

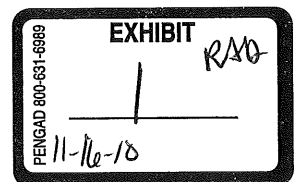
Laurie Traywick

From: Short, Paul E. [PShort@sccourts.org]
Sent: Tuesday, October 19, 2010 12:15 PM
To: Jane Shuler; Laurie Traywick; Paula Benson
Cc: Burgess, Hethie
Subject: Amended PDQ Form
Attachments: PDQFORM.Fall2010.new.doc

Attached please find my Amended PDQ Form. The changes made were to question #7 where I added "but I was elected to the S.C. Court of Appeals and did not complete my thesis.". The other change was to question #10. I added two additional CLEs that I have attended. They are listed as (a) Court of Appeals Workers' Comp Seminar, 10/15/10 and (b) Annual Judicial Conference, 08/18/10.

If you need and additional information, please contact me.

Thank you,
Paul E. Short, Jr.



JUDICIAL MERIT SELECTION COMMISSION
PERSONAL DATA QUESTIONNAIRE

Court, Position, and Seat # for which you are applying:
Court of Appeals, Seat 1

1. NAME: Paul E. Short, Jr.
BUSINESS ADDRESS: 158 Main Street, Room 107
Post Office Box 1006
Chester, S.C. 29706
E-MAIL ADDRESS: pshort@scccourts.org
TELEPHONE NUMBER: (office): (803) 581-5011
2. Date of Birth: 1947
Place of Birth: Gastonia, N.C.
3. Are you a citizen of South Carolina? Yes
Have you been a resident of this state for at least the immediate past five years? Yes
5. Family Status: Married on June 14, 1968, to Linda Huffstetler Short. Never divorced. Two children.
6. Have you served in the military?
U.S. Army, June 1968; entered active duty August 1971; discharged from active duty November 1971; served S.C. National Guard until 1973; discharged U.S. Army Reserve 1974; highest rank attained was 1st Lieutenant; Present Status, Inactive Reserve; Honorably Discharged as Captain. Serial number: XXX-XX-XXXX
7. List each college and law school you attended, including the dates of your attendance, the degrees you received, and if you left an institution without receiving a degree, the reason for your departure.
 - (a) The Citadel; 1964-68; B.A. Political Science;
 - (b) University of South Carolina Law School; 1968-71; J.D.;
 - (c) University of Nevada/Reno; Summers 1998-2001 (All course work for Master in Judicial Studies completed).
8. List the states in which you have been admitted to practice law and the year of each admission. Also list any states in which you took the bar exam but were never admitted to the practice of law. If you took the bar exam more than once in any of the states listed, please indicate the number of times you took the exam in each state.
South Carolina; 1971
9. List the significant activities in which you took part during your attendance at college, graduate, and law school. Give the dates you were involved in these activities and list any leadership positions you held.
The Citadel: Assistant Manager, Basketball Team, 1964-65; ROTC, 1964-68; Squad Sergeant, 1966, 2nd Lt. Corps of Cadets, 1968; member Senior Class Board of Directors

University of South Carolina School of Law: Phi Delta Phi Legal Fraternity;
Law Clerk of Attorneys Betty Sloan and Claud Sapp, 1969-71

10. Describe your continuing legal or judicial education during the past five years. Include only the title and date of any continuing legal or judicial education course completed.

<u>Conference/CLE Name</u>	<u>Date(s)</u>
(a) 4 th Annual Judicial Symposium	07/11/08;
(b) Annual Judicial Conference	08/20/08;
(c) Post-Conviction Relief Seminar	12/05/08;
(d) 7 th Annual Civil Law Update	01/23/08;
(e) 24 th Annual SC Criminal Law Update	01/23/08;
(f) NC/SC Appellate Judges' Conference	03/01/07;
(g) Annual Judicial Conference	08/22/07;
(h) The Law Clerk & Staff Code of Conduct	12/19/07;
(i) 4 th Annual Civil Law Update	01/27/06;
(j) 21 st Annual Criminal Law Update	01/27/06;
(k) EIJ/Economics Institute for Judges	03/20/06;
(l) NJC/Essential Skills for the Appellate Judges	07/01/06;
(m) NYUSCP/Appellate Judges Seminar	07/10/06;
(n) CLO/Mini Summit on Justice for Children	08/22/06;
(o) Annual Judicial Conference	08/23/06;
(p) NJC/South Carolina Judges/Journalists	09/28/06;
(q) Crawford: A Hearsay Chimera	04/14/05;
(r) Post-Conviction Relief Seminar	06/09/05;
(s) Annual Judicial Conference	08/24/05;
(t) Ethics 2005 Seminar	09/21/05;
(u) SCDTAA Annual Meeting	11/03/05;
(v) Appellate/Federal Judges Conference	05/26-27/05.

11. Have you taught law-related courses or lectured at bar association conferences, educational institutions, or continuing legal or judicial education programs?

- (a) I have made presentations to Circuit Court Judges on the Court of Appeals at the Circuit Court Judges' Conference.
- (b) I spoke on the topic Case File Development and Review, A View from the Judiciary at the S.C. Solicitors' Conference.
- (c) I have served as a Group Facilitator with the faculty for a General Jurisdiction Course at the National Judicial College/Reno, Nevada, for new Judges leading group discussions four hours each day on a wide variety of legal topics.
- (d) I was an instructor for a Seminar for the S.C. Legal Secretaries Association on the topic of Rules of Civil Procedure.

12. List all published books and articles you have written and give citations and the dates of publication for each. None

13. List all courts in which you have been admitted to practice and list the dates of your admission. Give the same information for administrative bodies that require a special admission to practice.
 - (a) S.C. Supreme Court; September 21, 1971;
 - (b) United States District Court of South Carolina; October 30, 1972;
 - (c) United States Fourth Circuit Court of Appeals; September 12, 1974.
14. Describe chronologically your legal experience since graduation from law school and include a list of all law firms with which you have been associated. Describe the general character of your practice and divide it into periods with dates if its character has changed over the years.

I began the general practice of law in November 1971, in Chester, S.C., with Mr. Fred H. Strickland and Mr. E. K. Hardin, who later became Probate Judge of Chester County.

In late 1972, I became a partner in the firm and, in approximately June 1973, Mr. Strickland was tragically killed in a house fire, and I became senior partner at the age of 26. Mr. William C. Keels graduated from law school in June 1973, and he and I began practicing law together at that time.

I was honored to have been elected to the S.C. Circuit Court At-Large Seat #8 on February 1, 1991, and served continuously until February 1999, when I was elected Resident Judge of the Sixth Judicial Circuit.

I was elected to the S.C. Court of Appeals in May 2004.
15. What is your rating in Martindale-Hubbell? AV
22. Have you ever held judicial office? Yes
 - (a) July 1991-February 1999; S.C. Circuit Court at Large, Seat #8;
 - (b) February 1999-June 2004; Resident Judge, Sixth Judicial Circuit;
 - (c) July 2004-Present; S.C. Court of Appeals, Seat #1.
23. If the answer to question 22 is yes, describe or list five of your most significant orders or opinions and give the citations if they were reported. Also list citations to any appellate review of these orders or opinions.
 - (a) Cannon v. SCDPPPS, 361 S.C. 425, 604 S.E.2d 709 (Ct. App. 2004); 371 S.C. 581, 641 S.E.2d 429 (2007);
 - (b) Gillman v. City of Beaufort, 368 S.C. 24, 627 S.E.2d 746 (Ct. App. 2006);
 - (c) Lukich v. Lukich, 368 S.C. 47, 627 S.E.2d 754 (Ct. App. 2006), affirmed by 379 S.C. 589, 666 S.E.2d 906 (2008);
 - (d) Vortex Sports & Entertainment, Inc. v. Ware, 378 S.C. 197, 662 S.E.2d 444 (Ct. App. 2008);
 - (e) State v. Singley, 383 S.C. 441, 679 S.E.2d 538 (Ct. App. 2009).
24. Have you ever held public office other than judicial office?

Yes. All reports were timely filed with the State Ethics Commission.

 - (a) S.C. House of Representatives, elected, 1982-91;
 - (b) Chester County Airport Commission, appointed, 1978-80;
 - (c) Chester County Attorney, appointed, 1980-82.

25. List all employment you had while serving as a judge (whether full-time or part-time, contractual or at will, consulting or otherwise) other than elected judicial office. Specify your dates of employment, employer, major job responsibilities, and supervisor. None
26. Have you ever been an unsuccessful candidate for elective, judicial, or other public office?
- I withdrew from the S.C. Court of Appeals, Seat #6 on February 4, 2003, after having been selected one of the three candidates selected by the Judicial Merit Selection Committee.
- I withdrew as a candidate from the S.C. Court of Appeals, Chief Judge Seat on approximately January 27, 2010.
27. Have you ever been engaged in any occupation, business, or profession other than the practice of law, teaching of law, or holding judicial or other public office?
- (a) Textiles, Inc., Gastonia, North Carolina;
- (b) Textile employee during summers while in college; 1964-68.
28. Are you now an officer or director or involved in the management of any business enterprise? No
29. A complete, current, financial net worth statement was provided to the Commission.
30. Describe any financial arrangements or business relationships you have, or have had in the past, that could constitute or result in a possible conflict of interest in the position you seek. Explain how you would resolve any potential conflict of interest. None
31. Have you ever been arrested, charged, or held by federal, state, or other law enforcement authorities for violation or for suspicion of violation of any federal law or regulation, state law or regulation, or county or municipal law, regulation, or ordinance, or any other law, including another country's law?
- No
32. Have you, to your knowledge, ever been under federal, state, or local investigation for possible violation of a criminal statute? No
33. Has a tax lien or other collection procedure ever been instituted against you by federal, state, or local authorities? Have you ever defaulted on a student loan? Have you ever filed for bankruptcy? No
34. Have you ever been sued, either personally or professionally, that is, have you ever been named as defendant or respondent in any court of law?

Yes. I was sued as a member of the Chester County Legislative Delegation by a tax payer who demanded that the Delegation, rather than the Chester County School Trustees, set the school tax millage. The Circuit Court later ruled that the Chester County Board of School Trustees had the taxing authority.

After becoming a Circuit Court Judge, I was also sued by a prisoner acting Pro Se. The case was filed in U.S. District Court and the Civil Action Number was 4:92-2623-3BD and was entitled: Priest Gerald Garner, #170960

v. Charles Molony Condon, Solicitor; Lee E. Berlinsky, Asst. Solicitor; Paul E. Short, Jr., Judge; Det. Guy R. Vanhorn; Det Frazier; Det. M. Benton; Det. Kay Colleton; and William L. Howard, Judge. I was dismissed from the case by Order dated August 26, 1993, which was duly signed and executed by Judge Ross Anderson.

I was also sued by another prisoner, Mark Steven Fortier. This case was entitled Mark Steven Fortier v. Medlock, et.al., Civil Action Number 3:920 C.V.-33121. This case was filed in U.S. District Court by Mr. Fortier against the Attorney General for South Carolina, me, as Circuit Court Judge, and several other officials. Mr. Fortier was the first State Wide Grand Jury case involving pornography. I was sentencing Judge and Mr. Fortier was apparently unhappy with his sentence. I was subsequently dismissed from the case by a United States District Judge.

I was also sued by Mr. Reco Cauthen, although I was never served with process as required by the S.C. Rules of Civil Procedure. I presided over Mr. Cauthen's trial of Grand Larceny, Kidnapping, Possession of a Weapon during the Commission of a Violent Crime, Armed Robbery and Burglary 1st Degree in November 2003 in Chester, S.C. During the trial, Mr. Cauthen was allegedly placed in a holding cell with two of his co-defendants who had turned State's evidence. The suit arose out of an alleged fight which ensued.

36. Have you ever been investigated by the Department of Social Services? If so, give the details and the resolution. Has your name ever been enrolled on the Central Registry of Child Abuse and Neglect? No
37. Are you now or have you ever been employed as a "lobbyist," as defined by S.C. Code § 2-17-10(13), or have you acted in the capacity of a "lobbyist's principal," as defined by S.C. Code § 2-17-10(14)? No
38. Since filing with the Commission your letter of intent to run for judicial office, have you accepted lodging, transportation, entertainment, food, meals, beverages, money, or any other thing of value as defined by S.C. Code § 2-17-10(1) from a lobbyist or lobbyist's principal? No
39. S.C. Code § 8-13-700 provides, in part, that "[n]o public official, public member, or public employee may knowingly use his official office, membership, or employment to obtain an economic interest for himself, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated." Please detail any knowledge you have of any formal charges or informal allegations against you or any other candidate for violations of these provisions. None
40. S.C. Code § 8-13-765 provides, in part, that "[n]o person may use government personnel, equipment, materials, or an office building in an election campaign." Please detail any knowledge you have of any formal charges or informal allegations against you or any other candidate for violations of these provisions. No

41. Itemize (by amount, type, and date) all expenditures, other than those for travel and room and board, made by you, or on your behalf in furtherance of your candidacy for the position you seek. None
42. List the amount and recipient of all contributions made by you or on your behalf to members of the General Assembly since the announcement of your intent to seek election to a judgeship. None
43. Have you directly or indirectly requested the pledge of any member of the General Assembly as to your election for the position for which you are being screened? Have you received the assurance of any public official or public employee that they will seek the pledge of any member of the General Assembly as to your election for the position for which you are being screened? No
44. Have you requested a friend or colleague to contact members of the General Assembly on your behalf? Are you aware of any friends or colleagues contacting members of the General Assembly on your behalf? No
45. Have you or has anyone acting on your behalf solicited or collected funds to aid in the promotion of your candidacy? No
46. Have you or has anyone acting on your behalf contacted members of the Judicial Merit Selection Commission about your candidacy or intention to become a candidate?
- Yes. I have contacted my Representative to advise him that I would be a candidate for re-election to the S.C. Court of Appeals, Seat # 1,
47. List all bar associations and professional organizations of which you are a member and give the titles and dates of any offices you have held in such groups.
- (a) Chester County Bar Association;
 - (b) S.C. Bar Association;
 - (c) Appellate Judges Association.
48. List all civic, charitable, educational, social, and fraternal organizations of which you are or have been a member during the past five years and include any offices held in such a group, any professional honors, awards, or other forms of recognition received and not listed elsewhere.
- (a) Purity Presbyterian Church; former Deacon, Elder;
 - (b) Sertoma International, Life Member;
 - (c) Chester Shrine Club;
 - (d) Chester Masonic Lodge;
 - (e) American Legion;
 - (f) Chester Men's Golf Association;
 - (g) Phi Delta Phi.
49. Provide any other information that may reflect positively or negatively on your candidacy, or which you believe should be disclosed in connection with consideration of you for nomination for the position you seek.

While I was practicing law, I had the pleasure to serve and to gain valuable experience on the Board of Commissioners on Grievances and Discipline.

50. References:

- (a) Mrs. Brenda T. McBrayer Vice President
First Citizens Bank
Post Office Box 490
Chester, S.C. 29706
803-377-7151
- (b) Ms. Ann Campbell 117 Main Street
Chester, S.C. 29706
803-256-4645
- (c) Mr. Daniel R. Settana, Jr.
Post Office Box 7217
Columbia, S.C. 29202
803-377-4162
- (d) Mr. Marvin Waldrep
129 Church Street
Chester, S.C. 29706
803-581-6222
- (e) Rev. Trey Hegar
Post Office Box 278
Chester, S.C. 29706
803-377-8175

YOUR SIGNATURE WILL BE HELD TO CONSTITUTE A WAIVER OF THE CONFIDENTIALITY OF ANY PROCEEDING BEFORE A GRIEVANCE COMMITTEE OR ANY INFORMATION CONCERNING YOUR CREDIT.

I HEREBY CERTIFY THAT MY ANSWERS ARE TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

Signature: Paul E. Short, Jr.

Date: August 2, 2010

<p style="text-align: center;">JUDICIAL MERIT SELECTION COMMISSION Sworn Statement to be included in Transcript of Public Hearings</p>
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Supreme Court/Court of Appeals
(New Candidate)

Full Name: Paul E. Short, Jr.
Business Address: 158 Main Street, Room 107
Post Office Box 1006
Chester, South Carolina 29706
Business Telephone: 803-581-5011

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?

I do not believe a judge should have *ex parte* communications with attorneys to discuss any issue involved in a case. An *ex parte* communication may be necessary on some occasions to issue a Temporary Restraining Order as required by the South Carolina Rules of Civil Procedure.

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 would recuse myself on any case in which I felt that my former association with someone would prevent me from being fair and impartial to all parties involved or could reasonably be viewed as the appearance of impropriety.

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 I believed that something I disclosed had even an appearance of bias and a party requested me to recuse myself, I would grant that Motion.

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

I normally do not accept gifts or anything of value from attorneys or other individuals. I have attended conferences sponsored by organizations such as the South Carolina Bar Association, South

Carolina Association for Justice, and South Carolina Defense Lawyers Association. On some of these occasions my registration fees, lodging, and meals have been provided by these organizations and attorneys. Of course, all Judges were invited and the Chief Justice approved our attendance. On a few of these occasions, I have gone to dinner with a group of attorneys and other Judges during these conferences; however, to my knowledge, none of the attorneys had any matters pending before me.

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

I would report it to the appropriate board, commission, or court.

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 would review the transcripts of record, briefs, and conduct research on the issues involved in any particular case.

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." I believe that under our Constitution, Judges are elected to interpret the law, not to promote or set public or social policy. When the issue of ambiguity of a statute is before the Court, I believe that Judges should refer to the legislative history of the statute in an attempt to interpret the law in a manner consistent with the Legislature's intent.

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 would participate in available continuing legal education in order that I could be as qualified as possible to serve as a member of the Court of Appeals. I would also attempt to be appointed to certain committees in order that I might contribute to the improvement of our legal system and the administration of justice.

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?

No. I believe that I have actually become closer to my family since I have been on the bench the last nineteen (19) years.

15. Are you currently serving on any boards or committees? If so, in what capacity are you serving? No

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:

I believe that historical evidence would be very valuable in determining the application of our Constitution. My analysis would include efforts to determine the intent of the framers of our Constitution in any particular area of the law.

- b) The use and value of an agency's interpretation of the Constitution:

I believe the Court should be bound by the framers' intent in interpreting our Constitution and not that of a particular agency.

- c) The use and value of documents produced contemporaneously to the Constitution, such as the minutes of the convention:

I believe that documents produced contemporaneously to the Constitution should be given the greatest weight in determining the framers' intent.

17. Is the power of the S.C. General Assembly plenary in nature unless otherwise limited by some specific Constitutional provision? Yes

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?

Local governments do not have plenary authority. All grants of authority to the local governments flow from the State level in our Constitution and statutes.

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?

Yes. I have written several research papers for courses I have completed in the Master of Judicial Studies Degree program.

23. What do you feel is the appropriate demeanor for a judge?

I believe that a Judge should treat every person with dignity and respect, and above all, a Judge must be fair in his dealings with all litigants, attorneys, and other persons who may appear in his Court.

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?

These rules apply seven days a week, twenty-four hours a day.

25. Would there be a role for sternness or anger in meetings with attorneys?

I believe a judge should do everything possible to prevent himself from becoming angry with attorneys. I do believe that in some instances a judge must be firm in his rulings in order that the attorneys will respect the orders and decisions of the court.

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

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?

Yes. I have notified my representative of my intent to file for re-election for Seat #1 of the South Carolina Court of Appeals.

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/Paul E. Short, Jr.

Sworn to before me this 22nd day of July, 2010.

Notary Public for S.C.

My Commission Expires: 9-14-2019

**Jane O. Shuler
Chief Counsel, Judicial Merit Selection Commission
Room 104 Gressette Building
P.O. Box 142
Columbia, S.C. 29202**

October 21, 2010

Re: Personal Data Questionnaire

Dear Ms. Shuler,

During my recent interview with Mr. Gentry, I learned I need to correct two answers on my PDQ.

