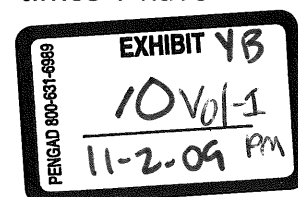


**JUDICIAL MERIT SELECTION COMMISSION**  
**Sworn Statement to be included in Transcript of Public Hearings**

**Circuit Court Judge**  
**(New Candidate)**

Full Name: Eric K. Englebardt  
Address: 326 Hampton Avenue  
Greenville, South Carolina 29601  
Work Telephone: (864) 552-4600

1. Why do you want to serve as a Circuit Court Judge?  
In my previous efforts at obtaining a seat on the Circuit Court bench I have focused my answer to this question on my experience in the various Circuit Courts around the state of South Carolina. I discussed that time in the courtroom has been the most enjoyable part of my practice. While this is certainly still true, in the last few years I have spent much less time in the courtroom and more time working as an arbitrator and mediator as the rise ADR has decreased the amount of time civil litigators spend trying cases. I have found that helping people resolve disputes as a mediator or making the ultimate determination of the facts and applying the law to those facts suits my temperament and abilities well. I've also always felt the desire to be involved in public service, and becoming a Circuit Court judge is the way to do that which I've always strived to do: unite my avocation and my vocation. I have served as a judge in the Youth Court program in Greenville County, in various moot court programs, and also recently during a trial academy for young lawyers. All these experiences have led me to believe that seeking a seat on the bench is the way for me to accomplish these goals by serving the people of this state in a way that challenges me yet allows me to use the best of my skills for the public good.
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?  
It is my expectation to serve as a judge as long as the state will have me.
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 do not believe *ex parte* communications should be tolerated in litigation. There is nothing more infuriating as a litigant than even the thought that the other side has gained the ear of the Court without giving you the opportunity to respond. The one or two times I have



been involved in situations where a party received or attempted to receive a temporary injunction against my client were some of the most frustrating times of my practice. While I certainly understand that limited *ex parte* communication is allowed in those infrequent occurrences (and other exceptions as described in the Code of Judicial Conduct), they are the only exceptions that come to mind.

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 am firmly of the belief that someone elected to the Circuit Court Bench through the process we use in South Carolina is someone who would have the integrity and personal ethical responsibility to recuse himself in a situation where there was any question as to whether or not they could be fair. I certainly know that this would be the "bright line test" I would want to use myself regarding recusal. However, I cannot imagine a situation where I feel my integrity could be compromised simply because a lawyer-legislator, former associate, law partner, or even close friend appeared before me. Part of my rationale for running for Circuit Court Judge is my deep-seeded sense of justice which puts the litigants and their need for fairness in the system first and foremost. As a result, I believe I could look past the identity of the counsel involved in a matter and focus solely on the ends of justice.

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?

Judges have to be particularly careful with statements regarding litigation and their thoughts on issues as well as on litigants. I hope that if I am elected I will be able to avoid any such appearance. However, as stated in my answer to question 6 above, because of my strong feelings that justice is required for all litigants, I believe it is likely that I would have a difficult time granting a motion for recusal if I truly did not believe that my statement actually was evidence of impartiality. Regardless, I would have to take this on a matter-by-matter basis and if I felt that the statement I made was based on some preconceived notion that could affect my impartiality I would not hesitate to grant the motion. That said, parties need to have a judicial system that disposes of judicial matters promptly and efficiently, and unnecessary recusals in themselves cause a delay in justice.

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

If there was a matter in front of me that had an inkling of financial or social involvement of my spouse or a close relative I believe it would

be my duty to recuse myself from such a matter if a reasonable mind would perceive an impropriety.

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

I would follow the Code of Judicial Conduct's requirements regarding the acceptance of gifts or social hospitality. It is my belief that judges should be regular members of society outside of the courtroom and, obviously, able to accept social invitations as long as their integrity and honesty is not compromised. However, the acceptance of gifts would seem to go "over the line" in this regard and I would not accept them from anyone who would not be someone with whom I exchanged gifts prior to becoming a judge.

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

If I became aware of misconduct of a lawyer or fellow judge I would be governed by Rule 8.3 of the Rules of Professional Conduct and would respond accordingly. Thankfully, I have not had to deal with this situation in my legal career to date and would hope I never had to deal with it as a judge.

11. Are you affiliated with any political parties, boards or commissions which, 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?

It would be my hope that I would be able to draft most orders myself with the help of my law clerk. Applying facts and analyzing the law is to me one of the most interesting and exciting parts of becoming a judge. However, having watched judges deal with full calendars during weeks of nonjury hearings, I understand drafting all orders oneself would be impractical. In cases where I felt it necessary to have an attorney draft a proposed order for me, I would certainly follow the required practice of all attorneys in the case having an opportunity to review and comment upon proposed orders before their submission to me and allow comments from both sides before finalizing the order myself.

14. If elected, what methods would you use to ensure that you and your staff meet deadlines?

As a practicing attorney deadlines are extremely important to me and my staff. As a judge this will be even of more paramount importance because it is my belief that judges need to set an example for practicing attorneys. Tickler systems are very easy to set up and it would be my expectation that my legal assistant, my law clerk and myself would all understand how the tickler systems were used and would work as a team to ensure that all deadlines were met.

