

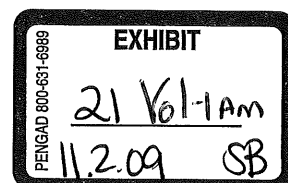
JUDICIAL MERIT SELECTION COMMISSION
Sworn Statement to be included in Transcript of Public Hearings

Circuit Court
(New Candidate)

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1. Why do you want to serve as a Circuit Court judge?
I want to be a Circuit Court judge because I believe I can do the job well. I believe I have the experience and the temperament to be a fair and impartial judge. My desire is to serve the State of South Carolina.
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? Ex Parte communication should be limited to only those exceptions enumerated in the Code of Judicial Conduct. The only circumstances under which I could envision *ex parte* communications being tolerated are those specifically authorized within the Code of Judicial Conduct or as expressly authorized by law.
6. What is your philosophy on recusal, especially in situations in which lawyer-legislators, former associates, or law partners are to appear before you?

In any case where a judge's impartiality might reasonably be questioned he should disqualify himself. The inquiry is if the judge's impartiality can *reasonably* be questioned. A litigant should not be allowed to simply question a judge's impartiality without reason so as to gain some tactical advantage such as delay of the proceedings. In those situations where the judge has a personal bias or prejudice concerning a party's lawyer, such as a lawyer – legislator or former associate or law partner, the judge should recuse himself. A judge should recuse himself in all cases if the judge's impartiality might be questioned because of prior association with a party or a party's lawyer. A judge may on a case-by-case basis and where circumstances warrant, ask the parties and their lawyers to consider whether to waive disqualification. This should be done only after the judge has disclosed on the record the basis of the judge's



disqualification. Any discussion between the parties and their lawyers to waive the disqualification should be out of the presence of the judge. The judge may participate in the proceedings thereafter if all parties agree to waive the disqualification and the judge is then willing to hear the matter.

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?

In such a situation as described, the question for the judge is whether the judge's impartiality might reasonably be questioned after the disclosure of information the parties or their lawyers might consider relevant to the question of disqualification. The decision by the judge to recuse himself would have to be made based upon the facts and circumstances of each case where the judge's impartiality is questioned. If after disclosure by the judge a motion for recusal is made and the judge, while believing that no real basis for disqualification exist, should disqualify himself if he believes his impartiality might reasonably be questioned. If on the other hand, after the judge's disclosure of information and a motion is made for the judges recusal, the judge should not recuse himself if he does not believe his impartiality can reasonably be questioned given the facts of the particular case.

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 discuss with my spouse and members of my household that as a judge my financial activities and social involvement are regulated by certain and specific ethical constraints and considerations. I would further explain that because of their relationship with me and their living in my home that any conduct or their part that might call into question whether or not they acted appropriately in any financial or social situation might reflect negatively on my serving as a judge.

In addition, I would discourage family members from engaging in financial and business dealings that would give an appearance of exploiting my position as judge.

If I had knowledge that my spouse or family member were acting inappropriately in any financial or social situation that might reflect negatively on my service as a judge I would demand the activity be ended immediately

If I knew my spouse or close relatives had an economic or financial interest in the subject matter of a case before me or close social involvement with a party appearing in a case before me I would recuse myself in accordance with Code of Judicial Conduct.

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

I believe that in an effort to avoid all appearances of impropriety it would be best to limit the acceptance of gifts and social hospitality to only

gifts from relatives or friends commensurate with a special occasion and ordinary social hospitality such as visiting in a relatives or friends home.

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

If I had knowledge that a lawyer had committed a violation of the Rules of Professional Conduct that gave rise to a substantial question as to the lawyers honesty, trustworthiness, or fitness as a lawyer I would inform the appropriate authorities.

If I had knowledge that another judge has committed a violation of the Code of Judicial Conduct that gave rise to a substantial question as to that judge's fitness for office I would inform 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

12. Do you have any business activities that you would envision remaining involved with if elected to the bench?

I am co-owner of two (2) residential rental properties with a person I have been friends with for twenty years. I do not believe such business activities would pose any ethical problems if elected to the bench.

13. If elected, how would you handle the drafting of orders?

As a lawyer I have always drafted the orders for my cases when given the opportunity. I enjoy drafting orders and would hope to continue to do so as a judge when I found issues or a particular case to be interesting. However, realizing the time restraints on a judge I know I would not have time to draft many orders.

As a rule, I would request a prevailing party's lawyer to draft a proposed order including therein all relevant findings of fact and conclusions of law and would give notice to all parties of my request on the record at the conclusion of the hearing or in writing. I would also request that the lawyer requested to draft proposed order forward the order to all parties for review prior to it being submitted to me so as to give all parties opportunity to respond to the finding of fact and conclusion of law before the order is signed.

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

I would use a calendaring system to ensure that I and my staff meet deadlines. As a back up to the calendar I would use a electronic calendaring system if available or "tickler" system.

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

It is the job and duty of a judge when construing a statute to ascertain the legislature's intent. A judge should not attempt to interpret a law in a way to limit or expand the legislative intent, but should read a statute giving each word their plain and ordinary meaning. A judge should not apply a law as he believes it should be but as the legislature intended it to be. To do anything else results in judicial activism that clearly invades the

responsibilities and duties of the legislative branch of government.