The answers to questions #36 and #37 need to be reversed. The answer to question #36 relating to ever being investigated by DSS should be "No".

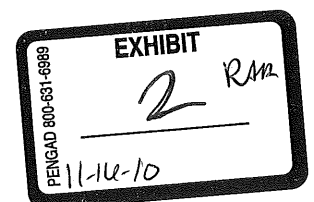
Question #37 relating to lobbying activity should list "SC Funeral Directors Association, 1990" and the "SC Society of Ophthalmology, 1990".

Thank you for your assistance.

Very truly yours,



H. Bruce Williams



JUDICIAL MERIT SELECTION COMMISSION
PERSONAL DATA QUESTIONNAIRE

Court, Position, and Seat # for which you are applying:

Court of Appeals, Seat 2

1. NAME: Harris Bruce Williams
BUSINESS ADDRESS: P.O. Box 11629
1015 Sumter Street
Columbia, S.C. 29211
E-MAIL ADDRESS: hwilliams@sccourts.org
TELEPHONE NUMBER: (office): 803-734-2159
2. Date of Birth: 1956
Place of Birth: Columbia, S.C.
3. Are you a citizen of South Carolina? Yes
Have you been a resident of this state for at least the immediate past five years? Yes
5. Family Status: Married on November 17, 1984, to Sharon Childers Williams.
Never divorced. Two children.
6. Have you served in the military? No
7. List each college and law school you attended, including the dates of your attendance, the degrees you received, and if you left an institution without receiving a degree, the reason for your departure.
 - (a) Wofford College, 1974-78, B.A.
 - (b) University of South Carolina, Summer of 1976 & 1977, summer classes
 - (c) Cumberland School of Law, Samford University, 1979-80; transferred to USC
 - (d) University of South Carolina School of Law, 1980-82, J.D.
8. List the states in which you have been admitted to practice law and the year of each admission. Also list any states in which you took the bar exam but were never admitted to the practice of law. If you took the bar exam more than once in any of the states listed, please indicate the number of times you took the exam in each state. South Carolina, admitted 1982
9. List the significant activities in which you took part during your attendance at college, graduate, and law school. Give the dates you were involved in these activities and list any leadership positions you held.
 - (a) President of Student Body – Wofford College, 1977-78
 - (b) Student Representative to Wofford College Board of Trustees, 1977-78
 - (c) Senior Order of Gnomes, 1977-78
 - (d) Intramural Sports, 1974-78
10. Describe your continuing legal or judicial education during the past five years. Include **only** the title and date of any continuing legal or judicial education course completed.

	<u>Conference/CLE Name</u>	<u>Date(s)</u>
(a)	Annual Judicial Conference	8/03 – 8/09;
(b)	National Foundation for Judicial Excellence (Judicial Symposium)	7/05-7/10;
(c)	4 TH Amendment Seminar (National Judicial College)	3/08;
(d)	Essential Skills for the Appellate Judge (National Judicial College)	7/1/06;
(e)	S.C. Drug Court Conference	8/23/06, '07, '08;
(f)	Civil Law Update	1/27/06, 1/08;
(g)	Criminal Law Update	1/27/06, 1/07, 1/08;
(h)	Family Court Judges Conference	4/03 – 4/08;
(i)	Mini Summit on Justice for Children	8/22/06;
(j)	Hot Tips for Domestic Law Practitioners	9/22/06;
(k)	Family Court Bench and Bar	12/01/06;
(l)	New Appellate Judge Conference (New York University)	7/10/05;
(m)	Criminal Law Update	1/21/05;
(n)	Trial and Appellate Advocacy	1/22/05;
(o)	Hot Tips For Domestic Law Practitioners	9/23/05;
(p)	Annual Judicial Symposium	7/15/05-07;
(q)	S.C. Defense Lawyers Annual Meeting	11/05 – 11/09;
(r)	S.C. Bar Family Law Section	1/23/04;
(s)	Revised Lawyers Oath Seminar	8/27/04;
(t)	Wofford and the Law	9/24/04;
(u)	S.C. Bar Family Law	1/24/03;
(v)	S.C. Association for Justice Conference	8/04-08;
(w)	Annual Solicitors Conference	9/03,'05, '06;
(x)	N.C./S.C. Appellate Judges Conference	3/05, 3/07;
(y)	National Association of Drug Court Professionals	6/04, '06, '08.'10.

11. Have you taught law-related courses or lectured at bar association conferences, educational institutions, or continuing legal or judicial education programs?

- (a) I have lectured at the S.C. Bar Program "Bridge the Gap" for new lawyers.
- (b) I have made presentations on the topics of appellate advocacy and domestic relations to lawyers attending the Annual S.C. Bar meeting as well as numerous presentations at S.C. Bar sponsored CLE events
- (c) I have given presentations in the areas of appellate law and domestic relations to the South Carolina Trial Lawyers at the annual meeting.
- (d) I have lectured to University of South Carolina Law School classes relating to the following topics: alternative sentencing/drug court, abuse and neglect cases, domestic relations; and presented professionalism seminars to first -year students on the courts and civility.

- (e) I have lectured to undergraduate and graduate level classes at the University of South Carolina regarding juvenile crime, drug court, and courtroom procedures in South Carolina.
 - (f) I had the opportunity to participate as a group leader in drug court training for new courts in a program sponsored by the National Association of Drug Court Professionals.
 - (g) I have made numerous presentations at S.C. Solicitors' annual Conferences relating to juveniles, case law updates, drug court, and civility in the courts. In addition, I have spoken at the S.C. Public Defenders Conference.
 - (h) I had the opportunity to speak at locally sponsored CLE events regarding abuse and neglect cases and guardian ad litem training.
12. List all published books and articles you have written and give citations and the dates of publication for each. None
13. List all courts in which you have been admitted to practice and list the dates of your admission. Give the same information for administrative bodies that require a special admission to practice.
- (a) Admitted to practice before the State Courts of South Carolina in 1982
 - (b) Admitted to practice before the Federal District Court in 1982
14. Describe chronologically your legal experience since graduation from law school and include a list of all law firms with which you have been associated. Describe the general character of your practice and divide it into periods with dates if its character has changed over the years.
- (a) 1982-95: General practice of law with primary emphasis on family law and personal injury law;
 - (b) 1982-91 Scott, Mathews, and Williams, PA;
 - (c) 1991-95 Trotter and Williams, PA;
 - (d) 1991-95 Part-time municipal judge for Irmo, S.C.;
 - (e) 1995-2004 Judge, S.C. Family Court;
 - (f) 2004-present Judge, S.C. Court of Appeals.
15. What is your rating in Martindale-Hubbell? BV
22. Have you ever held judicial office?
- (a) Assistant Town Judge, Irmo, S.C.: October 1991–June 6, 1995: Appointed by Town Council; jurisdiction limited to magistrate level criminal and traffic offenses. Duties included setting bonds for criminal defendants.
 - (b) S.C. Family court Judge, Fifth Circuit, Richland County, Seat # 1; June 1995–June 2004. Jurisdiction includes, but is not limited to divorce, adoption, abuse and neglect cases, and juveniles. I have presided over the Richland County Juvenile Drug court since inception in 1997.
 - (c) S.C. Court of Appeals – Seat #2, June, 2004–to present. Jurisdiction over all appeals except those reserved by statute to the Supreme Court.

- (d) I was appointed as a special Circuit Judge to preside over the Richland County Adult Drug Court, and I continue to preside over the Richland County Juvenile Drug Court as an acting family court judge.
23. If the answer to question 22 is yes, describe or list five of your most significant orders or opinions and give the citations if they were reported. Also list citations to any appellate review of these orders or opinions.
- (a) Hooper v. Rockwell, et al. - 334 S.C. 281, 573 S.E.2d 358, (1999);
 - (b) Truitt v. Truitt – 361 S.C. 272, 603 S.E.2d 867 (Ct.App.2004);
 - (c) State v. Lynch, 375 S.C.628, 654 S.E. 2d 292 (Ct.App.2007);
 - (d) State v. Funderburk, 367 S.C. 236 , 625 S.E.2d 248 (Ct.App.2006);
 - (e) McLaughlin v. Williams, 379 S.C. 451, 665 S.E. 2d 667 (2008).
24. Have you ever held public office other than judicial office? No
25. List all employment you had while serving as a judge (whether full-time or part-time, contractual or at will, consulting or otherwise) other than elected judicial office. Specify your dates of employment, employer, major job responsibilities, and supervisor. None
26. Have you ever been an unsuccessful candidate for elective, judicial, or other public office?
- (a) In 1994, I was a candidate for Family Court Judge. I was found qualified by the S.C. Bar and Judicial Merit Selection Commission. I withdrew prior to the election. I was elected to the Family Court in 1995.
 - (b) In 2003, I was found qualified by the S.C. Bar in my effort to serve on the S.C. Court of Appeals. I was found qualified and nominated by the Judicial Merit Selection Commission. Another candidate won the election. I was elected to Court of Appeals in 2004.
 - (c) In 2007, I was found qualified by the S.C. Bar in my effort to serve on the Supreme Court. I was found qualified and nominated by the Judicial Merit Selection Commission. Another candidate won the election.
 - (d) In 2009, I was found qualified by the S.C. Bar in my effort to serve on the Supreme Court. I was found qualified but not nominated by the Judicial Merit Selection Committee.
27. Have you ever been engaged in any occupation, business, or profession other than the practice of law, teaching of law, or holding judicial or other public office? No
28. Are you now an officer or director or involved in the management of any business enterprise? No
29. A complete, current financial net worth statement was provided to the Commission.
30. Describe any financial arrangements or business relationships you have, or have had in the past, that could constitute or result in a possible conflict of interest in the position you seek. Explain how you would resolve any potential conflict of interest.

My wife is co-owner with a lawyer of a parking space used for USC football games. I recuse myself in cases involving the lawyer.

31. Have you ever been arrested, charged, or held by federal, state, or other law enforcement authorities for violation or for suspicion of violation of any federal law or regulation, state law or regulation, or county or municipal law, regulation, or ordinance, or any other law, including another country's law?
Traffic violation for expired tags on wife's car; July 1, 1995
32. Have you, to your knowledge, ever been under federal, state, or local investigation for possible violation of a criminal statute? No
33. Has a tax lien or other collection procedure ever been instituted against you by federal, state, or local authorities? No. Have you ever defaulted on a student loan? Have you ever filed for bankruptcy? No
34. Have you ever been sued, either personally or professionally, that is, have you ever been named as defendant or respondent in any court of law?
Yes, I was named a defendant creditor in a foreclosure due to a family court order awarding me attorney fees owed by the defendant debtor.
36. Have you ever been investigated by the Department of Social Services? No. Has your name ever been enrolled on the Central Registry of Child Abuse and Neglect? No
37. Are you now or have you ever been employed as a "lobbyist," as defined by S.C. Code § 2-17-10(13), or have you acted in the capacity of a "lobbyist's principal," as defined by S.C. Code § 2-17-10(14)?
 - (a) S.C. Funeral Directors Association, 1990
 - (b) S.C. Society of Ophthalmology, 1990
38. Since filing with the Commission your letter of intent to run for judicial office, have you accepted lodging, transportation, entertainment, food, meals, beverages, money, or any other thing of value as defined by S.C. Code § 2-17-10(1) from a lobbyist or lobbyist's principal? None
39. S.C. Code § 8-13-700 provides, in part, that "[n]o public official, public member, or public employee may knowingly use his official office, membership, or employment to obtain an economic interest for himself, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated." Please detail any knowledge you have of any formal charges or informal allegations against you or any other candidate for violations of these provisions. None
40. S.C. Code § 8-13-765 provides, in part, that "[n]o person may use government personnel, equipment, materials, or an office building in an election campaign." Please detail any knowledge you have of any formal charges or informal allegations against you or any other candidate for violations of these provisions. None
41. Itemize (by amount, type, and date) all expenditures, other than those for travel and room and board, made by you, or on your behalf in furtherance of your candidacy for the position you seek. None

42. List the amount and recipient of all contributions made by you or on your behalf to members of the General Assembly since the announcement of your intent to seek election to a judgeship. None
43. Have you directly or indirectly requested the pledge of any member of the General Assembly as to your election for the position for which you are being screened? Have you received the assurance of any public official or public employee that they will seek the pledge of any member of the General Assembly as to your election for the position for which you are being screened? No
44. Have you requested a friend or colleague to contact members of the General Assembly on your behalf? Are you aware of any friends or colleagues contacting members of the General Assembly on your behalf? No
45. Have you or has anyone acting on your behalf solicited or collected funds to aid in the promotion of your candidacy? No
46. Have you or has anyone acting on your behalf contacted members of the Judicial Merit Selection Commission about your candidacy or intention to become a candidate? No
47. List all bar associations and professional organizations of which you are a member and give the titles and dates of any offices you have held in such groups.
- (a) S.C. Bar, 1982-present;
 - (b) Richland County Bar, 1982-present; Family Law Chairman 1993; Family Law Committee, 1991-93;
 - (c) S.C. Conference of Family Court Judges, 1995-2004; President, 1999-2000; President-elect, 1998-99; Secretary-Treasurer, 1997-98;
 - (d) S.C. Association of Drug Court Professionals; President 2000-01, Board Member, 2006-present;
 - (e) John Belton O'Neill Inn of Court, 2007-present;
 - (f) American Bar Association - 2010.
48. List all civic, charitable, educational, social, and fraternal organizations of which you are or have been a member during the past five years and include any offices held in such a group, any professional honors, awards, or other forms of recognition received and not listed elsewhere.
- (a) Received the "Program Achievement Award" at the 1998 Governor's Conference on Youth Crime for initiating and developing the Richland County Juvenile Drug Court;
 - (b) Columbia Kiwanis Club-President, 1989-90; Board of Directors, 1987-91 and 1994-95; Key Club and Keywanettes - Advisor, 1983-96;
 - (c) The Country Club - Wildewood and Woodcreek Farms; Chairman of the Golf Committee, 2005-06, 2009; committee member, 2003-04. The club is now known as The Members Club at Woodcreek Farms and Wildewood.;
 - (d) Tarantella;
 - (e) Palmetto Club;

- (f) S.C. Association of Drug Court Professionals- President (2007-08).
49. Provide any other information that may reflect positively or negatively on your candidacy, or which you believe should be disclosed in connection with consideration of you for nomination for the position you seek.

I assisted in the design and implementation of the Richland County Juvenile Drug Court Program, a comprehensive drug treatment court for juvenile offenders with serious drug problems. I continue to preside over the drug court on Monday evenings. We recently celebrated our 13-year anniversary of the Richland County Juvenile Drug Court.

I am gratified and appreciative the support and encouragement received from members of the Bar since serving on the bench. I will continue to strive to improve in hopes of better serving the people of South Carolina.

I believe my 13 years of experience as a practicing lawyer, nine years of experience on the Family Court, and six years of experience on the Court of Appeals gives me a broad range of experience to continue serving on the Court of Appeals.

50. References:

- (a) John E. Montgomery, Dean Emeritus and Professor of Law
University of South Carolina School of Law
Columbia, S.C. 29208
803-777-3360
- (b) Dr. Dan B. Maultsby
626 Otis Blvd.
Spartanburg, S.C. 29302
864-582-6978
- (c) Robert C. Wisnewski, Rector
St. John's Episcopal Church
113 Madison Avenue
Montgomery, AL 36104
334-262-1937
- (d) Travis Wright
Branch Manager, NBSC
1311 Pendleton Street
Columbia, S.C.
- (e) Professor Alan Medlin
University of South Carolina School of Law
701 South Main Street
Columbia, S.C. 29208
803-777-7465

YOUR SIGNATURE WILL BE HELD TO CONSTITUTE A WAIVER OF THE CONFIDENTIALITY OF ANY PROCEEDING BEFORE A GRIEVANCE COMMITTEE OR ANY INFORMATION CONCERNING YOUR CREDIT.

I HEREBY CERTIFY THAT MY ANSWERS ARE TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

Signature: H. Bruce Williams

Date: August 2, 2010

<p style="text-align: center;">JUDICIAL MERIT SELECTION COMMISSION Sworn Statement to be included in Transcript of Public Hearings</p>
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Supreme Court/Court of Appeals
(New Candidate)

Full Name: Harris Bruce Williams
Business Address: P.O. Box 11629
1015 Sumter Street
Columbia, SC 29211
Business Telephone: 803-734-2159

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?

My usual practice is not to engage in *ex parte* communications. The rules do allow certain relief to be sought by *ex parte* petition, and some administrative matters regarding the case may necessitate some *ex parte* contact.

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 have recused myself in cases involving my former law partners. There have been instances where the parties requested that I hear a case after I have divulged the relationship with my former partners. I would hear the matter only after a written stipulation was signed by the parties out of my presence. I would question the parties about the stipulation to make certain they wished for me to hear the matter. On the appellate court, I have recused myself in matter involving former partners. It is more difficult to follow the procedure outlined above in appellate matters.

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 I thought it was serious enough to disclose initially, I would give great deference to the parties. I want all parties to believe they are receiving an impartial hearing.

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

I do not accept gifts from lawyers or parties who appear before me. I do accept some social hospitality as allowed by the Canons of Ethics and other social hospitality including attending bar meetings and social functions sponsored by local and state bar associations.

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

I would have to report it.

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 review the record and the briefs filed with the court. The applicable case law is reviewed. The matter is discussed with my law clerks in preparation for discussion with my fellow judges. A pre-hearing report is prepared for the panel conference. The case is discussed with the judges on my panel. If the case is scheduled for oral argument, I listen carefully to the arguments of the lawyers. I utilize all the information presented and knowledge gained in the process to make my decision.

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

Public policy is determined by the legislature. The role of the judge is to review the law and apply the law to the facts of the case.

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 would continue to speak at Continuing Legal Education seminars sponsored by the S.C. Bar. I have served on a Legislative Study Committee and would continue to assist if appointed to other committees. I would continue to speak to community groups about the legal system. I have been involved in Drug Courts and their development for the last thirteen years. I would like to continue my involvement in educating the public about drug courts as well as assisting in training of those involved in establishing new drug courts.

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 have a very supportive family which has experienced my serving as a Family Court Judge for 9 years and as a Court of Appeals Judge for 6 years. My wife and children have been able to

appropriately handle any issues or difficult circumstances that resulted from my serving as a judge.

15. Are you currently serving on any boards or committees? If so, in what capacity are you serving?

S.C. Association of Drug Court Professionals - President

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:

The primary rule of statutory construction is to ascertain and effectuate the intent of the legislature. Constitutional construction is preferred over some unconstitutional interpretation. Terms that are clear and unambiguous should be given their plain and ordinary meaning without efforts to limit or expand their meaning.

- b) The use and value of an agency's interpretation of the Constitution:

To assist in the construction, it would be valuable to review documents and records produced contemporaneously in an effort to determine legislative intent. Historical evidence would be helpful and should be considered.

- c) The use and value of documents produced contemporaneously to the Constitution, such as the minutes of the convention:

In matters relating to the South Carolina Constitution, clear statutory language, evidence of legislative intent, longstanding administrative interpretations and required constitutional construction are all factors to be weighed.

17. Is the power of the South Carolina General Assembly plenary in nature unless otherwise limited by some specific Constitutional provision?

Yes. The power of the legislature is subject only to restrictions contained in the Constitutions of South Carolina and the U.S.

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?

The Constitution directs the General Assembly to make laws to establish the structure, organization, power, duties, functions, and responsibilities of local governments. The legislature may delegate to localities responsibility for local affairs and may give broad discretion. Local laws must 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?
A judge must demonstrate patience and the ability to listen. This applies to trial and appellate judges.
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?
The rules for judges apply 24 hours a day, seven days a week. The public is aware of a judge's demeanor on and off the bench.
25. Would there be a role for sternness or anger in meetings with attorneys?
There is no role for anger, but there are occasions when being firm is appropriate. I have found that treating attorneys and litigants with respect is the most appropriate way to conduct business in the courtroom.
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
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?
I have not contacted members of the Judicial Merit Selection Commission regarding my qualifications. I have had contact with members of the Commission regarding legislative issues such a family law, other legislative matters, and some incidental personal contact.
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/Harris Bruce Williams

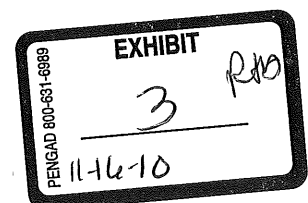
Sworn to before me this 2nd day of August, 2010.

