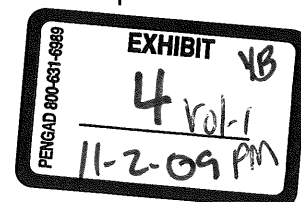


JUDICIAL MERIT SELECTION COMMISSION
Sworn Statement to be included in Transcript of Public Hearings
Circuit Court
(New Candidate)

Full Name: Joseph C. Smithdeal
Business Address: 409 Main Street
Greenwood, SC 29646
Business Telephone: (864) 229-1947

1. Why do you want to serve as a Circuit Court judge? I want to serve as a Circuit Court judge because I am well qualified, would do a good job, and can be of benefit to the legal system which I love. I often hear lay people complaining about the legal system. One person who has served on jury duty might feel disrespected and another person believes the judge or lawyers were "paid off". Having worked in the profession and having gotten to know a lot of attorneys and judges, I know that the good far outweighs the bad. My own honor, my work ethic and my deep abiding respect for the hard working women and men in the profession make me want to serve those people and their clients. I believe that every person has a right to a fair and speedy trial by an unbiased jury and/or judge. I believe every person has the right to my respect – not because of some status he has or the amount of money in his bank but because he is a person. My desire to serve as a Circuit Court judge comes from my desire to serve in general. I believe that I would be a good judge in whom the public and the legal system would have full confidence.
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 have no plans to return to private practice one day.
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? My philosophy is that except in limited circumstances, such as administrative matters, scheduling, true emergencies or when expressly authorized by law, *ex parte* communications should not take place or be considered by a judge. At the very minimum, this type of contact undermines public confidence in the judge and the justice system. Ex parte contacts are covered by Section 3B (7) of the Code of Judicial Conduct.
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 that a judge shall disqualify himself or herself when, "(a) the judge has a personal bias or



prejudice concerning a party or a party's lawyer...." Section 3E (1) (a). I would not generally have such bias or prejudice for or against any attorney, and no attorney who is a friend of mine would expect me to act in a biased manner. Recusal, however, may still be required by the general language of section 3E (1) if impartiality is reasonably questioned. After disclosing on the record any information that I think might be relevant to disqualification, I would consider the nature and length of the relationship as well as the urgency of the matter and the availability of another judge as indicated in the commentary to Section 3E. I would not hesitate to disqualify myself if a party has a reasonable question as to my ability to conduct a fair trial.

Regarding lawyer-legislators, they have to practice law too. Unless I have a close personal relationship with the lawyer-legislator and that relationship fell within the Code of Judicial Conduct such as Section 3E (1), I would not feel a reasonable question of impartiality would be raised. At present, I have no such relationships with lawyer-legislators. However, I do believe a judge should be on guard against the perception of bias or prejudice and would therefore always seek to maintain the confidence of the public.

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? Section 3E of the Code of Judicial Conduct states, "A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned...." Generally the provision mandates recusal based upon the reasonable appearance of a question. If the disclosure, in fact, had the appearance of bias, I believe recusal would be required.
8. How would you handle the appearance of impropriety because of the financial or social involvement of your spouse or a close relative? The involvement financially or socially of my spouse or close relative in a matter before me would raise a reasonable question as to my ability to be impartial. Appearances, in this case, would trump a subjective assessment of my impartiality. I would recuse myself.
9. What standards would you set for yourself regarding the acceptance of gifts or social hospitality? Pursuant to Canon 4 of the Code of Judicial Conduct, I would respectfully decline gifts or social hospitality without an underlying friendship outside of any judicial relationship. Only gifts or invitations consistent with the occasion and the non-judicial relationship are appropriate.
10. How would you handle a situation in which you became aware of misconduct of a lawyer or of a fellow judge? Section 3D of the Code of Judicial Conduct provides,
"(1) A judge who receives information indicating a substantial likelihood that another judge has committed a violation of this Code

should take appropriate action. A judge having knowledge that another judge has committed a violation of this Code that raises a substantial question as to the other judge's fitness for office shall inform the appropriate authority.

(2) A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct contained in Rule 407, SCACR, should take appropriate action. A judge having knowledge that a lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects shall inform the appropriate authority."

