the practice of law, teaching of law, or holding judicial or other public office? No.
28. Are you now an officer or director or involved in the management of any business enterprise? None, other than my law firm. Explain the nature of the business, your duties, and the term of your service.
Law firm. I am the President and managing partner of Ayers, Smithdeal & Bettis, P.C. I have been President for the past 7 years. My duties include: day to day operations; insurance coverage; personnel issues; retirement account sponsorship; ethics training and practicing law.
29. A complete, current financial net worth statement was provided to the Commission.
30. Describe any financial arrangements or business relationships that you have, or have had in the past, that could constitute or result in a possible conflict of interest in the position you seek. Explain how you would resolve any potential conflict of interest.
The only financial arrangements or business relationships that could constitute or result in a possible conflict of interest involve my partner Chad Bettis. We are partners in the real estate management company that owns the building our firm rents. I expect to make an agreement with my partner to equitably divide the assets of the company.
31. Have you ever been arrested, charged, or held by federal, state, or other law enforcement authorities for violation or for suspicion of violation of any federal law or regulation, state law or regulation, or county or municipal law, regulation, or ordinance, or any other law, including another country's law?
In 1987, while in college, I was waiting behind a car at a stop sign. I observed a driver going the wrong way on a one way street coming in my direction. I took my eyes off the car stopped in front of me and rolled into the rear of that vehicle. Because I had consumed beer prior to driving, I was arrested for driving under the influence of alcohol. I was not convicted. The charges were dismissed and the record was expunged.
32. Have you, to your knowledge, ever been under federal, state, or local investigation for possible violation of a criminal statute? No.
33. Has a tax lien or other collection procedure ever been instituted against you by federal, state, or local authorities? No. Have you ever defaulted on a student loan? No. Have you ever filed for bankruptcy? No.
34. Have you ever been sued, either personally or professionally? No.
36. Are you now or have you ever been employed as a "lobbyist," as defined by S.C. Code § 2-17-10(13), or have you acted in the capacity of a "lobbyist's principal," as defined by S.C. Code § 2-17-10(14)? No.
37. Since filing with the Commission your letter of intent to run for judicial office, have you accepted lodging, transportation, entertainment, food, meals, beverages, money, or any other thing of value as defined by S.C. Code § 2-17-10(1) from a lobbyist or lobbyist's principal? No.

38. S.C. Code § 8-13-700 provides, in part, that “[n]o public official, public member, or public employee may knowingly use his official office, membership, or employment to obtain an economic interest for himself, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated.” Please detail any knowledge you have of any formal charges or informal allegations against you or any other candidate for violations of these provisions. None.
39. S.C. Code § 8-13-765 provides, in part, that “[n]o person may use government personnel, equipment, materials, or an office building in an election campaign.” Please detail any knowledge you have of any formal charges or informal allegations against you or any other candidate for violations of these provisions. None.
40. Itemize (by amount, type, and date) all expenditures, other than those for travel and room and board, made by you, or on your behalf, in furtherance of your candidacy for the position you seek.
\$68.04 postage 9/05/08, \$125.19 copies 9/03/08.
41. List the amount and recipient of all contributions made by you or on your behalf to members of the General Assembly since the announcement of your intent to seek election to a judgeship. None.
42. Have you directly or indirectly requested the pledge of any member of the General Assembly as to your election for the position for which you are being screened? No. Have you received the assurance of any public official or public employee that they will seek the pledge of any member of the General Assembly as to your election for the position for which you are being screened? No.
43. Have you requested a friend or colleague to contact members of the General Assembly on your behalf? No. Are you aware of any friends or colleagues contacting members of the General Assembly on your behalf? No.
44. Have you or has anyone acting on your behalf solicited or collected funds to aid in the promotion of your candidacy? No.
45. Have you or has anyone acting on your behalf contacted members of the Judicial Merit Selection Commission about your candidacy or intention to become a candidate? No.
46. List all bar associations and professional organizations of which you are a member and give the titles and dates of any offices you have held in such groups.
- (a) South Carolina Bar Association;
 - (b) South Carolina Association for Justice, Board of Governors 2001-present;
 - (c) South Carolina Injured Workers’ Advocates;
 - (d) South Carolina Association of Criminal Defense Lawyers;
 - (e) American Association for Justice.
47. List all civic, charitable, educational, social, and fraternal organizations of which you are or have been a member during the past five years and include

any offices held in such a group, any professional honors, awards, or other forms of recognition received and not listed elsewhere.

- (a) Greenwood Chamber of Commerce, General Counsel, 2006-present;
- (b) Citadel Alumni Association – life member;
- (c) HospiceCare of the Piedmont, Board of Directors, 1997-2005;
- (d) Boy Scout Troop 220 – Greenwood, SC, Treasurer, 2005-present;
- (e) Greenwood Abbeville Little League, Vice President, 2007-2008;
- (f) Our Lady of Lourdes Catholic Church, Sunday school teacher;
- (g) Lakelands Baseball League and Greenwood Parks and Rec., baseball coach;
- (h) Knights of Columbus Council 7129- fraternal/charitable organization;
- (i) Long Cane Hunt Club;
- (j) Our Lady of Lourdes, softball team;
- (k) Healthy Learners, Advisory Board, 2006-present;
- (l) Fire Tower Hunt Club.

48. Provide any other information which may reflect positively or negatively on your candidacy, or which you believe should be disclosed in connection with consideration of you for nomination for the position you seek. This information may include how your life experiences have affected or influenced the kind or type of judge you have been or plan to be.

I take my children to school in the mornings and arrive at work every day at approximately 7:30am. I take an hour for lunch and work until approximately 6:30pm. I work until 5 pm on Fridays and several hours most Saturdays. My professional and personal reputation is my most valuable asset and I will always strive to uphold the integrity of our profession. I will keep the Court open at all times during scheduled business hours and will not look for an opportunity to leave early or cut a term short. Our dockets need attention and I will give it to them.

49. References:

- (a) W. Joseph Isaacs, Esq.
2000 Park Street, Ste. 100
Columbia, SC 29201
(803) 252 6323;
- (b) Steven D. Baggett, Esq.
PO Box 1547
Greenwood, SC 29648
(864) 229 2511;
- (c) Fr. Richard Harris, Pastor
St. Joseph Catholic Church
3600 Devine Street
Columbia, SC 29205
(803) 254 7646;
- (d) W. Chad Bettis, Esq.
PO Box 1268

Greenwood, SC 29648
(864) 229 1947;
(e) Richard Thomason, Vice President
County Bank
419 Main Street
Greenwood, SC 29646
(864) 942-1500.

YOUR SIGNATURE WILL BE HELD TO CONSTITUTE A WAIVER OF THE
CONFIDENTIALITY OF ANY PROCEEDING BEFORE A GRIEVANCE COMMITTEE OR
ANY INFORMATION CONCERNING YOUR CREDIT.

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

s/Joseph C. Smithdeal

Date: _____