Notary Public for S.C.

My Commission Expires: 3-10-2019

JUDICIAL MERIT SELECTION COMMISSION
PERSONAL DATA QUESTIONNAIRE
FOR RETIRED JUDGES/JUSTICES

1. NAME: Jasper M. Cureton
BUSINESS ADDRESS: South Carolina Court of Appeals
1015 Sumter Street
Columbia, S.C. 29201
BUSINESS TELEPHONE: 803-734-1926
E-MAIL ADDRESS: jaspercureton@yahoo.com
2. Date and Place of Birth: 1938; Walhalla, S.C.
3. Are you a citizen of South Carolina? Yes
Have you been a resident of this state for at least the immediate past five years? Yes
5. Family Status: Married on April 2, 1994, to Vessie Jean Burkins. Divorced twice. Two children.
Divorced on September 28, 1979, Richland County Family Court. Judge Cureton was the moving party; 3 Years Continuous Separation.
Divorced on April 8, 1991. Judge Cureton was the moving party; 1 Year's Continuous Separation. Two children.
6. Briefly describe your continuing legal or judicial education since your last screening. Include only the title and date of any continuing legal or judicial education course completed.
- | <u>Conference/CLE Name</u> | <u>Date(s)</u> |
|--|----------------|
| (a) Mini Summit on Justice for Children | 8/22/2006; |
| (b) 2006 Annual Judicial Conference | 8/23/2006; |
| (c) NC/SC Appellate Judges Conference | 3/01/2007; |
| (d) Bridge the Gap Seminar | 5/07/2007; |
| (e) 2007 Annual Judicial Conference | 8/22/2007; |
| (f) The Law Clerk and Staff Code of Conduct | 12/19/2007; |
| (g) 23 rd Annual S.C. Criminal Law Update | 1/25/2008; |
| (h) 6 th Annual Civil Law Update | 1/25/2008; |
| (i) Annual Judicial Conference | 8/20/2008; |
| (j) 24 th Annual Criminal Law Update | 1/23/2009; |
| (k) Senior Lawyers Division Seminar | 1/24/2009; |
| (l) 7 th Annual Civil Law Update | 1/23/2009; |
| (m) Annual Judicial Conference | 8/19/2009; |
| (n) Civil Law Update | 1/22/2010; |
| (o) Criminal Law Update | 1/22/2010. |
7. Have you practiced law or served as a mediator or arbitrator since your retirement from the judiciary? No
8. List your positions of employment on and/or appointment to the bench chronologically. You are not required to list dates of employment or



appointment prior to your last screening.

Retired Judge South Carolina Court of Appeals since retirement from that court on June 30, 2003.

9. Are you now an officer or director or involved in the management of any business enterprise? No
10. A complete, current financial statement was provided to the Commission.
11. Since your last screening, have you been arrested, charged, or held by federal, state, or other law enforcement authorities for violation or for suspicion of violation of any federal law or regulation, state law or regulation or county or municipal law, regulation or ordinance, or any other law, including another country's law? No
12. Since your last screening, have you, to your knowledge, been under federal, state, or local investigation for possible violation of a criminal statute? No.
13. Since your last screening, has a tax lien or other collection procedure been instituted against you by federal, state, or local authorities? Since your last screening, have you defaulted on a student loan? Since your last screening, have you filed for bankruptcy? No
14. Since your last screening, have you been sued, either personally or professionally? No
15. Since your last screening, have you, as a lawyer, judge, or other professional, in South Carolina or any other jurisdiction, been sanctioned for lawyer, judicial, or other professional misconduct or found to have committed such misconduct? No
16. Since your last screening, have you been criticized, whether informally or in a matter taken to a disciplinary authority, for the manner in which you treated litigants or attorneys before you on the bench? No
17. Describe your personal policy for the acceptance of food, meals, beverages, lodging, transportation, entertainment, social hospitality, or other things of value from an attorney, a group of attorneys, or from other individuals.

I do not accept food, meals, beverages, lodging, transportation, entertainment, social hospitality, or other things of value from individual lawyers. I also do not accept such things from a non-lawyer if there is a reasonable probability that the person is likely to appear before me or if the gift is offered for the purpose of influencing me in my judicial duties. I will accept, in accordance with guidelines prescribed for the state judiciary, meals and lodging from professional organizations, including law organizations where I participate in their activities.
18. Have you ever accepted anything of value from an attorney or litigant in a matter currently or previously before you or your court? No
19. Provide any other information which may reflect positively or negatively on your candidacy, or which you believe should be disclosed in connection with consideration of you for nomination for the position you seek. None
20. For the last fully completed calendar year, itemize the income, expenses, fees,

payments, or additional benefits exceeding \$500, in the aggregate, received by you or a member of your immediate family from South Carolina state and local entities. List the type, source, and amount or value of the benefit. Be sure to list any expense reimbursement you received separately from your income.

- (a) For calendar year 2009, I received a salary of \$16,624.00 from the State of South Carolina and \$119,091.96 from the S.C. Retirement System;
- (b) My wife received retirement income of \$14,836.32 from the S.C. Retirement System in 2009.

21. Describe any interest you or a member of your immediate family has in real property:

- (a) in which there is a potential conflict of interest with your involvement in a South Carolina state or local public agency -- None;
- (b) in which there have been public improvements of \$200 or that adjoins property in which there have been public improvements of \$200 -- None or;
- (c) which was sold, leased, or rented to a state or local public agency in South Carolina -- None.

22. Identify any personal property interest you or a member of your immediate family sold, leased, or rented to a South Carolina state or local public agency. Identify the property, its amount or value, and the name of the agency. None

I HEREBY CERTIFY THAT MY ANSWERS ARE TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

Signature: Jasper M. Cureton

Date: July 28, 2010

<p style="text-align: center;">JUDICIAL MERIT SELECTION COMMISSION Statement to be included in Transcript of Public Hearings</p>
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Retired Judge

Full Name: Jasper Marshall Cureton
Business Address: 1015 Sumter Street
Columbia, S.C. 29201
Business Telephone: (803) 734-1926

1. Have you met the Constitutional or statutory requirements for this position regarding age, residence, and years of practice? Yes
2. Have you met the mandatory minimum hours requirement for continuing legal education courses? Yes
3. Do you have any plans to return to private practice one day? No
4. Are you engaged in any legal activities other than your service as a retired judge, such as acting as an arbitrator or mediator? No
5. Are you involved in any active investments from which you derive additional income that might impair your appearance of impartiality? No
6. Do you belong to any organizations that discriminate based on race, religion, or gender? No
7. Have you engaged in any partisan political activity since your retirement? No
8. What do you feel is the appropriate demeanor for a judge?
I believe a judge should be courteous, attentive, respectful and helpful to attorneys and litigants. Although, a judge should be firm, the bench is no place for a judge to make jokes, belittle or intimidate lawyers or litigants.
9. In your position as a retired judge, what methods do you employ to ensure that deadlines for the timely issuance of orders are met?
I make every effort to complete cases as soon as possible after they are assigned to me for disposition. My chambers keep a log of all cases under consideration. A periodic tickler system is a must to ensure no case falls in the cracks.
10. 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?
No, anger is never appropriate in dealing with attorneys, litigants or the public. A judge should be firm, but should never get angry.
11. How would you handle a situation in which you became aware of misconduct of a lawyer or fellow judge?

I would report the information to the appropriate disciplinary body.

12. What is your philosophy on recusal, especially in situations in which lawyer-legislators, former associates, or law clerks are to appear before you?

I do not recuse myself from cases just because an attorney is a legislator. I do, however, recuse myself if I have any sort of business or social relationship with him/her. I recuse myself from hearing cases where a former associate is or was involved in the case in the last ten years, and also where law clerks in the last five years are involved

13. What is your philosophy regarding *ex parte* communications? Are there circumstances under which you could envision *ex parte* communications being tolerated?

There are very few opportunities for *ex parte* communications at the appellate level. Correspondence from litigants and attorneys are forwarded to the Clerk of Court to handle. I simply do not engage in *ex parte* communications with attorneys and litigants. At the trial level, it may be necessary to talk to an attorney for scheduling purposes only. It is always best to get representatives from all parties on the phone or before the court to discuss anything regarding the case

14. 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?

Yes. It is the appearance of bias that matters.

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

I do not accept food, gifts, beverages, lodging, transportation, entertainment or social hospitality from lawyers, litigants or any person if there is reasonable probability that the person will come before me, or if the gift or social hospitality is offered for the purpose of influencing me in my judicial duties. I will accept, in accordance with guidelines for the state judiciary, meals and lodging from professional legal organizations where I participate in their activities.

16. In order that we might advise court administration on steps that need to be taken, are there any limitations on your sight, hearing, or mobility that should be addressed by the court administrator? No

I HEREBY CERTIFY THAT THE ANSWERS TO THE ABOVE QUESTIONS ARE TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

s/Jasper Marshall Cureton

Sworn to before me this 26th day of July, 2010.

Notary Public for S.C.

My Commission Expires: 7-24-2016



State of South Carolina
The Family Court of the Thirteenth Judicial Circuit

Stephen S. Bartlett
Judge-Active Retired

819 East North Street
Greenville, SC 29601
Phone: (864) 331-3067
Fax: (864) 331-3058
sbartlettj@sccourts.org

August 31, 2010

Jane O. Shuler, Chief Counsel
Judicial Merit Selection Commission
Post Office Box 142
Columbia, SC 29202

Dear Mrs. Shuler:

I am requesting my Personal Data Questionnaire (PDQ) be amended by adding the enclosed schedule of JCLE seminars that I have attended since 2007. In addition, I am requesting that you amend the PDQ by adding my voter registration number which is _____ for Greenville County.

If further information is needed please do not hesitate to contact me.

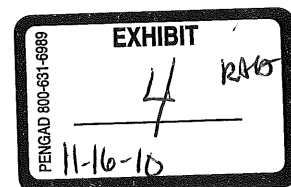
It was a pleasure meeting with you last week and I want to thank you for your assistance.

With best regards, I am

Sincerely Yours,

A handwritten signature in black ink, appearing to read "Stephen S. Bartlett", written over a horizontal line.

Stephen S. Bartlett



JCLE Seminars for Stephen S. Bartlett

<u>Course</u>	<u>Hours</u>
2009 Annual Judicial Conference	8.75
2008 Family Court Judges Conference (4/23/08)	5.5
2008 SCCA Judicial Conference (8/20/08)	8.75
2008 Advanced Mediation Skills (10/10/08)	14
2007 ACOB Joint & College Panel (3/23/07)	4
2007 Family Court Judges Assoc. (4/25/07)	6
2007 SC Annual Judicial Conference (8/22/08)	8
2008 SC Bar Annual –Government Law (1/25/08)	3
2008 SC Bar Annual – Family Law (1/25/08)	3
2006 SC Bar Annual – Alternative Dispute Resolution (1/27/06)	3
2006 SC Bar Annual – Family Law (1/27/06)	3
2006 Family Court Judges Assoc. (4/26/06)	3
2006 SC Bar –Mediator Certification (7/13/06)	40
2006 Mini-Summit on Justice for Children (8/22/06)	7.25
2006 Annual Judicial Conference (8/23/06)	9
2006 SC Bar Bench/Bar (12/1/06)	6
2007 SC Bar Family Law	3

JUDICIAL MERIT SELECTION COMMISSION
PERSONAL DATA QUESTIONNAIRE
FOR RETIRED JUDGES/JUSTICES

-
1. NAME: Stephen S. Bartlett
BUSINESS ADDRESS: 819 E. North Street
Greenville, S.C. 29601
BUSINESS TELEPHONE: 864-331-3067
E-MAIL ADDRESS: sbartlettj@sccourts.org
 2. Date and Place of Birth: 1952
San Diego, C.A.
 3. Are you a citizen of South Carolina? Yes
Have you been a resident of this state for at least the immediate past five years? Yes
 5. Family Status: Married on January 12, 1980, to Elizabeth Adele Anthony.
Never divorced. One child.
 6. Briefly describe your continuing legal or judicial education since your last screening. Include only the title and date of any continuing legal or judicial education course completed.

I have completed all mandatory JCLE requirements since my last screening. In addition I have attended the S.C. Association for Justice's annual Family Court seminar in August of each year. I currently have carried forward 30 hours of JCLE credit. At the time of completion of this list I do not have specific dates.

Amended:

<u>CLE/Conference Name</u>	<u>Date(s)</u>
(a) Annual Judicial Conference	2009;
(b) 2008 Family Court Judges Conference	4/23/08;
(c) 2008 SCCA Judicial Conference	8/20/08;
(d) 2008 Advanced Mediation Skills	10/10/08;
(e) 2007 ACOB Joint & College Panel	3/23/07;
(f) 2007 Family Court Judges Association	4/25/07;
(g) 2007 S.C. Annual Judicial Conference	8/22/07;
(h) 2008 S.C. Bar Annual-Government Law	1/25/08;
(i) 2008 S.C. Bar-Annual Family Law	1/25/08;
(j) 2006 S.C. Bar Annual-Alternative Dispute Resolution	1/27/06;
(k) 2006 S.C. Bar Annual-Family Law	1/27/06;
(l) 2006 Family Court Judges Association	4/26/06;
(m) 2006 S.C. Bar-Mediator Certification	7/13/06;
(n) 2006 Mini Summit on Justice for Children	8/22/06;
(o) 2006 Annual Judicial Conference	8/23/06;
(p) 2006 S.C. Bench/Bar	12/1/06;
(q) S.C. Bar Family Law	2007.

7. Have you practiced law or served as a mediator or arbitrator since your retirement from the judiciary?

I have performed both mediation and arbitration since retirement. I maintain an office for these services and perform an average of eight mediations per week that I am not holding court.

8. List your positions of employment on and/or appointment to the bench chronologically. You are not required to list dates of employment or appointment prior to your last screening. None
9. Are you now an officer or director or involved in the management of any business enterprise?

I am the owner of Family Court Mediations which I own as a sole proprietor and for which there are no employees.

10. A complete, current financial net worth statement was provided to the Commission.
11. Since your last screening, have you been arrested, charged, or held by federal, state, or other law enforcement authorities for violation or for suspicion of violation of any federal law or regulation, state law or regulation or county or municipal law, regulation or ordinance, or any other law, including another country's law? No
12. Since your last screening, have you, to your knowledge, been under federal, state, or local investigation for possible violation of a criminal statute? No
13. Since your last screening, has a tax lien or other collection procedure been instituted against you by federal, state, or local authorities? Since your last screening, have you defaulted on a student loan? Since your last screening, have you filed for bankruptcy? No
14. Since your last screening, have you been sued, either personally or professionally? No
15. Since your last screening, have you, as a lawyer, judge, or other professional, in South Carolina or any other jurisdiction, been sanctioned for lawyer, judicial, or other professional misconduct or found to have committed such misconduct? No
16. Since your last screening, have you been criticized, whether informally or in a matter taken to a disciplinary authority, for the manner in which you treated litigants or attorneys before you on the bench? No
17. Describe your personal policy for the acceptance of food, meals, beverages, lodging, transportation, entertainment, social hospitality, or other things of value from an attorney, a group of attorneys, or from other individuals.
- I do not accept anything of value from any attorney. Only fees earned in mediation or arbitration are accepted.
18. Have you ever accepted anything of value from an attorney or litigant in a matter currently or previously before you or your court? No
19. Provide any other information which may reflect positively or negatively on your candidacy, or which you believe should be disclosed in connection with

- consideration of you for nomination for the position you seek. None
20. For the last fully completed calendar year, itemize the income, expenses, fees, payments, or additional benefits exceeding \$500, in the aggregate, received by you or a member of your immediate family from South Carolina state and local entities. List the type, source, and amount or value of the benefit. Be sure to list any expense reimbursement you received separately from your income.
- In 2009, I received a 1099-MSC for taxable expenses that were compensated for in the amount of \$1,027.00. In addition, I received nontaxable amounts that would be difficult to segregate, but which I estimate to be about \$2,000.00.
21. Describe any interest you or a member of your immediate family has in real property:
- (a) in which there is a potential conflict of interest with your involvement in a South Carolina state or local public agency;
 - (b) in which there have been public improvements of \$200 or that adjoins property in which there have been public improvements of \$200; or
 - (c) which was sold, leased, or rented to a state or local public agency in South Carolina. None
22. Identify any personal property interest you or a member of your immediate family sold, leased, or rented to a South Carolina state or local public agency. Identify the property, its amount or value, and the name of the agency. Attach a copy of any contract or agreement. None

I HEREBY CERTIFY THAT MY ANSWERS ARE TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

Signature: Stephen Bartlett

Date: August 24, 2010

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

Retired Judge

Full Name: Stephen S. Bartlett
Business Address: 819 E. North Street
Greenville, SC 29601
Business Telephone: 864-332-3067

1. Have you met the Constitutional or statutory requirements for this position regarding age, residence, and years of practice? Yes
2. Have you met the mandatory minimum hours requirement for continuing legal education courses? Yes
3. Do you have any plans to return to private practice one day? No
4. Are you engaged in any legal activities other than your service as a retired judge, such as acting as an arbitrator or mediator?
Yes, mediation and arbitration.
5. Are you involved in any active investments from which you derive additional income that might impair your appearance of impartiality?
No
6. Do you belong to any organizations that discriminate based on race, religion, or gender? No
7. Have you engaged in any partisan political activity since your retirement? No
8. What do you feel is the appropriate demeanor for a judge?
Treat people in the same manner that you would expect either you or your family to be treated. Professional, temperate, and responsive.
9. In your position as a retired judge, what methods do you employ to ensure that deadlines for the timely issuance of orders are met?
I maintain a copy of my daily docket with indications of which attorney is required to submit the order and whether the order has been submitted.
10. 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?
Anger may be appropriate but expressions of anger or acts committed in anger are not appropriate.
11. How would you handle a situation in which you became aware of misconduct of a lawyer or fellow judge?
I would report all violations of the codes of ethics to the appropriate authority.

12. What is your philosophy on recusal, especially in situations in which lawyer-legislators, former associates, or law clerks are to appear before you?

I grant all motions for recusal unless objected to and there is no objective for the motion.

13. What is your philosophy regarding *ex parte* communications? Are there circumstances under which you could envision *ex parte* communications being tolerated?

I allow *ex parte* communications only where allowed by law such as in emergency motions or motions relating to scheduling.

14. 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 grant the motion for recusal.

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

I do not accept gifts from attorneys who appear or who have the potential to appear before me.

16. In order that we might advise court administration on steps that need to be taken, are there any limitations on your sight, hearing, or mobility that should be addressed by the court administrator? None.

I HEREBY CERTIFY THAT THE ANSWERS TO THE ABOVE QUESTIONS ARE TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

s/Stephen S. Bartlett

Sworn to before me this 24th day of August, 2010.

Notary Public for S.C.