Assuming that I had received information indicating a substantial likelihood of a violation on the part of a judge or a lawyer, I would address the information directly with the person and investigate in private to avoid scandal and protect the integrity of the judicial system. If I then had knowledge of a particular misdeed I would urge the person to self report and if he or she did not, I would be duty bound to report it myself.

11. Are you affiliated with any political parties, boards or commissions that, if you were elected, would need to be re-evaluated? Yes. I have already notified the various boards on which I serve of my intentions to run for Circuit Court Judge and my need to withdraw should I be elected.
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? Most judges before whom I have appeared have requested proposed orders from the prevailing party's attorney. I believe that this is the most efficient way to handle orders. The attorneys are the people most familiar with the case. Where circumstances such as time are an issue, I would draft the order. I enjoy writing.
14. If elected, what methods would you use to ensure that you and your staff meet deadlines? As in the practice of law, deadlines are important. I would maintain a computerized and a back-up paper calendaring system of hearings and trials. The calendars would denote oral orders issued, parties, attorneys and time to submit proposed written order. My staff and I would monitor the calendars weekly to ensure that all work was being done in a timely manner.
15. What is your philosophy on "judicial activism," and what effect should judges have in setting or promoting public policy? Judges have no role making or promoting what they believe to be public policy. The judge's responsibility is to interpret and apply the law as established by the Legislature and Appellate Courts.
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

have taught "Law School for Non-Lawyers and been involved with the local high school's mock trial teams. I think the public often has a negative impression of the legal system. I would hope to continue to assist the Bar in its ongoing efforts to demystify the legal system for the public.

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. I have spoken with several judges and am fully confident that the pressures of serving as a judge would not strain my personal relationships. My wife is also a member of the Bar and has clerked for a Circuit Court judge. She is very supportive of my decision to run for this seat.
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. Equal justice under law has always been a guiding principle for me. Judges, however, are not paid to be robots. Within the law I would view each case on its own merits and do justice to the best of my abilities. In general:
 - a. Repeat offenders: For various crimes there are progressive penalties for repeat offenders and it would be my responsibility to apply such sanctions. I would not hesitate to do so to the fullest extent in the appropriate cases. Without statutory guidance in sentencing, I would evaluate the case as presented and dispense appropriate justice on repeat offenders.
 - b. Juveniles (that have been waived to the circuit court): A juvenile that has been waived up to the Circuit Court is to be tried and sentenced as an adult. The law, however, provides for age appropriate sentences in certain situations such as the Youthful Offender Act. As a trial judge I would look for ways to both protect society and rehabilitate youthful offenders.
 - c. White collar criminals: I would make no distinction between "white collar" crimes and other similar crimes without such a label. Stealing is stealing.
 - d. Defendants with a socially and/or economically disadvantaged background: Although social and/or economic disadvantages may explain certain behaviors they cannot be used as an excuse for criminal activity. I have faith in human beings and as such I would treat the rich and poor alike.
 - e. Elderly defendants or those with some infirmity: Alternative sentencing may be needed in the case of the aged or infirmed so as not to place an additional burden on the State. However, in general, advanced age should not be a factor in sentencing.
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? Canon 3 of the Code of Judicial Conduct does not require disqualification unless the interest is more than *de minimis*. However, I believe that the appearance of bias should be avoided and I would certainly entertain any motion for recusal and give serious consideration to any party's concerns. For example, I would probably not recuse myself and delay justice in a case involving Pangea Petroleum, Inc of which I own \$.13 worth of stock.
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 be courteous, kind and respectful to everyone in the courthouse and on the street. A judge should be firm, fair and consistent. A patient judge is a wise judge. A judge should also be punctual.
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? I strive, sometimes without success, to put the Golden Rule into practice every day. I believe in it.
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? Anger is not appropriate in dealing with defendants, attorneys or pro se litigants. Anger is personal. While I am sure there have been many times that a judge has gotten frustrated or maybe was even provoked intentionally, a judge should not let anger effect his/her judgment.
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. I do expect to have a resume printed and buy some stamps in the near future.
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? 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/ Joseph C. Smithdeal

Sworn to before me this 13th day of August, 2009.

Notary Public for S.C.

My Commission Expires: 07-24-2018