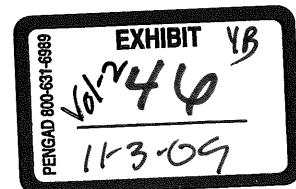


JUDICIAL MERIT SELECTION COMMISSION
Sworn Statement to be included in Transcript of Public Hearings
Administrative Law Court
(New Candidate)

Full Name: S. Phillip Lenski
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1. Do you plan to serve your full term if elected?
Yes.
2. 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?
Generally, *ex parte* communications are inappropriate and are to be avoided. Even with purely administrative matters such as scheduling, or in emergencies, while it is permissible to engage in *ex parte* communications, the communication should not enable one party to gain an advantage, and the non-participating party should be immediately notified of the substance of the communication. *Ex parte* communications are covered in the Rules of Judicial Conduct (Canon 3).
5. What is your philosophy on recusal, especially in situations in which lawyer-legislators, former associates, or law partners are to appear before you?
A judge should recuse himself in those cases where he has personal knowledge of the facts of a case, if he has a close personal relationship with one of the parties, or whenever facts and circumstances exist that create an appearance of impropriety or a lack of impartiality. In cases involving lawyer-legislators or former attorneys with whom I have worked, I would recuse myself whenever I felt that my personal relationship with that person might create an appearance of impropriety or raise a question as to my impartiality. If I merely knew a lawyer legislator, or if a former associate appeared before me with whom I did not have a personal relationship, I would still disclose



that information to counsel, and if a party requested me to recuse myself, I would strongly consider that request.

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?

I would give great deference to such a request. I believe that it is important that all parties who appear before any court feel that they are getting a fair hearing, and if there are facts that could reasonably create an appearance of bias or impartiality, then a request for recusal by a party should be granted.

7. If elected, what standards would you set for yourself regarding the acceptance of gifts or social hospitality?

The Code of Judicial Conduct outlines how judges should respond to offers of gifts or social hospitality. I would strictly follow the Code with regard to the acceptance of gifts or offers of hospitality. Accepting gifts and social hospitality are potentially dangerous subjects, and judges should take every precaution and to refuse gifts or offers of hospitality that might create an appearance of impropriety.

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

First, I would encourage the judge to self-report if I became aware of facts that led me to believe that another judge or attorney had engaged in misconduct. If that person failed to report the misconduct, then I would be compelled to report it myself to the appropriate body.

9. Are you affiliated with any political parties, boards or commissions that, if you are elected, would need to be re-evaluated?

No.

10. Have you engaged in any fund-raising activities with any political, social, community, or religious organizations?

No.

11. How would you handle the drafting of orders?

I believe that a judge should draft his own orders, and I would certainly adhere to that practice as an Administrative Law Judge.

12. What method would you use to ensure that you and your staff meet deadlines?

Good record keeping and communication, as well as proper monitoring are the benchmarks for meeting deadlines. As an Administrative Law Judge, I would ensure that my staff and I met our deadlines by requiring excellent record keeping, developing a tracking system to remind my staff and me of upcoming deadlines, and having regular meetings to review our progress and coordinate our efforts to ensure that all deadlines are met in a timely and professional manner.