My Commission Expires: 2-15-2013

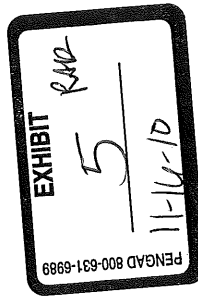
Citizens Committee Report/S.C. Bar Judicial Qualifications Committee Report

Court Family, Seat 1 Ninth Circuit

Candidate's Name: Honorable James Turner

Fall/Spring Screening 2010 (year)

	Unqualified	Qualified	Well-Qualified
1. Constitutional Qualifications: A candidate must meet the constitutional or statutory requirements of citizenship, residence, age, and professional experience.			X
2. Ethical Fitness: A candidate must have the ability to perform adjudicative duties impartially and to deal with litigants, lawyers, witnesses, and other courtroom participants objectively and without bias. A candidate should have a sense of humor and must exhibit trustworthiness, moral vigor, and strength of character. A candidate's past action and deeds should demonstrate consistent adherence to high ethical principles and his or her reputation should be above reproach. A candidate must also follow campaigning and pledging laws. At a minimum, a sitting judge will be expected to have complied with the Code of Judicial Conduct's requirements to avoid impropriety, the appearance of impropriety, and partiality.			X
3. Professional and Academic Ability: A candidate is expected to be well-versed in fundamental legal principles and in procedural and evidentiary rules. A candidate must have the ability to communicate in a style that is both lucid and persuasive and must have the intellectual capacity to interpret established legal principles, apply them to specific factual situations, and clearly and logically communicate the reasoning leading up to his or her conclusion. A candidate's academic record, participation in continuing legal education or other seminars, legal writing, and reputation among professional colleagues to evaluate legal knowledge and ability will be reviewed. On the appellate court level, consideration will be given to a candidate's ability to work well with others and to build or reach a consensus when appropriate.			X
4. Character: The character of a candidate regarding his or her ethical standards, work habits, and financial responsibility, will be reviewed, as well as a thorough investigation of any complaints, grievances, or criminal allegations made against a candidate.			X
5. Reputation: Consideration of a candidate's background will include the following: 1) the non-legal experience; 2) the candidate's involvement in community affairs, public office, or pro bono work; or 3) the candidate's views on social issues and his or her desire to affect public policy. A review will be undertaken to ensure a candidate has followed the Code of Judicial Conduct's prohibition against extra-judicial activities and rules governing the use of judicial office.			X
6. Physical Health: The demands of the judicial office require a high level of performance, and a candidate must be both mentally and physically capable of performing the duties of the office sought with or without reasonable accommodation for any mental or physical impairment that substantially limits a major life activity.			X
7. Mental Stability: The demands of the judicial office require a high level of performance, and a candidate must be both mentally and physically capable of performing the duties of the office sought with or without reasonable accommodation for any mental or physical impairment that substantially limits a		X	



major life activity.	Unqualified	Qualified	Well-Qualified
8. Experience: The extent and variety of a candidate's experience as an attorney or as a judge or both should be considered in light of the nature of the judicial vacancy to be filled.			X
9. Judicial Temperament: A candidate's ability to consistently exhibit exemplary judicial temperament will be reviewed. Among the qualities that comprise such a temperament are patience, open-mindedness, courtesy, tact, firmness, understanding, compassion, and humility. Factors that indicate a lack of judicial temperament include arrogance, impatience, pomposity, arbitrariness, and tyranny.		X	

Related Comments:

1. Constitutional Qualifications:

2. Ethical Fitness:

3. Professional and Academic Ability:

4. Character:

5. Reputation:

6. Physical Health:

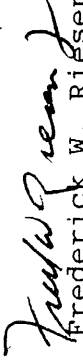
7. Mental Stability

8. Experience:

9. Judicial Temperament:

There is some concern with candidate's tactfulness.

SUMMARY STATEMENT:


Frederick W. Riessen, Jr.
Committee Chair's Name

9/21/10

Date

Honorable James Turner
Candidate's Name

Citizens Committee Report/S.C. Bar Judicial Qualifications Committee Report

Court Family , Seat 1 Ninth Circuit

Candidate's Name: Ben F. Mack

Fall/Spring Screening 2010 (year)

	Unqualified	Qualified	Well-Qualified
1. Constitutional Qualifications: A candidate must meet the constitutional or statutory requirements of citizenship, residence, age, and professional experience.			X
2. Ethical Fitness: A candidate must have the ability to perform adjudicative duties impartially and to deal with litigants, lawyers, witnesses, and other courtroom participants objectively and without bias. A candidate should have a sense of humor and must exhibit trustworthiness, moral vigor, and strength of character. A candidate's past action and deeds should demonstrate consistent adherence to high ethical principles and his or her reputation should be above reproach. A candidate must also follow campaigning and pledging laws. At a minimum, a sitting judge will be expected to have complied with the Code of Judicial Conduct's requirements to avoid impropriety, the appearance of impropriety, and partiality.			X
3. Professional and Academic Ability: A candidate is expected to be well-versed in fundamental legal principles and in procedural and evidentiary rules. A candidate must have the ability to communicate in a style that is both lucid and persuasive and must have the intellectual capacity to interpret established legal principles, apply them to specific factual situations, and clearly and logically communicate the reasoning leading up to his or her conclusion. A candidate's academic record, participation in continuing legal education or other seminars, legal writing, and reputation among professional colleagues to evaluate legal knowledge and ability will be reviewed. On the appellate court level, consideration will be given to a candidate's ability to work well with others and to build or reach a consensus when appropriate.			X
4. Character: The character of a candidate regarding his or her ethical standards, work habits, and financial responsibility, will be reviewed, as well as a thorough investigation of any complaints, grievances, or criminal allegations made against a candidate.			X
5. Reputation: Consideration of a candidate's background will include the following: 1) the non-legal experience; 2) the candidate's involvement in community affairs, public office, or pro bono work; or 3) the candidate's views on social issues and his or her desire to affect public policy. A review will be undertaken to ensure a candidate has followed the Code of Judicial Conduct's prohibition against certain extra-judicial activities and rules governing the use of judicial office.			X
6. Physical Health: The demands of the judicial office require a high level of performance, and a candidate must be both mentally and physically capable of performing the duties of the office sought with or without reasonable accommodation for any mental or physical impairment that substantially limits a major life activity.			X
7. Mental Stability: The demands of the judicial office require a high level of performance, and a candidate must be both mentally and physically capable of performing the duties of the office sought with or without reasonable accommodation for any mental or physical impairment that substantially limits a			X

major life activity.	Unqualified	Qualified	Well-Qualified
8. <u>Experience</u> : The extent and variety of a candidate's experience as an attorney or as a judge or both should be considered in light of the nature of the judicial vacancy to be filled.			X
9. <u>Judicial Temperament</u> : A candidate's ability to consistently exhibit exemplary judicial temperament will be reviewed. Among the qualities that comprise such a temperament are patience, open-mindedness, courtesy, tact, firmness, understanding, compassion, and humility. Factors that indicate a lack of judicial temperament include arrogance, impatience, pomposity, arbitrariness, and tyranny.			X

Related Comments:

1. Constitutional Qualifications:

2. Ethical Fitness:

3. Professional and Academic Ability:

4. Character:

5. Reputation:

6. Physical Health:

7. Mental Stability

8. Experience:

9. Judicial Temperament:

SUMMARY STATEMENT:

Fred W. Riesen, Jr.
Frederick W. Riesen, Jr.

Committee Chair's Name

9/21/10

Date

Ben F. Mack

Candidate's Name

Citizens Committee Report/S.C. Bar Judicial Qualifications Committee Report
Court Family _____, Seat 1 Ninth Circuit

Candidate's Name: Daniel F. Martin, Jr.
Fall/Spring Screening 2010 (year)

	Unqualified	Qualified	Well-Qualified
1. Constitutional Qualifications: A candidate must meet the constitutional or statutory requirements of citizenship, residence, age, and professional experience.			X
2. Ethical Fitness: A candidate must have the ability to perform adjudicative duties impartially and to deal with litigants, lawyers, witnesses, and other courtroom participants objectively and without bias. A candidate should have a sense of humor and must exhibit trustworthiness, moral vigor, and strength of character. A candidate's past action and deeds should demonstrate consistent adherence to high ethical principles and his or her reputation should be above reproach. A candidate must also follow campaigning and pledging laws. At a minimum, a sitting judge will be expected to have complied with the Code of Judicial Conduct's requirements to avoid impropriety, the appearance of impropriety, and partiality.			X
3. Professional and Academic Ability: A candidate is expected to be well-versed in fundamental legal principles and in procedural and evidentiary rules. A candidate must have the ability to communicate in a style that is both lucid and persuasive and must have the intellectual capacity to interpret established legal principles, apply them to specific factual situations, and clearly and logically communicate the reasoning leading up to his or her conclusion. A candidate's academic record, participation in continuing legal education or other seminars, legal writing, and reputation among professional colleagues to evaluate legal knowledge and ability will be reviewed. On the appellate court level, consideration will be given to a candidate's ability to work well with others and to build or reach a consensus when appropriate.			X
4. Character: The character of a candidate regarding his or her ethical standards, work habits, and financial responsibility, will be reviewed, as well as a thorough investigation of any complaints, grievances, or criminal allegations made against a candidate.			X
5. Reputation: Consideration of a candidate's background will include the following: 1) the non-legal experience; 2) the candidate's involvement in community affairs, public office, or pro bono work; or 3) the candidate's views on social issues and his or her desire to affect public policy. A review will be undertaken to ensure a candidate has followed the Code of Judicial Conduct's prohibition against certain extra-judicial activities and rules governing the use of judicial office.			X
6. Physical Health: The demands of the judicial office require a high level of performance, and a candidate must be both mentally and physically capable of performing the duties of the office sought with or without reasonable accommodation for any mental or physical impairment that substantially limits a major life activity.			X
7. Mental Stability: The demands of the judicial office require a high level of performance, and a candidate must be both mentally and physically capable of performing the duties of the office sought with or without reasonable accommodation for any mental or physical impairment that substantially limits a			X

major life activity.	Unqualified	Qualified	Well-Qualified
8. <u>Experience</u> : The extent and variety of a candidate's experience as an attorney or as a judge or both should be considered in light of the nature of the judicial vacancy to be filled.			X
9. <u>Judicial Temperament</u> : A candidate's ability to consistently exhibit exemplary judicial temperament will be reviewed. Among the qualities that comprise such a temperament are patience, open-mindedness, courtesy, tact, firmness, understanding, compassion, and humility. Factors that indicate a lack of judicial temperament include arrogance, impatience, pomposity, arbitrariness, and tyranny.			X

Related Comments:

1. Constitutional Qualifications:

2. Ethical Fitness:

3. Professional and Academic Ability:

4. Character:

5. Reputation:

6. Physical Health:

7. Mental Stability

8. Experience:

9. Judicial Temperament:

SUMMARY STATEMENT:

Frederick W. Riesen, Jr.
Frederick W. Riesen, Jr.

Committee Chair's Name

9/21/10

Date

Daniel F. Martin, Jr.

Candidate's Name

Citizens Committee Report/S.C. Bar Judicial Qualifications Committee Report

Court Family, Seat 1 Ninth Circuit

Candidate's Name: Rita J. Roache

Fall/Spring Screening 2010 (year)

	Unqualified	Qualified	Well-Qualified
1. Constitutional Qualifications: A candidate must meet the constitutional or statutory requirements of citizenship, residence, age, and professional experience.			X
2. Ethical Fitness: A candidate must have the ability to perform adjudicative duties impartially and to deal with litigants, lawyers, witnesses, and other courtroom participants objectively and without bias. A candidate should have a sense of humor and must exhibit trustworthiness, moral vigor, and strength of character. A candidate's past action and deeds should demonstrate consistent adherence to high ethical principles and his or her reputation should be above reproach. A candidate must also follow campaigning and pledging laws. At a minimum, a sitting judge will be expected to have complied with the Code of Judicial Conduct's requirements to avoid impropriety, the appearance of impropriety, and partiality.			X
3. Professional and Academic Ability: A candidate is expected to be well-versed in fundamental legal principles and in procedural and evidentiary rules. A candidate must have the ability to communicate in a style that is both lucid and persuasive and must have the intellectual capacity to interpret established legal principles, apply them to specific factual situations, and clearly and logically communicate the reasoning leading up to his or her conclusion. A candidate's academic record, participation in continuing legal education or other seminars, legal writing, and reputation among professional colleagues to evaluate legal knowledge and ability will be reviewed. On the appellate court level, consideration will be given to a candidate's ability to work well with others and to build or reach a consensus when appropriate.		X	
4. Character: The character of a candidate regarding his or her ethical standards, work habits, and financial responsibility, will be reviewed, as well as a thorough investigation of any complaints, grievances, or criminal allegations made against a candidate.			X
5. Reputation: Consideration of a candidate's background will include the following: 1) the non-legal experience; 2) the candidate's involvement in community affairs, public office, or pro bono work; or 3) the candidate's views on social issues and his or her desire to affect public policy. A review will be undertaken to ensure a candidate has followed the Code of Judicial Conduct's prohibition against extra-judicial activities and rules governing the use of judicial office.			X
6. Physical Health: The demands of the judicial office require a high level of performance, and a candidate must be both mentally and physically capable of performing the duties of the office sought with or without reasonable accommodation for any mental or physical impairment that substantially limits a major life activity.			X
7. Mental Stability: The demands of the judicial office require a high level of performance, and a candidate must be both mentally and physically capable of performing the duties of the office sought with or without reasonable accommodation for any mental or physical impairment that substantially limits a			X

major life activity.	Unqualified	Qualified	Well-Qualified
8. Experience: The extent and variety of a candidate's experience as an attorney or as a judge or both should be considered in light of the nature of the judicial vacancy to be filled.			X
9. Judicial Temperament: A candidate's ability to consistently exhibit exemplary judicial temperament will be reviewed. Among the qualities that comprise such a temperament are patience, open-mindedness, courtesy, tact, firmness, understanding, compassion, and humility. Factors that indicate a lack of judicial temperament include arrogance, impatience, pomposity, arbitrariness, and tyranny.		X	

Related Comments:

1. **Constitutional Qualifications:**
2. **Ethical Fitness:**
3. **Professional and Academic Ability:**
4. **Character:**
5. **Reputation:**

6. Physical Health:

7. Mental Stability

8. Experience:

9. Judicial Temperament:

SUMMARY STATEMENT:

Frederick W. Riesen, Jr.
Frederick W. Riesen, Jr.

Committee Chair's Name

9/21/10

Date

Rita J. Roache

Candidate's Name

Citizens Committee Report/S.C. Bar Judicial Qualifications Committee Report

Court Family, Seat 1 Ninth Circuit

Candidate's Name: Alexandra D. Varner

Fall/Spring Screening 2010 (year)

	Unqualified	Qualified	Well-Qualified
1. Constitutional Qualifications: A candidate must meet the constitutional or statutory requirements of citizenship, residence, age, and professional experience.			X
2. Ethical Fitness: A candidate must have the ability to perform adjudicative duties impartially and to deal with litigants, lawyers, witnesses, and other courtroom participants objectively and without bias. A candidate should have a sense of humor and must exhibit trustworthiness, moral vigor, and strength of character. A candidate's past action and deeds should demonstrate consistent adherence to high ethical principles and his or her reputation should be above reproach. A candidate must also follow campaigning and pledging laws. At a minimum, a sitting judge will be expected to have complied with the Code of Judicial Conduct's requirements to avoid impropriety, the appearance of impropriety, and partiality.			X
3. Professional and Academic Ability: A candidate is expected to be well-versed in fundamental legal principles and in procedural and evidentiary rules. A candidate must have the ability to communicate in a style that is both lucid and persuasive and must have the intellectual capacity to interpret established legal principles, apply them to specific factual situations, and clearly and logically communicate the reasoning leading up to his or her conclusion. A candidate's academic record, participation in continuing legal education or other seminars, legal writing, and reputation among professional colleagues to evaluate legal knowledge and ability will be reviewed. On the appellate court level, consideration will be given to a candidate's ability to work well with others and to build or reach a consensus when appropriate.			X
4. Character: The character of a candidate regarding his or her ethical standards, work habits, and financial responsibility, will be reviewed, as well as a thorough investigation of any complaints, grievances, or criminal allegations made against a candidate.			X
5. Reputation: Consideration of a candidate's background will include the following: 1) the non-legal experience; 2) the candidate's involvement in community affairs, public office, or pro bono work; or 3) the candidate's views on social issues and his or her desire to affect public policy. A review will be undertaken to ensure a candidate has followed the Code of Judicial Conduct's prohibition against certain extra-judicial activities and rules governing the use of judicial office.			X
6. Physical Health: The demands of the judicial office require a high level of performance, and a candidate must be both mentally and physically capable of performing the duties of the office sought with or without reasonable accommodation for any mental or physical impairment that substantially limits a major life activity.			X
7. Mental Stability: The demands of the judicial office require a high level of performance, and a candidate must be both mentally and physically capable of performing the duties of the office sought with or without reasonable accommodation for any mental or physical impairment that substantially limits a			X

major life activity.	Unqualified	Qualified	Well-Qualified
8. Experience: The extent and variety of a candidate's experience as an attorney or as a judge or both should be considered in light of the nature of the judicial vacancy to be filled.			X
9. Judicial Temperament: A candidate's ability to consistently exhibit exemplary judicial temperament will be reviewed. Among the qualities that comprise such a temperament are patience, open-mindedness, courtesy, tact, firmness, understanding, compassion, and humility. Factors that indicate a lack of judicial temperament include arrogance, impatience, pomposity, arbitrariness, and tyranny.			X

Related Comments:

1. Constitutional Qualifications:

2. Ethical Fitness:

3. Professional and Academic Ability:

4. Character:

5. Reputation:

6. Physical Health:

7. Mental Stability

8. Experience:

9. Judicial Temperament:

SUMMARY STATEMENT:

Frederick W. Riesen, Jr.
Frederick W. Riesen, Jr.

