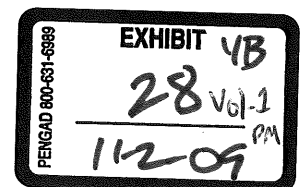


JUDICIAL MERIT SELECTION COMMISSION
Sworn Statement to be included in Transcript of Public Hearings

Circuit Court
(New Candidate)

Full Name: William Kenneth Witherspoon
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1. Why do you want to serve as a Circuit Court judge?
Serving as a Circuit Court judge would be a very challenging, honorable and rewarding position. I have a great deal of respect for the responsibilities of our judges. I want to serve as Circuit Court judge because of the role a judge has in the successful operation of our State's legal system. A judge is the insurer that all litigants receive a fair and impartial opportunity to have their conflicts resolved in a tribunal that is free of bias and prejudice. I want to continue to insure that all litigants get this opportunity to resolve their disputes. In addition, I have also enjoyed my service to the citizens of South Carolina during my tenure as a deputy sheriff, while working for the Budget and Control Board, and now with the United States Attorney's Office. I trust that my varied and very diverse experiences and background would aid me in performing the important functions of a Circuit Court judge. I have tried to expose myself, during my career, to different practice areas, as well as experiences that would provide insight to many aspects of the judicial system.
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 believe Canon 3 of Rule 501 of the Code of Judicial Conduct make it clear that *ex parte* communications are not appropriate, with very few exceptions. I think some *ex parte* communications may be necessary for scheduling, in emergency situations, or during temporary restraining order hearings. Otherwise, all *ex parte* communications should be avoided if possible. Even where *ex parte* communications are allowed and necessity dictates that a judge engage in such communications, I believe that a judge is obligated to inform the other parties to an action of those communications at the earliest opportunity.
6. What is your philosophy on recusal, especially in situations in which lawyer-legislators, former associates, or law partners are to appear



before you?

The Code of Judicial Conduct provides specific guidance on the requirements of judicial disqualification and I would certainly adhere to those requirements.

If I knew a litigant well enough that I felt uncomfortable sitting in judgment of them, I would recuse myself *sua sponte*. If I happened to know a litigant through some prior association, but still felt comfortable sitting in judgment of them without prejudice to either side, my philosophy would be to disclose my association to the other party and tell them I still felt comfortable sitting in judgment of the case, but give them the option of asking me to recuse myself. I think this would be required because of the potential appearance of impartiality. I will not recuse myself where I think a party or lawyer may simply be judge-shopping and come up with some pretextual reason for me to recuse myself.

I would follow this same policy if a former member of a law firm that I practiced with appeared before me. In addition, if a lawyer-legislator appeared before me they would be treated in the same manner as any other lawyer. I would not automatically recuse myself unless the other party had an independent ground for recusal.

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 give great deference to the motion by the party and be guided by Canons 2 and 3 of the Code of Judicial Conduct. If I felt the necessity to disclose something that might reasonably have the appearance of bias, even if I did not believe that it would actually prejudice my impartiality, then I would certainly carefully consider the arguments of the parties appearing before me concerning the issue of recusal. I would be extremely sensitive to the party's request for recusal but cognizant of not allowing parties to raise unsupportable claims of bias in order to shop for a specific judge or otherwise improperly manipulate the judicial system. If I denied the motion, I would place a complete and thorough explanation for my ruling on the record.

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

Again, the Canons of Judicial Conduct would guide me. I would consider these matters as a major reason to recuse myself from hearing the matter unless there exist other reasons mitigating against recusal.