13. What is your philosophy on “judicial activism,” and what effect should judges have in setting or promoting public policy?
I am a firm believer that the legislature makes the law and judges interpret it. I believe that judicial activism is inappropriate, and I would certainly not practice it if I were elected an Administrative Law judge. When the law is ambiguous, it is incumbent on judges to interpret it, however, that must be done with great deference to the intent of the General Assembly and any precedent existing in the law.
14. 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 believe that it is important that practitioners in any field of the law become engaged in reviewing current legislation for weaknesses and suggesting improvements. As an Administrative Law Judge, I would work with groups and associations to improve our state’s administrative laws and procedures.
15. Do you feel that the pressure of serving as a judge will strain personal relationships (i.e. spouse, children, friends, or relatives)? How would you plan to address this?
I do not believe that serving as a judge will strain my personal relationships with my wife and children. I have a very busy life, but I have learned to balance the needs of my family with the requirements of my job. I do not anticipate that if I become an Administrative Law Judge this will change.
16. Are you involved in any active investments from which you derive additional income that might impair your appearance of impartiality?
No.
17. Would you hear a case where you or a member of your family held a *de minimis* financial interest in a party involved?
My inclination would be to hear such a case. A *de minimus* interest is an insignificant interest that does not raise a reasonable question as to the judge’s impartiality. Therefore, absent additional facts, I would likely hear cases where I or a member of my family might have a *de minimus* financial interest in a party involved. I would, however, disclose the *de minimus* interest to the litigants in the interest of full disclosure.
18. Do you belong to any organizations that discriminate based on race, religion, or gender? No.
19. Have you met the mandatory minimum hours requirement for continuing legal education courses? Yes.
20. What percentage of your legal experience has dealt with cases that appear before the Administrative Law Court? Please describe to the Commission your experience in these areas.

Since leaving active duty in the Army, virtually all of my legal experience has involved appearing before the Administrative Law Court. From 1995 until 1997, I was a staff attorney at the South Carolina Department of Insurance. In that capacity I conducted disciplinary hearings and insurance rate hearings before the Administrative Law Court. At that time I appeared at the Administrative Law Court on a monthly basis for insurance agent/broker disciplinary hearings, and for insurance rate hearings. From 1997 through 2002 I was a staff counsel for the South Carolina Department of Labor, Licensing and Regulation. During those years I represented at least a dozen licensing boards, including the Real Estate Commission, the Contractor's Licensing Board, the Board of Architectural Examiners, the Board of Engineering, the Board of Nursing, and the Board of Accountancy. I handled all of the disciplinary actions for those boards, including the appeals, which were held before the Administrative Law Court. During those six years, I appeared before the Administrative Law Court for appeals of disciplinary actions approximately twice a month.

21. What do you feel is the appropriate demeanor for a judge?
A judge should be patient, he should be courteous, and he should be dignified. A judge should also know the law and be confident in dispensing it.
22. 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 believe that a judge's demeanor should continue off the bench, too. A judge should be cognizant of the fact that even off the bench his conduct is being scrutinized, and therefore, it is important that a judge remain dignified, patient, and courteous at all times.
23. Do you feel that it is ever appropriate to be angry with a member of the public who would appear before you? Is anger ever appropriate in dealing with attorneys or a pro se litigant?
Anger is never appropriate when dealing with either a litigant or with counsel. Anger is counterproductive and in almost every situation where I have observed a judge lose his/her temper, it creates a perception that the judge has also lost his/her objectivity. While litigants and counsel can, at times, be frustrating, it is incumbent upon a judge to maintain judicial temperament and act in a professional manner. If a judge fails to maintain control over his/her temper, then he has lost control of the proceeding.
This is not to say that a judge should permit litigants or counsel to take over a proceeding with inappropriate behavior. A judge must always maintain control of a proceeding over which he presides. However, a judge must maintain control using appropriate means and methods. Litigants, counsel, and witnesses may be admonished, they

may be sanctioned, and, under the appropriate circumstances, they may be held in contempt. However, any of these actions should be administered by a judge in a professional manner, free from any display of anger.

24. 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 \$278.00 on stationary, stamps, and printing costs. This has been reported to the House and Senate Ethics Committees.

25. If you are a sitting judge, have you used judicial letterhead or the services of your staff while campaigning for this office?

I am not a sitting judge.

26. Have you sought or received the pledge of any legislator prior to this date?

I previously ran for judicial office in the Spring of 2009. At the appropriate time, I sought pledges of legislators for that campaign. However, prior to this date, I have not sought or received the pledge of any legislator for this election.

27. Have you sought or been offered a conditional pledge of support by any legislator pending the outcome of your screening?

No.

28. 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.

29. Have you contacted any members of the Judicial Merit Selection Commission? No.

30. 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/ S. Phillip Lenski

Sworn to before me this 17th day of August, 2009.

Notary Public for S.C.

My Commission Expires: 05-23-2013