Committee Chair's Name

9/21/10

Date

Alexandra D. Varner

Candidate's Name

Lowcountry Citizens Committee Report/S.C. Bar Judicial Qualifications Committee Report

Court: Circuit Court, At-Large, Seat 9

Candidate's Name: Angela McCall-Tanner

Fall Screening 2010

	Unqualified	Qualified	Well-Qualified
1. Constitutional Qualifications: A candidate must meet the constitutional or statutory requirements of citizenship, residence, age, and professional experience.			X
2. Ethical Fitness: A candidate must have the ability to perform adjudicative duties impartially and to deal with litigants, lawyers, witnesses, and other courtroom participants objectively and without bias. A candidate should have a sense of humor and must exhibit trustworthiness, moral vigor, and strength of character. A candidate's past action and deeds should demonstrate consistent adherence to high ethical principles and his or her reputation should be above reproach. A candidate must also follow campaigning and pledging laws. At a minimum, a sitting judge will be expected to have complied with the Code of Judicial Conduct's requirements to avoid impropriety, the appearance of impropriety, and partiality.			X
3. Professional and Academic Ability: A candidate is expected to be well-versed in fundamental legal principles and in procedural and evidentiary rules. A candidate must have the ability to communicate in a style that is both lucid and persuasive and must have the intellectual capacity to interpret established legal principles, apply them to specific factual situations, and clearly and logically communicate the reasoning leading up to his or her conclusion. A candidate's academic record, participation in continuing legal education or other seminars, legal writing, and reputation among professional colleagues to evaluate legal knowledge and ability will be reviewed. On the appellate court level, consideration will be given to a candidate's ability to work well with others and to build or reach a consensus when appropriate.			X
4. Character: The character of a candidate regarding his or her ethical standards, work habits, and financial responsibility, will be reviewed, as well as a thorough investigation of any complaints, grievances, or criminal allegations made against a candidate.			X
5. Reputation: Consideration of a candidate's background will include the following: 1) the non-legal experience; 2) the candidate's involvement in community affairs, public office, or pro bono work; or 3) the candidate's views on social issues and his or her desire to affect public policy. A review will be undertaken to ensure a candidate has followed the Code of Judicial Conduct's prohibition against certain extra-judicial activities and rules governing the use of judicial office.			X
6. Physical Health: The demands of the judicial office require a high level of performance, and a candidate must be both mentally and physically capable of performing the duties of the office sought with or without reasonable accommodation for any mental or physical impairment that substantially limits a major life activity.			X
7. Mental Stability: The demands of the judicial office require a high level of performance, and a candidate must be both mentally and physically capable of performing the duties of the office sought with or without reasonable accommodation for any mental or physical impairment that substantially limits a major life activity.			X

	Unqualified	Qualified	Well-Qualified
8. <u>Experience:</u> The extent and variety of a candidate's experience as an attorney or as a judge or both should be considered in light of the nature of the judicial vacancy to be filled.			X
9. <u>Judicial Temperament:</u> A candidate's ability to consistently exhibit exemplary judicial temperament will be reviewed. Among the qualities that comprise such a temperament are patience, open-mindedness, courtesy, tact, firmness, understanding, compassion, and humility. Factors that indicate a lack of judicial temperament include arrogance, impatience, pomposity, arbitrariness, and tyranny.			X

Related Comments:

1. Constitutional Qualifications:

2. Ethical Fitness:

3. Professional and Academic Ability:

4. Character:

5. Reputation:

6. Physical Health:

7. Mental Stability

8. Experience:

9. Judicial Temperament:

SUMMARY STATEMENT:

Mike Hammond
Committee Chair's Name

October 7, 2010
Date

Angela McCall-Tanner
Candidate's Name

Lowcountry Citizens Committee Report/S.C. Bar Judicial Qualifications Committee Report

Court: Circuit Court, At-Large, Seat 9

Candidate's Name: Stephanie Pendarvis McDonald

Fall Screening 2010

	Unqualified	Qualified	Well-Qualified
1. Constitutional Qualifications: A candidate must meet the constitutional or statutory requirements of citizenship, residence, age, and professional experience.			X
2. Ethical Fitness: A candidate must have the ability to perform adjudicative duties impartially and to deal with litigants, lawyers, witnesses, and other courtroom participants objectively and without bias. A candidate should have a sense of humor and must exhibit trustworthiness, moral vigor, and strength of character. A candidate's past action and deeds should demonstrate consistent adherence to high ethical principles and his or her reputation should be above reproach. A candidate must also follow campaigning and pledging laws. At a minimum, a sitting judge will be expected to have complied with the Code of Judicial Conduct's requirements to avoid impropriety, the appearance of impropriety, and partiality.			X
3. Professional and Academic Ability: A candidate is expected to be well-versed in fundamental legal principles and in procedural and evidentiary rules. A candidate must have the ability to communicate in a style that is both lucid and persuasive and must have the intellectual capacity to interpret established legal principles, apply them to specific factual situations, and clearly and logically communicate the reasoning leading up to his or her conclusion. A candidate's academic record, participation in continuing legal education or other seminars, legal writing, and reputation among professional colleagues to evaluate legal knowledge and ability will be reviewed. On the appellate court level, consideration will be given to a candidate's ability to work well with others and to build or reach a consensus when appropriate.			X
4. Character: The character of a candidate regarding his or her ethical standards, work habits, and financial responsibility, will be reviewed, as well as a thorough investigation of any complaints, grievances, or criminal allegations made against a candidate.			X
5. Reputation: Consideration of a candidate's background will include the following: 1) the non-legal experience; 2) the candidate's involvement in community affairs, public office, or pro bono work; or 3) the candidate's views on social issues and his or her desire to affect public policy. A review will be undertaken to ensure a candidate has followed the Code of Judicial Conduct's prohibition against certain extra-judicial activities and rules governing the use of judicial office.			X
6. Physical Health: The demands of the judicial office require a high level of performance, and a candidate must be both mentally and physically capable of performing the duties of the office sought with or without reasonable accommodation for any mental or physical impairment that substantially limits a major life activity.			X
7. Mental Stability: The demands of the judicial office require a high level of performance, and a candidate must be both mentally and physically capable of performing the duties of the office sought with or without reasonable accommodation for any mental or physical impairment that substantially limits a major life activity.			X

	Unqualified	Qualified	Well-Qualified
8. <u>Experience:</u> The extent and variety of a candidate's experience as an attorney or as a judge or both should be considered in light of the nature of the judicial vacancy to be filled.			X
9. <u>Judicial Temperament:</u> A candidate's ability to consistently exhibit exemplary judicial temperament will be reviewed. Among the qualities that comprise such a temperament are patience, open-mindedness, courtesy, tact, firmness, understanding, compassion, and humility. Factors that indicate a lack of judicial temperament include arrogance, impatience, pomposity, arbitrariness, and tyranny.			X

Related Comments:

1. Constitutional Qualifications:

2. Ethical Fitness:

3. Professional and Academic Ability:

4. Character:

5. Reputation:

6. Physical Health:

7. Mental Stability

8. Experience:

9. Judicial Temperament:

SUMMARY STATEMENT:

Mike Hammond
Committee Chair's Name

October 7, 2010
Date

Stephanie Pendarvis McDonald
Candidate's Name

Lowcountry Citizens Committee Report/S.C. Bar Judicial Qualifications Committee Report

Court: Circuit Court, At-Large, Seat 9

Candidate's Name: The Honorable John Reaves McLeod

Fall Screening 2010

	Unqualified	Qualified	Well-Qualified
1. <u>Constitutional Qualifications:</u> A candidate must meet the constitutional or statutory requirements of citizenship, residence, age, and professional experience.			X
2. <u>Ethical Fitness:</u> A candidate must have the ability to perform adjudicative duties impartially and to deal with litigants, lawyers, witnesses, and other courtroom participants objectively and without bias. A candidate should have a sense of humor and must exhibit trustworthiness, moral vigor, and strength of character. A candidate's past action and deeds should demonstrate consistent adherence to high ethical principles and his or her reputation should be above reproach. A candidate must also follow campaigning and pledging laws. At a minimum, a sitting judge will be expected to have complied with the Code of Judicial Conduct's requirements to avoid impropriety, the appearance of impropriety, and partiality.			X
3. <u>Professional and Academic Ability:</u> A candidate is expected to be well-versed in fundamental legal principles and in procedural and evidentiary rules. A candidate must have the ability to communicate in a style that is both lucid and persuasive and must have the intellectual capacity to interpret established legal principles, apply them to specific factual situations, and clearly and logically communicate the reasoning leading up to his or her conclusion. A candidate's academic record, participation in continuing legal education or other seminars, legal writing, and reputation among professional colleagues to evaluate legal knowledge and ability will be reviewed. On the appellate court level, consideration will be given to a candidate's ability to work well with others and to build or reach a consensus when appropriate.			X
4. <u>Character:</u> The character of a candidate regarding his or her ethical standards, work habits, and financial responsibility, will be reviewed, as well as a thorough investigation of any complaints, grievances, or criminal allegations made against a candidate.			X
5. <u>Reputation:</u> Consideration of a candidate's background will include the following: 1) the non-legal experience; 2) the candidate's involvement in community affairs, public office, or pro bono work; or 3) the candidate's views on social issues and his or her desire to affect public policy. A review will be undertaken to ensure a candidate has followed the Code of Judicial Conduct's prohibition against certain extra-judicial activities and rules governing the use of judicial office.			X
6. <u>Physical Health:</u> The demands of the judicial office require a high level of performance, and a candidate must be both mentally and physically capable of performing the duties of the office sought with or without reasonable accommodation for any mental or physical impairment that substantially limits a major life activity.			X
7. <u>Mental Stability:</u> The demands of the judicial office require a high level of performance, and a candidate must be both mentally and physically capable of performing the duties of the office sought with or without reasonable accommodation for any mental or physical impairment that substantially limits a major life activity.			X

	Unqualified	Qualified	Well-Qualified
8. <u>Experience:</u> The extent and variety of a candidate's experience as an attorney or as a judge or both should be considered in light of the nature of the judicial vacancy to be filled.		X	
9. <u>Judicial Temperament:</u> A candidate's ability to consistently exhibit exemplary judicial temperament will be reviewed. Among the qualities that comprise such a temperament are patience, open-mindedness, courtesy, tact, firmness, understanding, compassion, and humility. Factors that indicate a lack of judicial temperament include arrogance, impatience, pomposity, arbitrariness, and tyranny.			X

Related Comments:

1. Constitutional Qualifications:

2. Ethical Fitness:

3. Professional and Academic Ability:

4. Character:

5. Reputation:

6. Physical Health:

7. Mental Stability

8. Experience:

The Committee has concerns over the candidate's lack of experience.

9. Judicial Temperament:

SUMMARY STATEMENT:

Mike Hammond
Committee Chair's Name

October 7, 2010
Date

The Honorable John Reaves McLeod
Candidate's Name

Lowcountry Citizens Committee Report/S.C. Bar Judicial Qualifications Committee Report

Court: Circuit Court, At-Large, Seat 9

Candidate's Name: The Honorable Maite Murphy

Fall Screening 2010

	Unqualified	Qualified	Well-Qualified
1. Constitutional Qualifications: A candidate must meet the constitutional or statutory requirements of citizenship, residence, age, and professional experience.			X
2. Ethical Fitness: A candidate must have the ability to perform adjudicative duties impartially and to deal with litigants, lawyers, witnesses, and other courtroom participants objectively and without bias. A candidate should have a sense of humor and must exhibit trustworthiness, moral vigor, and strength of character. A candidate's past action and deeds should demonstrate consistent adherence to high ethical principles and his or her reputation should be above reproach. A candidate must also follow campaigning and pledging laws. At a minimum, a sitting judge will be expected to have complied with the Code of Judicial Conduct's requirements to avoid impropriety, the appearance of impropriety, and partiality.			X
3. Professional and Academic Ability: A candidate is expected to be well-versed in fundamental legal principles and in procedural and evidentiary rules. A candidate must have the ability to communicate in a style that is both lucid and persuasive and must have the intellectual capacity to interpret established legal principles, apply them to specific factual situations, and clearly and logically communicate the reasoning leading up to his or her conclusion. A candidate's academic record, participation in continuing legal education or other seminars, legal writing, and reputation among professional colleagues to evaluate legal knowledge and ability will be reviewed. On the appellate court level, consideration will be given to a candidate's ability to work well with others and to build or reach a consensus when appropriate.			X
4. Character: The character of a candidate regarding his or her ethical standards, work habits, and financial responsibility, will be reviewed, as well as a thorough investigation of any complaints, grievances, or criminal allegations made against a candidate.			X
5. Reputation: Consideration of a candidate's background will include the following: 1) the non-legal experience; 2) the candidate's involvement in community affairs, public office, or pro bono work; or 3) the candidate's views on social issues and his or her desire to affect public policy. A review will be undertaken to ensure a candidate has followed the Code of Judicial Conduct's prohibition against certain extra-judicial activities and rules governing the use of judicial office.			X
6. Physical Health: The demands of the judicial office require a high level of performance, and a candidate must be both mentally and physically capable of performing the duties of the office sought with or without reasonable accommodation for any mental or physical impairment that substantially limits a major life activity.			X
7. Mental Stability: The demands of the judicial office require a high level of performance, and a candidate must be both mentally and physically capable of performing the duties of the office sought with or without reasonable accommodation for any mental or physical impairment that substantially limits a major life activity.			X

	Unqualified	Qualified	Well-Qualified
8. <u>Experience:</u> The extent and variety of a candidate's experience as an attorney or as a judge or both should be considered in light of the nature of the judicial vacancy to be filled.			X
9. <u>Judicial Temperament:</u> A candidate's ability to consistently exhibit exemplary judicial temperament will be reviewed. Among the qualities that comprise such a temperament are patience, open-mindedness, courtesy, tact, firmness, understanding, compassion, and humility. Factors that indicate a lack of judicial temperament include arrogance, impatience, pomposity, arbitrariness, and tyranny.			X

Related Comments:

1. Constitutional Qualifications:

2. Ethical Fitness:

3. Professional and Academic Ability:

4. Character:

5. Reputation:

6. Physical Health:

7. Mental Stability

8. Experience:

9. Judicial Temperament:

SUMMARY STATEMENT:

Mike Hammond
Committee Chair's Name

October 7, 2010
Date

The Honorable Maite Murphy
Candidate's Name

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Lowcountry Citizens Committee Report/S.C. Bar Judicial Qualifications Committee Report

Court: Circuit Court, At-Large, Seat 9

Candidate's Name: Catherine Templeton

Fall Screening 2010

	Unqualified	Qualified	Well-Qualified
1. Constitutional Qualifications: A candidate must meet the constitutional or statutory requirements of citizenship, residence, age, and professional experience.			X
2. Ethical Fitness: A candidate must have the ability to perform adjudicative duties impartially and to deal with litigants, lawyers, witnesses, and other courtroom participants objectively and without bias. A candidate should have a sense of humor and must exhibit trustworthiness, moral vigor, and strength of character. A candidate's past action and deeds should demonstrate consistent adherence to high ethical principles and his or her reputation should be above reproach. A candidate must also follow campaigning and pledging laws. At a minimum, a sitting judge will be expected to have complied with the Code of Judicial Conduct's requirements to avoid impropriety, the appearance of impropriety, and partiality.			X
3. Professional and Academic Ability: A candidate is expected to be well-versed in fundamental legal principles and in procedural and evidentiary rules. A candidate must have the ability to communicate in a style that is both lucid and persuasive and must have the intellectual capacity to interpret established legal principles, apply them to specific factual situations, and clearly and logically communicate the reasoning leading up to his or her conclusion. A candidate's academic record, participation in continuing legal education or other seminars, legal writing, and reputation among professional colleagues to evaluate legal knowledge and ability will be reviewed. On the appellate court level, consideration will be given to a candidate's ability to work well with others and to build or reach a consensus when appropriate.			X
4. Character: The character of a candidate regarding his or her ethical standards, work habits, and financial responsibility, will be reviewed, as well as a thorough investigation of any complaints, grievances, or criminal allegations made against a candidate.			X
5. Reputation: Consideration of a candidate's background will include the following: 1) the non-legal experience; 2) the candidate's involvement in community affairs, public office, or pro bono work; or 3) the candidate's views on social issues and his or her desire to affect public policy. A review will be undertaken to ensure a candidate has followed the Code of Judicial Conduct's prohibition against certain extra-judicial activities and rules governing the use of judicial office.			X
6. Physical Health: The demands of the judicial office require a high level of performance, and a candidate must be both mentally and physically capable of performing the duties of the office sought with or without reasonable accommodation for any mental or physical impairment that substantially limits a major life activity.			X
7. Mental Stability: The demands of the judicial office require a high level of performance, and a candidate must be both mentally and physically capable of performing the duties of the office sought with or without reasonable accommodation for any mental or physical impairment that substantially limits a major life activity.			X

	Unqualified	Qualified	Well-Qualified
8. Experience: The extent and variety of a candidate's experience as an attorney or as a judge or both should be considered in light of the nature of the judicial vacancy to be filled.		X	
9. Judicial Temperament: A candidate's ability to consistently exhibit exemplary judicial temperament will be reviewed. Among the qualities that comprise such a temperament are patience, open-mindedness, courtesy, tact, firmness, understanding, compassion, and humility. Factors that indicate a lack of judicial temperament include arrogance, impatience, pomposity, arbitrariness, and tyranny.			X

Related Comments:

1. Constitutional Qualifications:

2. Ethical Fitness:

3. Professional and Academic Ability:

4. Character:

5. Reputation:

6. Physical Health:

7. Mental Stability

8. Experience:

The Committee has concerns over the candidate's lack of criminal law experience.

9. Judicial Temperament:

SUMMARY STATEMENT:

Mike Hammond
Committee Chair's Name

October 7, 2010
Date

Catherine Templeton
Candidate's Name

Lowcountry Citizens Committee Report/S.C. Bar Judicial Qualifications Committee Report

Court: Circuit Court, At-Large, Seat 9

Candidate's Name: David Wolf

Fall Screening 2010

	Unqualified	Qualified	Well-Qualified
1. Constitutional Qualifications: A candidate must meet the constitutional or statutory requirements of citizenship, residence, age, and professional experience.			X
2. Ethical Fitness: A candidate must have the ability to perform adjudicative duties impartially and to deal with litigants, lawyers, witnesses, and other courtroom participants objectively and without bias. A candidate should have a sense of humor and must exhibit trustworthiness, moral vigor, and strength of character. A candidate's past action and deeds should demonstrate consistent adherence to high ethical principles and his or her reputation should be above reproach. A candidate must also follow campaigning and pledging laws. At a minimum, a sitting judge will be expected to have complied with the Code of Judicial Conduct's requirements to avoid impropriety, the appearance of impropriety, and partiality.			X
3. Professional and Academic Ability: A candidate is expected to be well-versed in fundamental legal principles and in procedural and evidentiary rules. A candidate must have the ability to communicate in a style that is both lucid and persuasive and must have the intellectual capacity to interpret established legal principles, apply them to specific factual situations, and clearly and logically communicate the reasoning leading up to his or her conclusion. A candidate's academic record, participation in continuing legal education or other seminars, legal writing, and reputation among professional colleagues to evaluate legal knowledge and ability will be reviewed. On the appellate court level, consideration will be given to a candidate's ability to work well with others and to build or reach a consensus when appropriate.			X
4. Character: The character of a candidate regarding his or her ethical standards, work habits, and financial responsibility, will be reviewed, as well as a thorough investigation of any complaints, grievances, or criminal allegations made against a candidate.			X
5. Reputation: Consideration of a candidate's background will include the following: 1) the non-legal experience; 2) the candidate's involvement in community affairs, public office, or pro bono work; or 3) the candidate's views on social issues and his or her desire to affect public policy. A review will be undertaken to ensure a candidate has followed the Code of Judicial Conduct's prohibition against certain extra-judicial activities and rules governing the use of judicial office.			X
6. Physical Health: The demands of the judicial office require a high level of performance, and a candidate must be both mentally and physically capable of performing the duties of the office sought with or without reasonable accommodation for any mental or physical impairment that substantially limits a major life activity.			X
7. Mental Stability: The demands of the judicial office require a high level of performance, and a candidate must be both mentally and physically capable of performing the duties of the office sought with or without reasonable accommodation for any mental or physical impairment that substantially limits a major life activity.			X

	Unqualified	Qualified	Well-Qualified
8. Experience: The extent and variety of a candidate's experience as an attorney or as a judge or both should be considered in light of the nature of the judicial vacancy to be filled.		X	
9. Judicial Temperament: A candidate's ability to consistently exhibit exemplary judicial temperament will be reviewed. Among the qualities that comprise such a temperament are patience, open-mindedness, courtesy, tact, firmness, understanding, compassion, and humility. Factors that indicate a lack of judicial temperament include arrogance, impatience, pomposity, arbitrariness, and tyranny.			X

Related Comments:

1. Constitutional Qualifications:

2. Ethical Fitness:

3. Professional and Academic Ability:

4. Character:

5. Reputation:

6. Physical Health:

7. Mental Stability

8. Experience:

The Committee has concerns over the candidate's lack of experience.