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

As a current government employee, I do not accept gifts or other social hospitality from anyone other than family members or very close

- personal friends. I would continue this practice and recuse myself from hearing matters involving these persons.
10. How would you handle a situation in which you became aware of misconduct of a lawyer or of a fellow judge?
All lawyers have a duty to report any misconduct that they become aware of to the proper authorities. I would report such misconduct.
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?
It is my intention to draft all final orders. I would, however, request both parties to submit proposed orders for my consideration in drafting the final order. I would use those proposed orders in drafting my final order.
14. If elected, what methods would you use to ensure that you and your staff meet deadlines?
I would use both electronic and written calendar ticklers as reminders of things that need to be completed. This would include having the same ticklers for my legal assistant and law clerk with specific time requirements for issuing proposed orders. I currently use these tickler systems now in my practice.
15. What is your philosophy on "judicial activism," and what effect should judges have in setting or promoting public policy?
I strongly believe a judge should not be an activist. In our form of government, the legislature's role is to make the laws and a judge's role is to apply the laws to the facts presented in the case before him/her. Judges should not take any role in setting or promoting public policy. That role should be left to those who are elected to represent the citizens of this state.
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 that judges have a responsibility to speak on legal matters and judicial administration. I would lecture at Continuing Legal Education classes and other similar type seminars to advance the legal profession. I would volunteer to lecture to school age children on the judicial system and the need for our 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?
Yes. My family is very supportive of my efforts to become a Circuit Court judge. I would, however, continue to explain the high requirements and ethical mandates that might not always make sense to

them. I would continue to limit my socializing to a very few close friends who would not appear before me.

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 review the offender's prior record and take in consideration the nature of the prior offenses, the length of time between convictions, the prior punishment given and the nature of the current charge to help fashion an appropriate sentence for each repeat offender. I would be inclined to impose longer sentences for repeat violent offenders under the discretion given the court by the General Assembly.

b. Juveniles (that have been waived to the circuit court): Because this individual had been waived up to circuit court indicates that the offense committed is serious. Again, I would consider the juvenile's prior record, the type of offense committed and the impact on the victim(s) along with the potential to rehabilitate the individual in fashioning an appropriate sentence.

c. White collar criminals: In light of current events, white collar crimes can have a devastating effect on our society including the elderly, poor and working families. I would consider the same factors for white collar criminals as for all other offenders. In addition, the payment of restitution would be a factor in deciding on the sentence imposed. In some instances, this class of offenders deserve to be punished to the same extent as violent offenders.

d. Defendants with a socially and/or economically disadvantaged background: I would consider an offender's background when trying to fashion an appropriate sentence. This does not mean that he will not be punished, but rather, his background will be one of several factors used to reach what I consider the appropriate sentence. This does not imply that a person who is socially and/or economically disadvantaged has an excuse for committing a criminal offense.

e. Elderly defendants or those with some infirmity: I would consider the offender's age and physical condition in deciding on a sentence. I would impose a sentence that is appropriate to punish the offender but I would be sensitive to the offender's age and physical condition, the likelihood the offender would commit another crime and whether the public might be equally protected from the defendant and the ability of the criminal justice system to properly handle these unusual cases.

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 the interest held by a family member were truly *de minimis*, I would

not be required to recuse myself. However, even if the financial interest might be *de minimis*, there might be other factors so unique to that family member that it would be better from an appearance of impartiality standpoint if another judge presided over the matter.

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?
The general public views and expects a judge to have a very professional, respectful and reserve demeanor both on and off the bench. A judge must respect the law and act so as to promote public confidence in the integrity and impartiality of the judiciary.
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?
Fortunately or unfortunately, the general public views a judge the same whether he/she is presiding on the bench or having dinner in a restaurant or at a child's soccer game. Therefore, these rules would apply to me at all times whether I am presiding or not.
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. There may be occasions when an attorney/defendant refuses to follow court orders and a judge must take a firm stance with this individual to protect the integrity of the court and the legal system. However, at no time should a judge lose his/her temper while presiding.
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 \$94.80 for stationery and stamps.
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
31. Have you contacted any members of the Judicial Merit Selection Commission?

I inadvertently sent a letter of introduction to the members of the Judicial Merit Selection Commission on July 27, 2009.

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/ William K. Witherspoon

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

Notary Public for S.C.

My Commission Expires: 04-19-2017