It is not a judge's job to set or promote public policy. What one person may believe to be good public policy may be detested as abhorrent public policy by the next person. Public Policy is a matter of individual opinion that may change over time as result of many different factors. A judge should only recognize as public policy that which he can derive from a clear understanding of the law of the state. To do anything else would again invade the sole province of the legislature.

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 believe the best way to improve the legal system is to educate the public about how the legal system operates. Most people rarely have dealings within the legal system and do not have any clear understanding of how the system works. In an effort to improve the legal system I would want to speak to local social groups and organizations upon request. Also, I would want to speak to school children about the judicial system and the role it plays in our government.

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 do not feel the pressures of serving as a judge would strain my personal relationships. I lost my wife Mary to breast cancer in 2000. Mary and I had met in 1980 and married in 1984. After Mary's passing, I met my current wife "Toni" in 2001. We married in 2004. During the three years prior to our marriage Toni and I had ample time together to build a strong and lasting relationship. Since 2001, Toni and I have always dealt with each other openly and honestly. I know that if I am elected to the bench Toni and I will continue to talk to each other to discuss issues concerning our marriage and if my duties as a judge are straining that relationship. I truly believe my relationship with my wife is strong enough to withstand any strain created by my service as a judge.

As for my children, I don't believe there would be any stain in our relationship as a result of the pressures associated with being a judge. I have always been a very involved father and have spent a great deal of time with my children. My children are very supportive of my efforts to become a judge, and I have spoken with them all about the time and travel demands of serving as 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:

Repeat offenders display a willingness to continue to commit crimes although they have previously been before the court and should understand the consequences of their anti-social behavior. The repeat

offender should be judged more harshly than a first time offender. Repeat offenders should not look to me as a judge for probationary or minimal sentences. Repeat offenders should be sentenced more harshly within the dictates of the law and the circumstances of each case.

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

A juvenile defendant that has been waived from the jurisdiction of the Family Court to General Sessions Court has by statute been charged with a serious crime. Of course, the purpose of all criminal laws is to punish the offender when he breaks the law. In cases involving juvenile offenders I believe a judge should consider such factors as the child's age when the crime was committed, the crimes committed and if the crime were one of violence, as well as aspects of the child's family background.

While the child should be punished in accordance with the controlling law I believe a judge should try to fashion punishment for a juvenile offender in such a way not only to punish but in hopes that the child can learn from his mistakes and lead a productive life as an adult.

c. White collar criminals:

As a judge I would make no distinction in the sentencing of white collar criminals as opposed to any other person that appears before me. White collar crimes can be and often are just as damaging to the victim(s) as are other crimes. I would sentence white collar criminals the same as others while at all times listening to all circumstances of mitigation.

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

I do not believe that simply because a person is from a socially or economically disadvantaged background he is more likely to commit a crime. I have no doubt that a persons background shapes how a person may view the world and that persons belief system. However, I believe a person's decision to commit a crime is his decision and he should not be allowed to rely on the excuse that he committed the crime because he is the product of a socially or economically disadvantaged background. To do so would mean a judge should view more harshly a defendant who commits a crime and has lived a life of social and economic advantages. Simply because a defendant is from a disadvantaged background does not in and of itself mean that a defendant should be viewed any differently that another defendant. A person's social and economic background is only one factor of many a judge should consider when sentencing a defendant.

e. Elderly defendants or those with some infirmity:

I believe that when sentencing the elderly or the infirmed a judge should consider each case on a case-by-case basis taking into consideration all factors presented at sentencing including any mitigating circumstances.

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?

The Code of Judicial Conduct would allow me as a judge to hear a case where I or a member of my family held a *de minimis* financial interest in a party involved.

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?
I believe the most important characteristics for a judge to exhibit are patience and humility. Often a judge will have parties appear before him who are not represented and not versed in the rules of procedure and evidence. While a judge should not advise a pro se litigant on the rules of court or rules of procedure he should always be patient allowing anyone who appears before him to be heard fully. A judge should also be humble. He should remember that he is only one part of the system that is made up of many different people doing difficult jobs. The jobs being performed by others are no less important than the job being performed by the judge. The judge must be the one to move things forward but to do so while dealing with others in a courteous, efficient and firm manner.
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?
Since I was a young man I have tried to set certain rules and guidelines by which I have tried to conduct myself when interacting with others. Most of these rules of conduct were learned from my parents growing up and from my affiliation with the Boy Scouts of America for most of my childhood.
I have always tried in my personal and professional life to be patient and humble. While I have not always succeeded to act as I would have liked, I do feel, that I have except for only a few occasions, acted and treated others in such a way to make my family proud. I was taught by my parents to always treat others as you would like to be treated. This idea has guided me everyday since childhood. I would know of no reason why that would change if elected to the bench.
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 do not believe it is ever appropriate for a judge to express anger towards anyone he deals with in an official capacity. A judge can and should act firmly but not with anger. A judge can perform his duties without expressing anger. I believe that a judge that acts angrily with anyone diminishes the public's confidence in the judicial system because anger is an individual emotion and not representative of an impartial, unbiased judiciary represented by that individual.

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? \$0.00
27. If you are a sitting judge, have you used judicial letterhead or the services of your staff while campaigning for this office? NA
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/ Bryan C. Able

Sworn to before me this 12th day of August, 2009.

My Commission Expires: 02-21-2018

Notary Public for S.C.