9. Judicial Temperament:

SUMMARY STATEMENT:

Mike Hammond
Committee Chair's Name

October 7, 2010
Date

David Wolf
Candidate's Name

Citizens Committee Report/S.C. Bar Judicial Qualifications Committee Report
Court Circuit Court At Large, **Seat** 9

Candidate's Name: Kellum W. Allen
Fall/Spring Screening 2010 (year)

	Unqualified	Qualified	Well-Qualified
1. <u>Constitutional Qualifications:</u> A candidate must meet the constitutional or statutory requirements of citizenship, residence, age, and professional experience.			X
2. <u>Ethical Fitness:</u> A candidate must have the ability to perform adjudicative duties impartially and to deal with litigants, lawyers, witnesses, and other courtroom participants objectively and without bias. A candidate should have a sense of humor and must exhibit trustworthiness, moral vigor, and strength of character. A candidate's past action and deeds should demonstrate consistent adherence to high ethical principles and his or her reputation should be above reproach. A candidate must also follow campaigning and pledging laws. At a minimum, a sitting judge will be expected to have complied with the Code of Judicial Conduct's requirements to avoid impropriety, the appearance of impropriety, and partiality.			X
3. <u>Professional and Academic Ability:</u> A candidate is expected to be well-versed in fundamental legal principles and in procedural and evidentiary rules. A candidate must have the ability to communicate in a style that is both lucid and persuasive and must have the intellectual capacity to interpret established legal principles, apply them to specific factual situations, and clearly and logically communicate the reasoning leading up to his or her conclusion. A candidate's academic record, participation in continuing legal education or other seminars, legal writing, and reputation among professional colleagues to evaluate legal knowledge and ability will be reviewed. On the appellate court level, consideration will be given to a candidate's ability to work well with others and to build or reach a consensus when appropriate.			X
4. <u>Character:</u> The character of a candidate regarding his or her ethical standards, work habits, and financial responsibility, will be reviewed, as well as a thorough investigation of any complaints, grievances, or criminal allegations made against a candidate.			X
5. <u>Reputation:</u> Consideration of a candidate's background will include the following: 1) the non-legal experience; 2) the candidate's involvement in community affairs, public office, or pro bono work; or 3) the candidate's views on social issues and his or her desire to affect public policy. A review will be undertaken to ensure a candidate has followed the Code of Judicial Conduct's prohibition against certain extra-judicial activities and rules governing the use of judicial office.			X
6. <u>Physical Health:</u> The demands of the judicial office require a high level of performance, and a candidate must be both mentally and physically capable of performing the duties of the office sought with or without reasonable accommodation for any mental or physical impairment that substantially limits a major life activity.			X
7. <u>Mental Stability:</u> The demands of the judicial office require a high level of performance, and a candidate must be both mentally and physically capable of performing the duties of the office sought with or without reasonable accommodation for any mental or physical impairment that substantially limits a major life activity.			X

	Unqualified	Qualified	Well-Qualified
8. Experience: The extent and variety of a candidate's experience as an attorney or as a judge or both should be considered in light of the nature of the judicial vacancy to be filled.			X
9. Judicial Temperament: A candidate's ability to consistently exhibit exemplary judicial temperament will be reviewed. Among the qualities that comprise such a temperament are patience, open-mindedness, courtesy, tact, firmness, understanding, compassion, and humility. Factors that indicate a lack of judicial temperament include arrogance, impatience, pomposity, arbitrariness, and tyranny.			X

Related Comments:

1. Constitutional Qualifications:

2. Ethical Fitness:

The committee believes Judge Allen has the utmost ethical fitness to continue serving our State as a Circuit Court judge.

3. Professional and Academic Ability:

Outstanding in every respect.

4. Character:

Judge Allen's sterling character is outstanding and above reproach.

5. Reputation:

Judge Allen has a most outstanding reputation.

6. Physical Health:

7. Mental Stability

8. Experience:

The committee was both impressed and appreciative of Judge Allen's 13 years of outstanding and exemplary service on the Family Court

9. Judicial Temperament:

Judge Allen's temperament is outstanding in every way. He sets the standard for his peers to emulate.

SUMMARY STATEMENT:

This committee believes that Judge Allen is truly an asset to our State and our judiciary. We have the utmost respect and appreciation for his honorable service on the Family Court for the 11th Circuit. We believe he is most eminently qualified to continue his service to our State on the Circuit Court, and we are confident he would continue to serve in an outstanding manner.

John Grantland
Committee Chair's Name

October 8, 2010
Date

Kellum W. Allen
Candidate's Name

Citizens Committee Report/S.C. Bar Judicial Qualifications Committee Report

Court Circuit Court At Large, **Seat** 9

Candidate's Name: Charles J. Brooks, II

Fall/Spring Screening 2010 (year)

	Unqualified	Qualified	Well-Qualified
1. Constitutional Qualifications: A candidate must meet the constitutional or statutory requirements of citizenship, residence, age, and professional experience.			X
2. Ethical Fitness: A candidate must have the ability to perform adjudicative duties impartially and to deal with litigants, lawyers, witnesses, and other courtroom participants objectively and without bias. A candidate should have a sense of humor and must exhibit trustworthiness, moral vigor, and strength of character. A candidate's past action and deeds should demonstrate consistent adherence to high ethical principles and his or her reputation should be above reproach. A candidate must also follow campaigning and pledging laws. At a minimum, a sitting judge will be expected to have complied with the Code of Judicial Conduct's requirements to avoid impropriety, the appearance of impropriety, and partiality.			X
3. Professional and Academic Ability: A candidate is expected to be well-versed in fundamental legal principles and in procedural and evidentiary rules. A candidate must have the ability to communicate in a style that is both lucid and persuasive and must have the intellectual capacity to interpret established legal principles, apply them to specific factual situations, and clearly and logically communicate the reasoning leading up to his or her conclusion. A candidate's academic record, participation in continuing legal education or other seminars, legal writing, and reputation among professional colleagues to evaluate legal knowledge and ability will be reviewed. On the appellate court level, consideration will be given to a candidate's ability to work well with others and to build or reach a consensus when appropriate.			X
4. Character: The character of a candidate regarding his or her ethical standards, work habits, and financial responsibility, will be reviewed, as well as a thorough investigation of any complaints, grievances, or criminal allegations made against a candidate.			X
5. Reputation: Consideration of a candidate's background will include the following: 1) the non-legal experience; 2) the candidate's involvement in community affairs, public office, or pro bono work; or 3) the candidate's views on social issues and his or her desire to affect public policy. A review will be undertaken to ensure a candidate has followed the Code of Judicial Conduct's prohibition against certain extra-judicial activities and rules governing the use of judicial office.			X
6. Physical Health: The demands of the judicial office require a high level of performance, and a candidate must be both mentally and physically capable of performing the duties of the office sought with or without reasonable accommodation for any mental or physical impairment that substantially limits a major life activity.			X
7. Mental Stability: The demands of the judicial office require a high level of performance, and a candidate must be both mentally and physically capable of performing the duties of the office sought with or without reasonable accommodation for any mental or physical impairment that substantially limits a major life activity.			X

	Unqualified	Qualified	Well-Qualified
8. <u>Experience:</u> The extent and variety of a candidate's experience as an attorney or as a judge or both should be considered in light of the nature of the judicial vacancy to be filled.			X
9. <u>Judicial Temperament:</u> A candidate's ability to consistently exhibit exemplary judicial temperament will be reviewed. Among the qualities that comprise such a temperament are patience, open-mindedness, courtesy, tact, firmness, understanding, compassion, and humility. Factors that indicate a lack of judicial temperament include arrogance, impatience, pomposity, arbitrariness, and tyranny.			X

Related Comments:

1. Constitutional Qualifications:

Ethical Fitness:

The committee considered Mr. Brooks to be highly ethical.

3. Professional and Academic Ability:

The committee was very impressed by Mr. Brooks 20 years of experience in both civil and criminal law. We believe his professional and academic ability is outstanding.

4. Character:

The Committee was most impressed by Mr. Brooks' character. We believe his sterling and impeccable character is above reproach.

5. Reputation:

Mr. Brooks enjoys a most outstanding reputation among his peers, and we were very impressed by his commitment to the community.

6. Physical Health:

7. Mental Stability

8. Experience:

Mr. Brooks has 20 years of experience in a general practice handling criminal and civil cases. We believe his experience was most impressive and outstanding in every way.

9. Judicial Temperament:

The Committee believes that Mr. Brooks is very thoughtful, mature and experienced candidate. With his profound common sense and humility, we are most confident that his judicial temperament would be most outstanding.

SUMMARY STATEMENT:

The Committee was very impressed with Mr. Brooks and we enjoyed his interview. We believe his temperament and character are outstanding in every way. Mr. Brooks is eminently qualified to serve on the Circuit Court, and we believe he would serve our State in a most outstanding manner.

John Grantland
Committee Chair's Name

October 8, 2010
Date

Charles J. Brooks, II
Candidate's Name

Citizens Committee Report/S.C. Bar Judicial Qualifications Committee Report

Court Circuit Court At Large, **Seat** 9

Candidate's Name: Tara L. McGregor

Fall/Spring Screening 2010 (year)

	Unqualified	Qualified	Well-Qualified
1. Constitutional Qualifications: A candidate must meet the constitutional or statutory requirements of citizenship, residence, age, and professional experience.			X
2. Ethical Fitness: A candidate must have the ability to perform adjudicative duties impartially and to deal with litigants, lawyers, witnesses, and other courtroom participants objectively and without bias. A candidate should have a sense of humor and must exhibit trustworthiness, moral vigor, and strength of character. A candidate's past action and deeds should demonstrate consistent adherence to high ethical principles and his or her reputation should be above reproach. A candidate must also follow campaigning and pledging laws. At a minimum, a sitting judge will be expected to have complied with the Code of Judicial Conduct's requirements to avoid impropriety, the appearance of impropriety, and partiality.			X
3. Professional and Academic Ability: A candidate is expected to be well-versed in fundamental legal principles and in procedural and evidentiary rules. A candidate must have the ability to communicate in a style that is both lucid and persuasive and must have the intellectual capacity to interpret established legal principles, apply them to specific factual situations, and clearly and logically communicate the reasoning leading up to his or her conclusion. A candidate's academic record, participation in continuing legal education or other seminars, legal writing, and reputation among professional colleagues to evaluate legal knowledge and ability will be reviewed. On the appellate court level, consideration will be given to a candidate's ability to work well with others and to build or reach a consensus when appropriate.			X
4. Character: The character of a candidate regarding his or her ethical standards, work habits, and financial responsibility, will be reviewed, as well as a thorough investigation of any complaints, grievances, or criminal allegations made against a candidate.			X
5. Reputation: Consideration of a candidate's background will include the following: 1) the non-legal experience; 2) the candidate's involvement in community affairs, public office, or pro bono work; or 3) the candidate's views on social issues and his or her desire to affect public policy. A review will be undertaken to ensure a candidate has followed the Code of Judicial Conduct's prohibition against certain extra-judicial activities and rules governing the use of judicial office.			X
6. Physical Health: The demands of the judicial office require a high level of performance, and a candidate must be both mentally and physically capable of performing the duties of the office sought with or without reasonable accommodation for any mental or physical impairment that substantially limits a major life activity.			X
7. Mental Stability: The demands of the judicial office require a high level of performance, and a candidate must be both mentally and physically capable of performing the duties of the office sought with or without reasonable accommodation for any mental or physical impairment that substantially limits a major life activity.			X

	Unqualified	Qualified	Well-Qualified
8. <u>Experience</u> : The extent and variety of a candidate's experience as an attorney or as a judge or both should be considered in light of the nature of the judicial vacancy to be filled.			X
9. <u>Judicial Temperament</u> : A candidate's ability to consistently exhibit exemplary judicial temperament will be reviewed. Among the qualities that comprise such a temperament are patience, open-mindedness, courtesy, tact, firmness, understanding, compassion, and humility. Factors that indicate a lack of judicial temperament include arrogance, impatience, pomposity, arbitrariness, and tyranny.			X

Related Comments:

1. Constitutional Qualifications:

2. Ethical Fitness:

The Committee considers Mrs. McGregor to be highly ethical.

3. Professional and Academic Ability:

4. Character:

The Committee believes Mrs. McGregor's outstanding character to be above reproach.

5. Reputation:

Mrs. McGregor enjoys a most outstanding reputation in the community that is well deserved.

6. Physical Health:

7. Mental Stability

8. Experience:

The Committee was impressed by Mrs. McGregor's seven years of service in the U.S. Attorney's Office.

9. Judicial Temperament:

The Committee was very impressed by Mrs. McGregor's enthusiasm, energy and maturity. She shows wisdom beyond her years. We are very confident that she would show outstanding judicial temperament.

SUMMARY STATEMENT:

The Committee was very impressed with Mrs. McGregor, and we enjoyed her interview. We believe she has the character, work ethic and energy to be an outstanding Circuit Court Judge. Mrs. McGregor is eminently qualified to serve on the Circuit Court bench, and we believe she would serve our State in an outstanding manner.

John Grantland
Committee Chair's Name

October 8, 2010
Date

Tara L. McGregor
Candidate's Name

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Fall/Spring Screening 2010 (year)

Well-	Qualified	X
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100	1	1

Related Comments:

1. Constitutional Qualifications:

2. Ethical Fitness:

The committee believes Mrs. Roche to be highly ethical.

3. Professional and Academic Ability:

The committee was most impressed by Mrs. Roche's outstanding professional and academic background.

4. Character:

Mrs. Roche's character is outstanding and above reproach.

5. Reputation:

Mrs. Roche has an outstanding reputation among her peers.

				require a high level of performance, and a candidate must be both mentally and physically capable of performing the duties of the office sought with or without reasonable accommodation for any mental or physical impairment that substantially limits a major life activity.
				7. Mental Stability: The demands of the judicial office require a high level of performance, and a candidate must be both mentally and physically capable of performing the duties of the office sought with or without reasonable accommodation for any mental or physical impairment that substantially limits a major life activity.
				8. Experience: The extent and variety of a candidate's experience as an attorney or as a judge or both should be considered in light of the nature of the judicial vacancy to be filled.
				9. Judicial Temperament: A candidate's ability to consistently exhibit exemplary judicial temperament will be reviewed. Among the qualities that comprise such a temperament are patience, open-mindedness, courtesy, tact, firmness, understanding, compassion, and humility. Factors that indicate a lack of judicial temperament include arrogance, impatience, pomposity, arbitrariness, and tyranny.
Unqualified	Qualified	Well-qualified	X	

6. Physical Health:

7. Mental Stability

8. Experience:

The committee was very impressed by Mrs. Roche's commitment to service and her experience as a Commissioner on the Workers Compensation Commission.

9. Judicial Temperament:

Mrs. Roche has impeccable character, intelligence, and common sense, and the committee believes she would have outstanding judicial temperament on the bench.

SUMMARY STATEMENT:

The committee was very impressed by Mrs. Roche. She has a most outstanding academic background and a sincere commitment of service to our state. She is eminently qualified to serve as a Judge on the Circuit Court, and we are confident she would continue to serve our state in an outstanding manner.

John M. Grandland
Committee Chair's Name

9-23-10
Date

Andrea Roche
Candidate's Name

Court Fifth Judicial Circuit _____, Seat 1	Candidate's Name: Deandra Benjamin Fall/Spring Screening 2010 (year)
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Well- Qualified	X					<p>1. Constitutional Qualifications: A candidate must meet the constitutional or statutory requirements of citizenship, residence, age, and professional experience.</p>
Qualified	X					<p>2. Ethical Fitness: A candidate must have the ability to perform adjudicative duties impartially and to deal with litigants, lawyers, witnesses, and other courtroom participants objectively and without bias. A candidate should have a sense of humor and must exhibit trustworthiness, moral vigor, and strength of character. A candidate's past action and deeds should demonstrate consistent adherence to high ethical principles and his or her reputation should be above reproach. A candidate must also follow campaigning and pledging laws. At a minimum, a sitting judge will be expected to have complied with the Code of Judicial Conduct's requirements to avoid impropriety, the appearance of impropriety, and partially.</p>
Unqualified						<p>3. Professional and Academic Ability: A candidate is expected to be well-versed in fundamental legal principles and in procedural and evidentiary rules. A candidate must have the ability to communicate in a style that is both lucid and persuasive and must have the intellectual capacity to interpret established legal principles, apply them to specific factual situations, and clearly and logically communicate the reasoning leading up to his or her conclusion. A candidate's academic record, participation in continuing legal education or other seminars, legal writing, and reputation among professional colleagues to evaluate legal knowledge and ability will be reviewed. On the appellate court level, consideration will be given to a candidate's ability to work well with others and to build or reach a consensus when appropriate.</p>
	X					<p>4. Character: The character of a candidate regarding his or her ethical standards, work habits, and financial responsibility, will be reviewed, as well as a thorough investigation of any complaints, grievances, or criminal allegations made against a candidate.</p>
						<p>5. Reputation: Consideration of a candidate's background will include the following: 1) the non-legal experience; 2) the candidate's involvement in community affairs, public office, or pro bono work; or 3) the candidate's views on social issues and his or her desire to affect public policy. A review will be undertaken to ensure a candidate has followed the Code of Judicial Conduct's prohibition against certain extra-judicial activities and rules governing the use of judicial office.</p>
	X					<p>6. Physical Health: The demands of the judicial office require a high level of performance, and a candidate must</p>

Related Comments:

1. Constitutional Qualifications:

2. Ethical Fitness:

The committee found that Mrs. Benjamin is considered highly ethical.

3. Professional and Academic Ability:

4. Character:

Mrs. Benjamin's outstanding character is unquestioned.

5. Reputation:

Mrs. Benjamin has a most outstanding reputation in the community and among her peers.

6. Physical Health:

	Unqualified		be both mentally and physically capable of performing the duties of the office sought with or without reasonable accommodation for any mental or physical impairment that substantially limits a major life activity.
	Unqualified		7. <u>Mental Stability:</u> The demands of the judicial office require a high level of performance, and a candidate must be both mentally and physically capable of performing the duties of the office sought with or without reasonable accommodation for any mental or physical impairment that substantially limits a major life activity.
	Unqualified		8. <u>Experience:</u> The extent and variety of a candidate's experience as an attorney or as a judge or both should be considered in light of the nature of the judicial vacancy to be filled.
	Unqualified		9. <u>Judicial Temperament:</u> A candidate's ability to consistently exhibit exemplary judicial temperament will be reviewed. Among the qualities that comprise such a temperament are patience, open-mindedness, courtesy, tact, firmness, understanding, compassion, and humility. Factors that indicate a lack of judicial temperament include arrogance, impatience, pomposity, arbitrariness, and tyranny.
Well-qualified	Qualified	X	

7. Mental Stability

8. Experience:

The committee was very impressed by Mrs. Benjamin's excellent experience in the Attorney General's Office and private practice, and also in her outstanding service as a Municipal Court Judge for the City of Columbia.

9. Judicial Temperament:

The committee believes that with Mrs. Benjamin's maturity and experience she would have outstanding judicial temperament.

SUMMARY STATEMENT:

Mrs. Benjamin is both an eminently qualified and a most highly regarded candidate. The committee is confident that she would make an outstanding judge on the Circuit Court.

John M. Grantland
Committee Chair's Name

09-23-10
Date

Deandra Gist Benjamin
Candidate's Name

Court, Fifth Judicial Circuit, Seat 1

Candidate's Name: John P. Meadors

Unqualified				<p>1. Constitutional Qualifications: A candidate must meet the constitutional or statutory requirements of citizenship, residence, age, and professional experience.</p>
Well-Qualified	X			<p>2. Ethical Fitness: A candidate must have the ability to perform adjudicative duties impartially and to deal with litigants, lawyers, witnesses, and other courtroom participants objectively and without bias. A candidate should have a sense of humor and must exhibit trustworthiness, moral vigor, and strength of character. A candidate's past action and deeds should demonstrate consistent adherence to high ethical principles and his or her reputation should be above reproach. A candidate must also follow campaigning and pledging laws. At a minimum, a sitting judge will be expected to have complied with the Code of Judicial Conduct's requirements to avoid impropriety, the appearance of impropriety, and partially.</p>
	X			<p>3. Professional and Academic Ability: A candidate is expected to be well-versed in fundamental legal principles and in procedural and evidentiary rules. A candidate must have the ability to communicate in a style that is both lucid and persuasive and must have the intellectual capacity to interpret established legal principles, apply them to specific factual situations, and clearly and logically communicate the reasoning leading up to his or her conclusion. A candidate's academic record, participation in continuing legal education or other seminars, legal writing, and reputation among professional colleagues to evaluate legal knowledge and ability will be reviewed. On the appellate court level, consideration will be given to a candidate's ability to work well with others and to build or reach a consensus when appropriate.</p>
	X			<p>4. Character: The character of a candidate regarding his or her ethical standards, work habits, and financial responsibility, will be reviewed, as well as a thorough investigation of any complaints, grievances, or criminal allegations made against a candidate.</p>
				<p>5. Reputation: Consideration of a candidate's background will include the following: 1) the non-legal experience, public office, or pro bono work; or 3) the candidate's views on social issues and his or her desire to affect public policy. A review will be undertaken to ensure a candidate has followed the Code of Judicial Conduct's prohibition against certain extra-judicial activities and rules governing the use of judicial office.</p>
	X			<p>6. Physical Health: The demands of the judicial office require a high level of performance, and a candidate must</p>

6. Physical Health:

5. Reputation: Mr. Meadors enjoys an outstanding reputation among his peers.

4. Character: The Committee was most impressed by Mr. Meadors' character. We believe his sterling and outstanding character is above reproach.