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

I am not at all in favor of judicial activism. It is my belief that statutory laws should be set up by the Legislature as representatives of the public, with the appellate courts the overseers of the Constitution and the protectors of current law. As a circuit court judge it would be my belief that it was my job to enforce the law, regardless of my personal feelings about it. While there are certainly occasions where appellate courts need to step in and say that an individual act is contrary to public policy, it is my belief that these circumstances are few and far between and that elective government is better suited to set public policy, with the checks and balances of appellate courts to make sure that such decisions follow the constitution.

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?

As a judge I would be more than happy to be involved with activities to improve the law, legal system and administrations of justice. I was very active in the development of the Alternative Dispute Resolution program here in Greenville, having spent two years as the Vice President of the Upstate Mediation Network. Due to my experience as an arbitrator and mediator, it would be my hope that I could use that experience to help areas of the state which have not fully embraced ADR to do so as it is my belief that this is an important cog in the wheel of justice that gets ignored in parts of our state. Strong mediation and arbitration programs speed up the dockets by removing cases and, accordingly, allowing all parties a more speedy route to the courtroom and finality to their claims. Also, having been involved in the Youth Court program in Greenville, I would like to stay involved in that program and help expand it elsewhere.

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

All professions have their stressors, and the legal profession is no exception, regardless of which side of the bench a lawyer is on. However, I’ve certainly never faced the pressure of presiding over a death penalty case for example, and I can imagine the stress from that must be unbelievable. I have always believed in exercise as a means of helping to relieve stress and I run and bicycle frequently to assist with this. Also, as my wife is a US Bankruptcy Court judge, I think the ability to have the person closest to me going through similar experiences and stresses will be quite helpful.

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 believe in all cases of sentencing case-by-case analysis will be necessary. However, with regard to repeat offenders I would probably err on the side of harsher penalties as part of my philosophy with criminal sentencing is hoping that being caught and sentenced once would be a deterrent to future criminal acts. Once someone has become a repeat offender it would be my belief that harsher sentence would be necessary because they are less likely to reform and the need to protect society from them would be greater.

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

Again this would need to be dealt with on a case-by-case basis, particularly looking at the circumstances and charges involved. However, I would probably err on the side of a more lenient sentences for nonviolent juveniles in the hopes that they would have a better opportunity to reform.

c. White collar criminals:

I do not believe I would view white collar crime and sentencing very differently than any other kind of crime. Again, I hesitate to give any kind of concrete answer to this question as I hope I would view each case individually instead of painting with a broad brush as to how we would handle each of these kinds of cases. Note that my "philosophy" would probably lead me toward lesser sentences for nonviolent crimes as opposed to violent crimes with many other factors being considered.

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

My answer to 18(d) is very similar to my answer to 18(c). The backgrounds of the Defendants would not nearly be as important to me as the type of crime they committed and somewhat circuitously whether they are repeat offenders. Obviously if there was some alternative programming such as the Drug Courts, that I felt could help someone, if I had the latitude to do so I would be willing to consider that.

e. Elderly defendants or those with some infirmity:

It is my belief that the penal system should take care of inmates with infirmities or age problems. However, I am a firm believer that criminals should be treated as criminals despite their age or experience. Again, and I know I am repeating myself, more important to me than the makeup of the individual would be the crime they have been convicted of committing.

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?  
I would follow the Canons of the Code of Judicial Conduct as a guideline for handling a situation with a *de minimis* financial interest, such that it would not disqualify me by definition. However, I would be careful to ensure that the interest was truly *de minimis*, since this is an area in which what is not really a conflict can look like one.
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?  
It is my belief that a judge's demeanor is almost as important as his knowledge of the law. As the person in charge of the courtroom, it is the judge that sets the tone and is the conduit between the general public, whether they be jurors or litigants, and the judicial system. Judges need to listen with patience and respect to the arguments of counsel, stay concerned with the comfort of the jury, be willing to work hard and, perhaps most important, be fair to all sides. Additionally, a judge must hold himself out to be respected by not taking actions that would portray him in a bad light. I believe this is very important as judges are the symbols of our judicial system to the general public and confidence in the caliber of the judge leads to confidence in the system.
24. Do the rules that you expressed in your previous answer apply only while you are on the bench or in chambers, or do these rules apply seven days a week, twenty-four hours a day?  
While I believe judges certainly have a right to have a normal life outside the courtroom, it is my belief that a judge is always a representative of the court and, as a result, his judicial demeanor should be constant in and out of the courtroom. The demeanor of a judge should be his true demeanor, not an act he puts on in the courtroom.
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?  
I believe controlling anger may be one of the hardest things a judge can do. I can think of many examples of cases, especially in the criminal context, where the actions of the criminal were so egregious that losing one's temper would be a natural act. However, as discussed in the above response regarding judicial demeanor, I do not

believe anger is appropriate coming from the bench. Much as I try to hold my temper when dealing with my children, it would be my goal to hold my temper with members of the public and criminal defendants as well. In regard to the second part of this question, I do not think anger per se is ever truly appropriate. However, that is not to say that a judge expressing unhappiness with the actions of a litigant or an attorney is inappropriate. There are cases where contempt is warranted and in those situations an oral rebuke may be necessary. But, again, much as disciplining your children it is better when not coming at it from anger, it would be my hope that I could approach difficult situations from the bench in the same way.

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 not spent any money.
27. If you are a sitting judge, have you used judicial letterhead or the services of your staff while campaigning for this office.  
N/A.
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.
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/ Eric K. Englehardt

Sworn to before me this 11<sup>th</sup> day of August, 2009.

Notary Public for S.C.

My Commission Expires: 01-12-2019