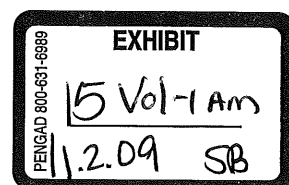


JUDICIAL MERIT SELECTION COMMISSION
Sworn Statement to be included in Transcript of Public Hearings
Supreme Court/Court of Appeals
(New Candidate)

Full Name: Daniel Frederick Pieper
Business Address: 100 Broad Street, Blake #200
Charleston, S.C. 29401
Business Telephone: 843-958-5142

1. Do you plan to serve your full term if elected? Yes
2. If elected, do you have any plans to return to private practice one day? No
3. Have you met the Constitutional requirements for this position regarding age, residence, and years of practice? Yes
4. What is your philosophy regarding *ex parte* communications? Are there circumstances under which you could envision *ex parte* communications being tolerated? Unless specifically allowed by law, I am very guarded when it comes to *ex parte* communications. I train my staff to also be on guard for such conversations. I consistently remind counsel to communicate with all persons involved, not just the court, whether the matter involves a letter, a proposed order or an email. There are some instances in which *ex parte* proceedings are authorized; for example, a temporary restraining order. In some criminal matters, the signing of an order for a defendant's expert witness fee authorization is also done by way of *ex parte* order.
5. What is your philosophy on recusal, especially in situations in which lawyer-legislators, former associates, or law partners are to appear before you? I do not automatically recuse myself in these situations unless the circumstances are such that create an improper appearance of bias. I generally follow a procedure of disclosure of any person I have practiced with in the past or a person that is a friend of mine. Once disclosure has occurred, I make an inquiry as to whether any party has any concerns at all. I do it in a very relaxed way so that the person feels comfortable in telling me if he or she prefers that I not handle the matter. Before I make that inquiry, I suggest that everyone leave the room to discuss the matter and I will also step out to make everyone comfortable. If we know of an issue in advance, the clerk of court handles contacting the attorneys under our court rules.
6. 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? If the motion were made, I would have no problem recusing myself in any situation that presents the appearance



of bias; it is important to remember that the appearance of bias not only impacts those individuals in court but also the public's perception of fairness.

7. What standards have you set for yourself regarding the acceptance of gifts or social hospitality? Generally, I always ask for a separate meal check for myself. I generally do not go to lunch or dinner with lawyers. Most of my social circle involves persons who are not lawyers. I may have three or four lawyers I have known for years that I might accept some hospitality from or for whom I might buy lunch or dinner. Usually they do not even appear before me. If they did, I would disclose it.
8. How would you handle a situation in which you became aware of misconduct of a lawyer or of a fellow judge? I would discuss it with the judge or report it, depending on our reporting obligations under the particular circumstances.
9. Are you affiliated with any political parties, boards or commissions that need to be evaluated? No
10. Have you engaged in any fund-raising activities with any political, social, community, or religious organizations? No
11. How would you prepare for cases that were before you? I have a reputation for preparing my cases in advance by reading the file and any briefs, as well as researching the law. My staff and I often work long hours to accomplish this result since we realize everyone is entitled to their day in court.
12. What is your philosophy on "judicial activism," and what effect should judges have in setting or promoting public policy? I do not believe in judicial activism or legislating from the bench. Preferably, the Legislature should set the public policy and make the laws of this state. At times, there are gaps in the common law of this state that sometimes require a court to evaluate legislative and public policy in addressing those gaps and interpreting the law. This philosophy is important in maintaining the delicate balance of power between the branches of government.
13. Canon 4 allows a judge to engage in activities to improve the law, legal system, and administration of justice. What activities would you plan to undertake to further this improvement of the legal system? I will continue to put together the Bar's "Tips from the Bench" program, as well as participate in other educational programs. I participate in a program to train bilingual interpreters specifically for the court system due to the growing need in our state. I also teach law as an adjunct professor.
Also, I mentor several students throughout their law school years. Many of those students have volunteered to work in my office to learn as much as possible. I think it is very important they have someone

from whom they can seek advice and someone to guide them in the development of professional traits. In the long term, I believe dedication to the new generation of lawyers will greatly enhance the legal system. In addition, I serve on the Supreme Court Commission on CLE and Specialization. We have recently been designated to administer the lawyer mentoring program adopted by the Supreme Court.

14. 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 plan to address this? I was concerned about that when I first started as a judge. However, that learning curve has occurred over the last 20 years or so in the judicial system in one capacity or another and does not now present an issue.
15. Are you currently serving on any boards or committees? If so, in what capacity are you serving? I serve on the advisory board for the Charleston School of Law. I also participate on the advisory board for the bilingual legal interpretation program at the College of Charleston. By appointment of the Supreme Court, I also serve as a member of the Commission on CLE and Specialization. This commission oversees the certification of members of the Bar to specialty practice areas and also certifies courses which qualify for continuing legal education. We have recently been designated by the Supreme Court to oversee the new lawyer mentoring program. The duties of this commission closely parallel my views about quality in the practice of law and dedication to the study of law. I am eager to work in the mentoring program as we implement ways to assist new lawyers in the practice of law as a profession.
16. Please describe your methods of analysis in matters of South Carolina's Constitution and its interpretation by explaining your approach in the following areas. Which area should be given the greatest weight?
 - a) The use and value of historical evidence in practical application of the Constitution:
 - b) The use and value of an agency's interpretation of the Constitution:
 - c) The use and value of documents produced contemporaneously to the Constitution, such as the minutes of the convention:

The first step in the analysis of any document or enactment, whether a constitution or otherwise, is to determine whether there is any ambiguity in the language at issue. If there is none, the court's duty is to give effect to the plain meaning of the unambiguous provision. If an ambiguity is present, and the term "ambiguity" means that there is more than one reasonable interpretation of the text, then the court may resort to appropriate secondary authority (such authority is often

called persuasive authority, whether it is persuasive or not). The goal at this point is to determine the original meaning of the text at issue. Each of the three sources discussed in the question, historical evidence and practical application, agency interpretations, and contemporaneous documents, are potential sources of information that can help unravel public meaning. However, some are more likely to be repositories of helpful information than others. With regard to historical evidence and practical application of the Constitution, historical evidence of the public meaning of the text at the time of its enactment is extremely valuable, as demonstrated by the U.S. Supreme Court's reliance on such sources in its recent Second Amendment jurisprudence. This historical evidence is often the most useful secondary source. Agency interpretations of constitutional provisions are ordinarily of no value in determining the proper interpretation of a constitutional provision. While some courts have given weight to agency interpretations of statutes enforced by the agency, this principle generally has no application to constitutional interpretation. One situation where agency interpretation can be useful, and it is a very narrow exception, is that agency activity occurring at or near the time of the adoption of some constitutional text could shed light on the original public meaning of that text by demonstrating what an agency thought it meant at that time. However, courts must proceed with caution in this regard since political or other improper motivations may be involved in that agency interpretation or action. Put simply, an agency may have an incentive to act in accordance with how it would like the provision to be interpreted whether the provision should be interpreted that way or not. Accordingly, agency interpretation of a constitutional provision is almost always of little or no import or value in proper interpretation by a court. With regard to documents produced contemporaneously with the constitutional provision in question, there are two different sorts of documents. One type is entitled to great weight and the other is ordinarily not. A document that sheds light on original public meaning may be extremely powerful and even outcome determinative. The U.S. Supreme Court's opinion in the Second Amendment case, Heller, again serves as an example. In Heller, the Supreme Court cites dictionaries and other documents from the late 1700's in support of its interpretation of the Second Amendment, establishing the original public meaning of the Second Amendment's text and similar textual formulations. However, these sorts of contemporaneous – but unbiased – documents are far, far more valuable than what is typically viewed as "legislative history." Legislative history must be closely scrutinized. Often, it is nothing more than a collection of self-serving documents created by one or more persons, and inserted into the

record, as opposed to something that reflects the intent of the legislative body as a whole. At times, these documents are allowed to be inserted into the record even after the legislation has been passed; thus, these documents may not accurately reflect legislative intent. In such a circumstance, a court should endeavor to interpret the meaning that a reasonable person would have ascribed to the provision contemporaneous with its passage. This approach is even more compelling as most of the current language of the S.C. Constitution was approved on election day by voters at the polls who would have been unaware of any "legislative history" filling in interpretive gaps in the law. Thus, courts must proceed with caution in scrutinizing legislative history. In some situations, sources typically viewed as "legislative history" might be of use. Documents that have been particularly helpful to the S.C. Supreme Court in the past are the West Committee Report and the minutes of the West Committee. The Committee was formed in the late 1960's, headed by then Senator John C. West, and charged with recommending amendments to the Constitution of 1895. The West materials are not the sort of self-serving documents that are often put forward as "legislative history" and these materials provide a rare example of a legislative history source potentially helpful in properly interpreting constitutional text.

17. Is the power of the South Carolina General Assembly plenary in nature unless otherwise limited by some specific Constitutional provision? The General Assembly has plenary power to enact and amend statutes within the parameters of the Constitution.
18. Presuming that the three branches of government have plenary power for their responsibilities, do any other levels of government (i.e. local governments) have plenary authority, or do all grants of authority to other levels of government flow from the state level in our Constitution and statutes? To the extent not inconsistent with specific constitutional or statutory terms, I generally believe that the power of all levels of government below the state level must flow directly from the Legislature and the Constitution. Generally, the local levels of government are exercising that level of the State's sovereign authority delegated to such local governments and may enact ordinances and laws which do not conflict with state law.
19. Are you involved in any active investments from which you derive additional income that might impair your appearance of impartiality? No
20. Do you belong to any organizations that discriminate based on race, religion, or gender? No
21. Have you met the mandatory minimum hours requirement for continuing legal education courses? Yes
22. Have you written any scholarly articles? No

23. What do you feel is the appropriate demeanor for a judge?
I believe a judge should demonstrate an appreciation for the importance of the proceedings and maintain control of the proceedings so that all who appear in court feel that they received due process of the law and a fair day in court. This demeanor is a trait that is learned and continues to evolve with experience on the bench. I also think a judge should conduct his activities with character and integrity.
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 and to my staff as well.
25. Would there be a role for sternness or anger in meetings with attorneys? There is no real role for anger or sternness, but a firm, guiding hand may be appropriate at times depending on the situation. This question is interesting to me in that I convened a meeting of about 40 lawyers a few years ago to discuss the feelings of the Bar on how judges should react to certain situations. I was consistently told that judges should be tougher on individuals who deliberately or consistently violate rules of procedure and conduct. This example is one example of how I have found it useful to interact with groups of the Bar to increase my skills as a judge.
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 at this time.
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? 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/ Daniel Frederick Pieper

Sworn to before me this 11 day of August, 2009.

Notary Public for S.C.

My Commission Expires: 08-03-2015