3. Professional and Academic Ability: The Committee was most impressed by Mr. Meadors' extensive and outstanding experience as a solicitor. We believe his professional and academic ability is outstanding.

2. Ethical Fitness: The Committee believes that Mr. Meadors is highly ethical.

1. Constitutional Qualifications:

Related Comments:

			be both mentally and physically capable of performing the duties of the office sought with or without reasonable accommodation for any mental or physical impairment that substantially limits a major life activity.
Unqualified	Unqualified		7. <u>Mental Stability:</u> The demands of the judicial office require a high level of performance, and a candidate must be both mentally and physically capable of performing the duties of the office sought with or without reasonable accommodation for any mental or physical impairment that substantially limits a major life activity.
Well-Qualified	Qualified		8. <u>Experience:</u> The extent and variety of a candidate's experience as an attorney or as a judge or both should be considered in light of the nature of the judicial vacancy to be filled.
			9. <u>Judicial Temperament:</u> A candidate's ability to consistently exhibit exemplary judicial temperament will be reviewed. Among the qualities that comprise such a temperament are patience, open-mindedness, courtesy, tact, firmness, understanding, compassion, and humility. Factors that indicate a lack of judicial temperament include arrogance, impatience, pomposity, arbitrariness, and tyranny.

7. Mental Stability

8. Experience:

The committee was most impressed by the fact that Mr. Meadors has devoted 22 years of professional life to successfully trying a wide range of complex cases in the courtroom. His experience is most outstanding in every way.

9. Judicial Temperament:

The Committee believes that Mr. Meadors possesses wisdom, humility, and profound common sense. We are very confident that Mr. Meadors' judicial temperament would be most outstanding.

SUMMARY STATEMENT:

The Committee was most impressed by Mr. Meadors. He is the most experienced candidate we interviewed and his character and temperament are outstanding in every way. We believe Mr. Meadors is most eminently qualified to serve on the Circuit Court and we are confident he would serve our state in an outstanding manner.

John M. Grantland
Committee Chair's Name

09-23-10
Date

John P. Meadors
Candidate's Name

Court _____ Court of Appeals _____, Seat 2
Candidate's Name: Harris Bruce Williams
Fall/Spring Screening 2010 (Year)

[illegible]

Related Comments:

1. Constitutional Qualifications:

2. Ethical Fitness:

Judge Williams is considered highly ethical.

3. Professional and Academic Ability:

Outstanding in every respect

4. Character:

Judge Williams' sterling character is outstanding and above reproach.

5. Reputation:

Judge Williams has a most outstanding reputation.

6. Physical Health:

7. Mental Stability

	Unqualified	Qualified	Well-qualified
be both mentally and physically capable of performing the duties of the office sought with or without reasonable accommodation for any mental or physical impairment that substantially limits a major life activity.			
7. Mental Stability: The demands of the judicial office require a high level of performance, and a candidate must be both mentally and physically capable of performing the duties of the office sought with or without reasonable accommodation for any mental or physical impairment that substantially limits a major life activity.			X
8. Experience: The extent and variety of a candidate's experience as an attorney or as a judge or both should be considered in light of the nature of the judicial vacancy to be filled.			X
9. Judicial Temperament: A candidate's ability to consistently exhibit exemplary judicial temperament will be reviewed. Among the qualities that comprise such a temperament are patience, open-mindedness, courtesy, tact, firmness, understanding, compassion, and humility. Factors that indicate a lack of judicial temperament include arrogance, impatience, pomposity, arbitrariness, and tyranny.			X

8. Experience: The committee was both impressed and appreciative of Judge Williams' outstanding and exemplary service on both the Family Court and the Court of Appeals.

9. Judicial Temperament: Judge Williams' temperament is outstanding in every way. He sets the standard for his peers to emulate.

SUMMARY STATEMENT:

Judge Williams is a truly an asset to our State and our judiciary. The committee has the utmost appreciation for his honorable service on the Court of Appeals, in the Richland County Drug Court and in the community. We believe he is most eminently qualified to continue his service on the Court of Appeals and we are confident he would continue to serve in an outstanding manner.

John M. Grantland
Committee Chair's Name

09-23-10
Date

Harris Bruce Williams
Candidate's Name

Court Fifth Judicial Circuit, Seat 1

Candidate's Name: Lisa C. Glover

Unqualified				<p>1. Constitutional Qualifications: A candidate must meet the constitutional or statutory requirements of citizenship, residence, age, and professional experience.</p>
Qualified				<p>2. Ethical Fitness: A candidate must have the ability to perform adjudicative duties impartially and to deal with litigants, lawyers, witnesses, and other courtroom participants objectively and without bias. A candidate should have a sense of humor and must exhibit trustworthiness, moral vigor, and strength of character. A candidate's past action and deeds should demonstrate consistent adherence to high ethical principles and his or her reputation should be above reproach. A candidate must also follow campaigning and pledging laws. At a minimum, a sitting judge will be expected to have complied with the Code of Judicial Conduct's requirements to avoid impropriety, the appearance of impropriety, and partially.</p>
Well-Qualified	X	X	X	<p>3. Professional and Academic Ability: A candidate is expected to be well-versed in fundamental legal principles and in procedural and evidentiary rules. A candidate must have the ability to communicate in a style that is both lucid and persuasive and must have the intellectual capacity to interpret established legal principles, apply them to specific factual situations, and clearly and logically communicate the reasoning leading up to his or her conclusion. A candidate's academic record, participation in continuing legal education or other seminars, legal writing, and reputation among professional colleagues to evaluate legal knowledge and ability will be reviewed. On the appellate court level, consideration will be given to a candidate's ability to work well with others and to build or reach a consensus when appropriate.</p>
	X			<p>4. Character: The character of a candidate regarding his or her ethical standards, work habits, and financial responsibility, will be reviewed, as well as a thorough investigation of any complaints, grievances, or criminal allegations made against a candidate.</p>
	X			<p>5. Reputation: Consideration of a candidate's background will include the following: 1) the non-legal experience; 2) the candidate's involvement in community affairs, public office, or pro bono work; or 3) the candidate's views on social issues and his or her desire to affect public policy. A review will be undertaken to ensure a candidate has followed the Code of Judicial Conduct's prohibition against certain extra-judicial activities and rules governing the use of judicial office.</p>
	X			<p>6. Physical Health: The demands of the judicial office require a high level of performance, and a candidate must</p>

6. Physical Health:

among her peers.

Mrs. Glover enjoys an excellent reputation in the legal community

5. Reputation:

above reproach.

The Committee believes Mrs. Glover's character is outstanding and

4. Character:

3. Professional and Academic Ability:

The Committee considered Mrs. Glover to be highly ethical.

2. Ethical Fitness:

1. Constitutional Qualifications:

Related Comments:

	Unqualified				be both mentally and physically capable of performing the duties of the office sought with or without reasonable accommodation for any mental or physical impairment that substantially limits a major life activity.
	Unqualified				7. Mental Stability: The demands of the judicial office require a high level of performance, and a candidate must be both mentally and physically capable of performing the duties of the office sought with or without reasonable accommodation for any mental or physical impairment that substantially limits a major life activity.
	Unqualified				8. Experience: The extent and variety of a candidate's experience as an attorney or as a judge or both should be considered in light of the nature of the judicial vacancy to be filled.
	Unqualified				9. Judicial Temperament: A candidate's ability to consistently exhibit exemplary judicial temperament will be reviewed. Among the qualities that comprise such a temperament are patience, open-mindedness, courtesy, tact, firmness, understanding, compassion, and humility. Factors that indicate a lack of judicial temperament include arrogance, impatience, pomposity, arbitrariness, and tyranny.
Well-qualified	Qualified	X			

7. Mental Stability

8. Experience: The committee was impressed by Mrs. Glover's outstanding service as a Workers Compensation Commissioner and as Deputy General Counsel to the S.C. Second Injury Fund.

9. Judicial Temperament: The committee believes that based on Mrs. Glover's common sense and experience as a Workers Compensation Commissioner, she would show outstanding judicial temperament.

SUMMARY STATEMENT: The Committee believes that Mrs. Glover is very highly qualified to serve on the Circuit Court bench, and we are confident that she would serve in an outstanding manner.

John M. Grantland
Committee Chair's Name

09-23-10
Date

Lisa C. Glover
Candidate's Name

Candidate's Name: Jeffrey M. Tzerman
Fifth Judicial Circuit, Seat 1
 Fall/Spring Screening 2010 (Year)

Well-Qualified	X					<p>1. Constitutional Qualifications: A candidate must meet the constitutional or statutory requirements of citizenship, residence, age, and professional experience.</p>
Qualified	X					<p>2. Ethical Fitness: A candidate must have the ability to perform adjudicative duties impartially and to deal with litigants, lawyers, witnesses, and other courtroom participants objectively and without bias. A candidate should have a sense of humor and must exhibit trustworthiness, moral vigor, and strength of character. A candidate's past action and deeds should demonstrate consistent adherence to high ethical principles and his or her reputation should be above reproach. A candidate must also follow campaigning and pledging laws. At a minimum, a sitting judge will be expected to have complied with the Code of Judicial Conduct's requirements to avoid impropriety, the appearance of impropriety, and partiality.</p>
Unqualified						<p>3. Professional and Academic Ability: A candidate is expected to be well-versed in fundamental legal principles and in procedural and evidentiary rules. A candidate must have the ability to communicate in a style that is both lucid and persuasive and must have the intellectual capacity to interpret established legal principles, apply them to specific factual situations, and clearly and logically communicate the reasoning leading up to his or her conclusion. A candidate's academic record, participation in continuing legal education or other seminars, legal writing, and reputation among professional colleagues to evaluate legal knowledge and ability will be reviewed. On the appellate court level, consideration will be given to a candidate's ability to work well with others and to build or reach a consensus when appropriate.</p>
	X					<p>4. Character: The character of a candidate regarding his or her ethical standards, work habits, and financial responsibility, will be reviewed, as well as a thorough investigation of any complaints, grievances, or criminal allegations made against a candidate.</p>
	X					<p>5. Reputation: Consideration of a candidate's background will include the following: 1) the non-legal experience; 2) the candidate's involvement in community affairs, public office, or pro bono work; or 3) the candidate's views on social issues and his or her desire to affect public policy. A review will be undertaken to ensure a candidate has followed the Code of Judicial Conduct's prohibition against certain extra-judicial activities and rules governing the use of judicial office.</p>
	X					<p>6. Physical Health: The demands of the judicial office require a high level of performance, and a candidate must</p>

Related Comments:

1. Constitutional Qualifications:

2. Ethical Fitness:

The Committee considers Mr. Tzerman to be highly ethical.

3. Professional and Academic Ability:

4. Character:

Mr. Tzerman's outstanding character is impeccable and above reproach.

5. Reputation:

Mr Tzerman enjoys a most outstanding reputation among his peers and in the community.

6. Physical Health:

7. Mental Stability

	Unqualified				be both mentally and physically capable of performing the duties of the office sought with or without reasonable accommodation for any mental or physical impairment that substantially limits a major life activity.
	Unqualified				7. <u>Mental Stability:</u> The demands of the judicial office require a high level of performance, and a candidate must be both mentally and physically capable of performing the duties of the office sought with or without reasonable accommodation for any mental or physical impairment that substantially limits a major life activity.
	Unqualified				8. <u>Experience:</u> The extent and variety of a candidate's experience as an attorney or as a judge or both should be considered in light of the nature of the judicial vacancy to be filled.
	Unqualified				9. <u>Judicial Temperament:</u> A candidate's ability to consistently exhibit exemplary judicial temperament will be reviewed. Among the qualities that comprise such a temperament are patience, open-mindedness, courtesy, tact, firmness, understanding, compassion, and humility. Factors that indicate a lack of judicial temperament include arrogance, impatience, pomposity, arbitrariness, and tyranny.
Well-qualified	Qualified	X	X	X	

8. Experience:

The committee was most impressed by Mr. Tzerman's 10 years of outstanding service as the Kershaw County Master-in-Equity and his well-rounded private practice experience in both criminal and civil law.

9. Judicial Temperament:

The Committee believes that Mr. Tzerman's humility and common sense would enable him to have outstanding judicial temperament.

SUMMARY STATEMENT:

Mr. Tzerman is a very eminently qualified and highly regarded candidate. We are confident that he would most ably serve on the Circuit Court in an outstanding manner.

John M. Granland
Committee Chair's Name

09-23-10
Date

Jeffrey M. Tzerman
Candidate's Name

Citizens Committee Report/S.C. Bar Judicial Qualifications Committee Report
Court _____ **Fifth Judicial Circuit**, Seat **1**
Candidate's Name: **Robert Eldon Hood**
Fall/Spring Screening **2010** (year)

	Unqualified							
	Well-qualified	X						
1. Constitutional Qualifications: A candidate must meet the constitutional or statutory requirements of citizenship, residence, age, and professional experience.								
2. Ethical Fitness: A candidate must have the ability to perform adjudicative duties impartially and to deal with litigants, lawyers, witnesses, and other courtroom participants objectively and without bias. A candidate should have a sense of humor and must exhibit trustworthiness, moral vigor, and strength of character. A candidate's past action and deeds should demonstrate consistent adherence to high ethical principles and his or her reputation should be above reproach. A candidate must also follow campaigning and pledging laws. At a minimum, a sitting judge will be expected to have complied with the Code of Judicial Conduct's requirements to avoid impropriety, the appearance of impropriety, and partially.								
3. Professional and Academic Ability: A candidate is expected to be well-versed in fundamental legal principles and in procedural and evidentiary rules. A candidate must have the ability to communicate in a style that is both lucid and persuasive and must have the intellectual capacity to interpret established legal principles, apply them to specific factual situations, and clearly and logically communicate the reasoning leading up to his or her conclusion. A candidate's academic record, participation in continuing legal education or other seminars, legal writing, and reputation among professional colleagues to evaluate legal knowledge and ability will be reviewed. On the appellate court level, consideration will be given to a candidate's ability to work well with others and to build or reach a consensus when appropriate.								
4. Character: The character of a candidate regarding his or her ethical standards, work habits, and financial responsibility, will be reviewed, as well as a thorough investigation of any complaints, grievances, or criminal allegations made against a candidate.								
5. Reputation: Consideration of a candidate's background will include the following: 1) the non-legal experience; 2) the candidate's involvement in community affairs, public office, or pro bono work; or 3) the candidate's views on social issues and his or her desire to affect public policy. A review will be undertaken to ensure a candidate has followed the Code of Judicial Conduct's prohibition against certain extra-judicial activities and rules governing the use of judicial office.								
6. Physical Health: The demands of the judicial office require a high level of performance, and a candidate must								
								X

Related Comments:

1. Constitutional Qualifications:

2. Ethical Fitness:

The Committee believes that Mr. Hood is highly ethical.

3. Professional and Academic Ability:

4. Character:

The Committee also believes that Mr. Hood has most outstanding character and maturity.

5. Reputation:

The Committee found that Mr. Hood has an outstanding reputation among his peers in the legal community.

6. Physical Health:

	Unqualified		be both mentally and physically capable of performing the duties of the office sought with or without reasonable accommodation for any mental or physical impairment that substantially limits a major life activity.
	Unqualified		7. <u>Mental Stability:</u> The demands of the judicial office require a high level of performance, and a candidate must be both mentally and physically capable of performing the duties of the office sought with or without reasonable accommodation for any mental or physical impairment that substantially limits a major life activity.
X	Qualified		8. <u>Experience:</u> The extent and variety of a candidate's experience as an attorney or as a judge or both should be considered in light of the nature of the judicial vacancy to be filled.
X	Well-Qualified		9. <u>Judicial Temperament:</u> A candidate's ability to consistently exhibit exemplary judicial temperament will be reviewed. Among the qualities that comprise such a temperament are patience, open-mindedness, courtesy, tact, firmness, understanding, compassion, and humility. Factors that indicate a lack of judicial temperament include arrogance, impatience, pomposity, arbitrariness, and tyranny.

7. Mental Stability

8. Experience:
The Committee was very impressed by Mr. Hood's extensive criminal experience with the State Grand Jury and his successful civil experience in private practice.

9. Judicial Temperament:
Mr. Hood has maturity, wisdom and common sense beyond his years. The committee is very confident that he would show outstanding judicial temperament on the bench.

SUMMARY STATEMENT:

The Committee was very impressed by Mr. Hood, and we believe he has the character, work ethic and experience to make an outstanding Circuit Court Judge. We are confident that he is eminently qualified to serve on the Circuit Court and that he would serve in an outstanding manner.

John M. Grandland
Committee Chair's Name

09-23-10
Date

Robert Eldon Hood
Candidate's Name

Court _____ Retired Judge/Justice _____, Seat _____
Candidate's Name: _____ Jasper M. Cureton _____
Fall/Spring Screening _____ 2010 _____ (year)

Unqualified				<p>1. Constitutional Qualifications: A candidate must meet the constitutional or statutory requirements of citizenship, residence, age, and professional experience.</p>
Qualified				<p>2. Ethical Fitness: A candidate must have the ability to perform adjudicative duties impartially and to deal with litigants, lawyers, witnesses, and other courtroom participants objectively and without bias. A candidate should have a sense of humor and must exhibit trustworthiness, moral vigor, and strength of character. A candidate's past action and deeds should demonstrate consistent adherence to high ethical principles and his or her reputation should be above reproach. A candidate must also follow campaigning and pledging laws. At a minimum, a sitting judge will be expected to have complied with the Code of Judicial Conduct's requirements to avoid impropriety, the appearance of impropriety, and partially.</p>
Well-Qualified	X	X		<p>3. Professional and Academic Ability: A candidate is expected to be well-versed in fundamental legal principles and in procedural and evidentiary rules. A candidate must have the ability to communicate in a style that is both lucid and persuasive and must have the intellectual capacity to interpret established legal principles, apply them to specific factual situations, and clearly and logically communicate the reasoning leading up to his or her conclusion. A candidate's academic record, participation in continuing legal education or other seminars, legal writing, and reputation among professional colleagues to evaluate legal knowledge and ability will be reviewed. On the appellate court level, consideration will be given to a candidate's ability to work well with others and to build or reach a consensus when appropriate.</p>
	X			<p>4. Character: The character of a candidate regarding his or her ethical standards, work habits, and financial responsibility, will be reviewed, as well as a thorough investigation of any complaints, grievances, or criminal allegations made against a candidate.</p>
	X			<p>5. Reputation: Consideration of a candidate's background will include the following: 1) the non-legal experience; 2) the candidate's involvement in community affairs, public office, or pro bono work; or 3) the candidate's views on social issues and his or her desire to affect public policy. A review will be undertaken to ensure a candidate has followed the Code of Judicial Conduct's prohibition against certain extra-judicial activities and rules governing the use of judicial office.</p>
	X			<p>6. Physical Health: The demands of the judicial office require a high level of performance, and a candidate must</p>

6. Physical Health:

Judge Cureton has a most outstanding reputation.

5. Reputation:

impeccable and above reproach.

The Committee believes Judge Cureton's outstanding character is

4. Character:

Outstanding in every way

3. Professional and Academic Ability:

Judge Cureton is considered highly ethical.

2. Ethical Fitness:

1. Constitutional Qualifications:

Related Comments:

	Unqualified		be both mentally and physically capable of performing the duties of the office sought with or without reasonable accommodation for any mental or physical impairment that substantially limits a major life activity.
	Unqualified		7. <u>Mental Stability:</u> The demands of the judicial office require a high level of performance, and a candidate must be both mentally and physically capable of performing the duties of the office sought with or without reasonable accommodation for any mental or physical impairment that substantially limits a major life activity.
	Unqualified		8. <u>Experience:</u> The extent and variety of a candidate's experience as an attorney or as a judge or both should be considered in light of the nature of the judicial vacancy to be filled.
	Unqualified		9. <u>Judicial Temperament:</u> A candidate's ability to consistently exhibit exemplary judicial temperament will be reviewed. Among the qualities that comprise such a temperament are patience, open-mindedness, courtesy, tact, firmness, understanding, compassion, and humility. Factors that indicate a lack of judicial temperament include arrogance, impatience, pomposity, arbitrariness, and tyranny.
Well- Qualified	Qualified	X	
		X	
		X	

7. Mental Stability

8. Experience:

The Committee is grateful and appreciative of Judge Cureton's outstanding experience and service to our State on the Court of Appeals.

9. Judicial Temperament:

Judge Cureton's temperament is most outstanding in every way.

SUMMARY STATEMENT:

The Committee was honored to interview Judge Cureton. We believe he is truly an asset to our State and our judiciary. We are grateful for his continued service on the Court of Appeals, and we believe he is most eminently qualified to continue his legacy of outstanding service, experience and leadership.

John M. Grantland
Committee Chair's Name

09-23-10
Date

Jasper M. Cureton
Candidate's Name

Candidate's Name:	James Shadd III
Court	Fifth Judicial Circuit
Seat	1

[illegible]

	Unqualified		require a high level of performance, and a candidate must be both mentally and physically capable of performing the duties of the office sought with or without reasonable accommodation for any mental or physical impairment that substantially limits a major life activity.				
	Unqualified		7. Mental Stability: The demands of the judicial office require a high level of performance, and a candidate must be both mentally and physically capable of performing the duties of the office sought with or without reasonable accommodation for any mental or physical impairment that substantially limits a major life activity.			X	
	Unqualified		8. Experience: The extent and variety of a candidate's experience as an attorney or as a judge or both should be considered in light of the nature of the judicial vacancy to be filled.			X	
	Unqualified		9. Judicial Temperament: A candidate's ability to consistently exhibit exemplary judicial temperament will be reviewed. Among the qualities that comprise such a temperament are patience, open-mindedness, courtesy, tact, firmness, understanding, compassion, and humility. Factors that indicate a lack of judicial temperament include arrogance, impatience, pomposity, arbitrariness, and tyranny.			X	

Related Comments:

1. Constitutional Qualifications:

2. Ethical Fitness:

The Committee considers Mr. Shadd to be highly ethical.

3. Professional and Academic Ability:

4. Character:

The Committee believes Mr. Shadd's outstanding character is above reproach.

5. Reputation:

Mr. Shadd enjoys a most outstanding reputation in the community that is well deserved. We were also very impressed by his service to the Boys and Girls Club of Columbia

6. Physical Health:

7. Mental Stability

8. Experience:

The Committee was very impressed by Mr. Shadd's excellent experience in both criminal and civil law.

9. Judicial Temperament:

The Committee is confident that Mr. Shadd has the common sense, humility and compassion to have outstanding judicial temperament.

SUMMARY STATEMENT:

The Committee was very impressed with Mr. Shadd and we enjoyed his interview. We are equally impressed by his commitment to the community. We feel certain that he is eminently qualified to serve our State on the Circuit Court, and we know that he would serve in an outstanding manner.

John M. Grantland
Committee Chair's Name

09-23-10
Date

James Shadd, III
Candidate's Name

Citizens Committee Report/S.C. Bar Judicial Qualifications Committee Report
Court of Appeals, Seat 1
Candidate's Name: Judge Paul E. Short, Jr.
Fall Screening 2010

	Unqualified	Qualified	Well-Qualified
1. Constitutional Qualifications: A candidate must meet the constitutional or statutory requirements of citizenship, residence, age, and professional experience.			X
2. Ethical Fitness: A candidate must have the ability to perform adjudicative duties impartially and to deal with litigants, lawyers, witnesses, and other courtroom participants objectively and without bias. A candidate should have a sense of humor and must exhibit trustworthiness, moral vigor, and strength of character. A candidate's past action and deeds should demonstrate consistent adherence to high ethical principles and his or her reputation should be above reproach. A candidate must also follow campaigning and pledging laws. At a minimum, a sitting judge will be expected to have complied with the Code of Judicial Conduct's requirements to avoid impropriety, the appearance of impropriety, and partiality.			X
3. Professional and Academic Ability: A candidate is expected to be well-versed in fundamental legal principles and in procedural and evidentiary rules. A candidate must have the ability to communicate in a style that is both lucid and persuasive and must have the intellectual capacity to interpret established legal principles, apply them to specific factual situations, and clearly and logically communicate the reasoning leading up to his or her conclusion. A candidate's academic record, participation in continuing legal education or other seminars, legal writing, and reputation among professional colleagues to evaluate legal knowledge and ability will be reviewed. On the appellate court level, consideration will be given to a candidate's ability to work well with others and to build or reach a consensus when appropriate.			X
4. Character: The character of a candidate regarding his or her ethical standards, work habits, and financial responsibility, will be reviewed, as well as a thorough investigation of any complaints, grievances, or criminal allegations made against a candidate.			X
5. Reputation: Consideration of a candidate's background will include the following: 1) the non-legal experience; 2) the candidate's involvement in community affairs, public office, or pro bono work; or 3) the candidate's views on social issues and his or her desire to affect public policy. A review will be undertaken to ensure a candidate has followed the Code of Judicial Conduct's prohibition against certain extra-judicial activities and rules governing the use of judicial office.			X
6. Physical Health: The demands of the judicial office require a high level of performance, and a candidate must be both mentally and physically capable of performing the duties of the office sought with or without reasonable accommodation for any mental or physical impairment that substantially limits a major life activity.			X
7. Mental Stability: The demands of the judicial office require a high level of performance, and a candidate must be both mentally and physically capable of performing the duties of the office sought with or without reasonable accommodation for any mental or physical impairment that substantially limits a major life activity.			X

	Unqualified	Qualified	Well-Qualified
8. <u>Experience:</u> The extent and variety of a candidate's experience as an attorney or as a judge or both should be considered in light of the nature of the judicial vacancy to be filled.			X
9. <u>Judicial Temperament:</u> A candidate's ability to consistently exhibit exemplary judicial temperament will be reviewed. Among the qualities that comprise such a temperament are patience, open-mindedness, courtesy, tact, firmness, understanding, compassion, and humility. Factors that indicate a lack of judicial temperament include arrogance, impatience, pomposity, arbitrariness, and tyranny.			X

Related Comments:

1. Constitutional Qualifications:

2. Ethical Fitness:

3. Professional and Academic Ability:

4. Character:

5. Reputation:

6. Physical Health:**7. Mental Stability****8. Experience:****9. Judicial Temperament:****SUMMARY STATEMENT:**

The Committee unanimously agreed that Judge Short is well qualified for each of the 7 evaluative criteria.

Leonard Price
Rev. Leonard Price

9-22-2010
Date

Judge Paul E. Short, Jr.
Candidate's Name

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Piedmont Citizens Committee Report/S.C. Bar Judicial Qualifications Committee Report

Circuit Court, At-Large, Seat 9

Candidate's Name: William P. Frick

Fall Screening 2010

	Unqualified	Qualified	Well-Qualified
1. Constitutional Qualifications: A candidate must meet the constitutional or statutory requirements of citizenship, residence, age, and professional experience.		yes	
2. Ethical Fitness: A candidate must have the ability to perform adjudicative duties impartially and to deal with litigants, lawyers, witnesses, and other courtroom participants objectively and without bias. A candidate should have a sense of humor and must exhibit trustworthiness, moral vigor, and strength of character. A candidate's past action and deeds should demonstrate consistent adherence to high ethical principles and his or her reputation should be above reproach. A candidate must also follow campaigning and pledging laws. At a minimum, a sitting judge will be expected to have complied with the Code of Judicial Conduct's requirements to avoid impropriety, the appearance of impropriety, and partiality.		yes	
3. Professional and Academic Ability: A candidate is expected to be well-versed in fundamental legal principles and in procedural and evidentiary rules. A candidate must have the ability to communicate in a style that is both lucid and persuasive and must have the intellectual capacity to interpret established legal principles, apply them to specific factual situations, and clearly and logically communicate the reasoning leading up to his or her conclusion. A candidate's academic record, participation in continuing legal education or other seminars, legal writing, and reputation among professional colleagues to evaluate legal knowledge and ability will be reviewed. On the appellate court level, consideration will be given to a candidate's ability to work well with others and to build or reach a consensus when appropriate.		OK	
4. Character: The character of a candidate regarding his or her ethical standards, work habits, and financial responsibility, will be reviewed, as well as a thorough investigation of any complaints, grievances, or criminal allegations made against a candidate.		OK	
5. Reputation: Consideration of a candidate's background will include the following: 1) the non-legal experience; 2) the candidate's involvement in community affairs, public office, or pro bono work; or 3) the candidate's views on social issues and his or her desire to affect public policy. A review will be undertaken to ensure a candidate has followed the Code of Judicial Conduct's prohibition against certain extra-judicial activities and rules governing the use of judicial office.		OK	
6. Physical Health: The demands of the judicial office require a high level of performance, and a candidate must be both mentally and physically capable of performing the duties of the office sought with or without reasonable accommodation for any mental or physical impairment that substantially limits a major life activity.		OK	
7. Mental Stability: The demands of the judicial office require a high level of performance, and a candidate must be both mentally and physically capable of performing the duties of the office sought with or without reasonable accommodation for any mental or physical impairment that substantially limits a major life activity.		OK	

	Unqualified	Qualified	Well-Qualified
8. <u>Experience</u> : The extent and variety of a candidate's experience as an attorney or as a judge or both should be considered in light of the nature of the judicial vacancy to be filled.	<i>Need more</i>		
9. <u>Judicial Temperament</u> : A candidate's ability to consistently exhibit exemplary judicial temperament will be reviewed. Among the qualities that comprise such a temperament are patience, open-mindedness, courtesy, tact, firmness, understanding, compassion, and humility. Factors that indicate a lack of judicial temperament include arrogance, impatience, pomposity, arbitrariness, and tyranny.		<i>OK</i>	

Related Comments:

1. Constitutional Qualifications:

OK

2. Ethical Fitness:

OK

3. Professional and Academic Ability:

He needs more and varied experience

4. Character:

Good

5. Reputation:

Good

6. Physical Health:*Good***7. Mental Stability***Good***8. Experience:**

*The committee feels that Mr. Frick
needs more ~~and~~ varied experience than he has
now*

9. Judicial Temperament:**SUMMARY STATEMENT:**

We find Mr. Frick acceptable; however, he needs additional and more varied experience and it not yet ready to assume a judgeship.

Charles H. Montgomery
Charles Montgomery

October 21, 2010 *William P. Frick*
Date Candidate's Name

Piedmont Citizens Committee Report/S.C. Bar Judicial Qualifications Committee Report
Circuit Court, At-Large, Seat 9
Candidate's Name: Daniel B. Hall
Fall Screening 2010

Unqualified	Qualified	Well-Qualified
1. Constitutional Qualifications: A candidate must meet the constitutional or statutory requirements of citizenship, residence, age, and professional experience.		Yes
2. Ethical Fitness: A candidate must have the ability to perform adjudicative duties impartially and to deal with litigants, lawyers, witnesses, and other courtroom participants objectively and without bias. A candidate should have a sense of honor and must exhibit trustworthiness, moral vigor, and strength of character. A candidate's past action and words should demonstrate consistent adherence to high ethical principles and his or her reputation should be above reproach. A candidate must also follow campaigning principles and his or her reputation should be above reproach. A candidate must also follow campaigning principles and his or her reputation should be above reproach. A candidate must also follow campaigning principles and his or her reputation should be above reproach.		✓
3. Professional and Academic Ability: A candidate is expected to be well-versed in fundamental legal principles and in procedural and evidentiary rules. A candidate must have the ability to communicate in a style that is both fact and persuasive and must have the intellectual capacity to interpret established legal principles, apply them to specific factual situations, and clearly and logically communicate the reasoning leading up to his or her conclusion. A candidate's academic record, participation in continuing legal education or other seminars, legal writing, and reputation among professional colleagues to evaluate legal knowledge and ability will be reviewed. On the appellate court level, consideration will be given to a candidate's ability to work well with others and to build or reach a consensus when appropriate.		✓
4. Character: The character of a candidate regarding his or her ethical standards, work habits, and financial responsibility, will be reviewed, as well as a thorough investigation of any complaints, grievances, or criminal allegations made against a candidate.		Excellent
5. Background: Consideration of a candidate's background will include the following: 1) the non-legal experience; 2) the candidate's involvement in community affairs, public office, or pro bono work; or 3) the candidate's views on social issues and his or her desire to affect public policy. A review will be undertaken to ensure a candidate has followed the Code of Judicial Conduct's prohibition against certain extra-judicial activities and rules governing the use of judicial office.		Excellent
6. Physical Health: The demands of the judicial office require a high level of performance, and a candidate must be both mentally and physically capable of performing the duties of the office sought with or without reasonable accommodation for any mental or physical impairment that substantially limits a major life activity.		✓
7. Mental Stability: The demands of the judicial office require a high level of performance, and a candidate must be both mentally and physically capable of performing the duties of the office sought with or without reasonable accommodation for any mental or physical impairment that substantially limits a major life activity.		✓

Unqualified	Qualified	Well-Qualified
		✓
<p>8. Experience: The extent and variety of a candidate's experience as an attorney or as a judge or both should be considered in light of the nature of the judicial vacancy to be filled.</p> <p>9. Judicial Temperament: A candidate's ability to consistently exhibit exemplary judicial temperament will be reviewed. Among the qualities that comprise such a temperament are patience, open-mindedness, courtesy, tact, firmness, understanding, compassion, and humility. Factors that indicate a lack of judicial temperament include arrogance, impatience, pettiness, arbitrariness, and tyranny.</p>		

Very Good

Related Comments:

1. Constitutional Qualifications:

2. Ethical Fitness:

3. Professional and Academic Ability:

4. Character:

He is an attorney of excellent character and reputation.

5. Reputation:

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6. Physical Health:

7. Mental Stability

8. Experience:

9. Judicial Temperament:

SUMMARY STATEMENT:

The committee was impressed by his extensive experience including his work and employment outside the legal profession. We find him to be physically and ethically fit. We believe this judicial temperament would be excellent. He has an excellent reputation.

Charles H. Montgomery
Charles Montgomery

November 2, 2010 *D. Hall*
Date Candidate's Name

Piedmont Citizens Committee Report/S.C. Bar Judicial Qualifications Committee Report

Circuit Court, At-Large, Seat 9

Candidate's Name: Honorable Donald B. Hocker

Fall Screening 2010

	Unqualified	Qualified	Well-Qualified
1. Constitutional Qualifications: A candidate must meet the constitutional or statutory requirements of citizenship, residence, age, and professional experience.			
2. Ethical Fitness: A candidate must have the ability to perform adjudicative duties impartially and to deal with litigants, lawyers, witnesses, and other courtroom participants objectively and without bias. A candidate should have a sense of humor and must exhibit trustworthiness, moral vigor, and strength of character. A candidate's past action and deeds should demonstrate consistent adherence to high ethical principles and his or her reputation should be above reproach. A candidate must also follow campaigning principles and pledging laws. At a minimum, a sitting judge will be expected to have complied with the Code of Judicial Conduct's requirements to avoid impropriety, the appearance of impropriety, and partiality.			
3. Professional and Academic Ability: A candidate is expected to be well-versed in fundamental legal principles and in procedural and evidentiary rules. A candidate must have the ability to communicate in a style that is both lucid and persuasive and must have the intellectual capacity to interpret established legal principles, apply them to specific factual situations, and clearly and logically communicate the reasoning leading up to his or her conclusion. A candidate's academic record, participation in continuing legal education or other seminars, legal writing, and reputation among professional colleagues to evaluate legal knowledge and ability will be reviewed. On the appellate court level, consideration will be given to a candidate's ability to work well with others and to build or reach a consensus when appropriate.			
4. Character: The character of a candidate regarding his or her ethical standards, work habits, and financial responsibility, will be reviewed, as well as a thorough investigation of any complaints, grievances, or criminal allegations made against a candidate.			
5. Reputation: Consideration of a candidate's background will include the following: 1) the non-legal experience; 2) the candidate's involvement in community affairs, public office, or pro bono work; or 3) the candidate's views on social issues and his or her desire to affect public policy. A review will be undertaken to ensure a candidate has followed the Code of Judicial Conduct's prohibition against certain extra-judicial activities and rules governing the use of judicial office.			
6. Physical Health: The demands of the judicial office require a high level of performance, and a candidate must be both mentally and physically capable of performing the duties of the office sought with or without reasonable accommodation for any mental or physical impairment that substantially limits a major life activity.			
7. Mental Stability: The demands of the judicial office require a high level of performance, and a candidate must be both mentally and physically capable of performing the duties of the office sought with or without reasonable accommodation for any mental or physical impairment that substantially limits a major life activity.			

	Unqualified	Qualified	Well-Qualified
8. <u>Experience</u> : The extent and variety of a candidate's experience as an attorney or as a judge or both should be considered in light of the nature of the judicial vacancy to be filled.			
9. <u>Judicial Temperament</u> : A candidate's ability to consistently exhibit exemplary judicial temperament will be reviewed. Among the qualities that comprise such a temperament are patience, open-mindedness, courtesy, tact, firmness, understanding, compassion, and humility. Factors that indicate a lack of judicial temperament include arrogance, impatience, pomposity, arbitrariness, and tyranny.			

Related Comments:

1. Constitutional Qualifications:

2. Ethical Fitness:

Excellent

3. Professional and Academic Ability:

He appears to be well qualified concerning his professional and academic ability

4. Character:

5. Reputation:

6. Physical Health:

7. Mental Stability

8. Experience:

Extensive, well qualified

9. Judicial Temperament:

SUMMARY STATEMENT:

He has extensive experience as an attorney and magistrate. We find him knowledgeable of the law and the committee believes his judicial temperament would be excellent.

Charles Montgomery
Charles Montgomery

October 21, 2010
Date

Donald B. Hacker
Candidate's Name

Upstate Citizens Committee Report/S.C. Bar Judicial Qualifications Committee Report
Court: Circuit Court, 13th Circuit, Seat 2
Candidate's Name: Eric Englehardt
Fall Screening 2010

	Unqualified	Qualified	Well-Qualified
1. Constitutional Qualifications: A candidate must meet the constitutional or statutory requirements of citizenship, residence, age, and professional experience.		X	
2. Ethical Fitness: A candidate must have the ability to perform adjudicative duties impartially and to deal with litigants, lawyers, witnesses, and other courtroom participants objectively and without bias. A candidate should have a sense of humor and must exhibit trustworthiness, moral vigor, and strength of character. A candidate's past action and deeds should demonstrate consistent adherence to high ethical principles and his or her reputation should be above reproach. A candidate must also follow campaigning and pledging laws. At a minimum, a sitting judge will be expected to have complied with the Code of Judicial Conduct's requirements to avoid impropriety, the appearance of impropriety, and partiality.		X	
3. Professional and Academic Ability: A candidate is expected to be well-versed in fundamental legal principles and in procedural and evidentiary rules. A candidate must have the ability to communicate in a style that is both lucid and persuasive and must have the intellectual capacity to interpret established legal principles, apply them to specific factual situations, and clearly and logically communicate the reasoning leading up to his or her conclusion. A candidate's academic record, participation in continuing legal education or other seminars, legal writing, and reputation among professional colleagues to evaluate legal knowledge and ability will be reviewed. On the appellate court level, consideration will be given to a candidate's ability to work well with others and to build or reach a consensus when appropriate.		X	
4. Character: The character of a candidate regarding his or her ethical standards, work habits, and financial responsibility, will be reviewed, as well as a thorough investigation of any complaints, grievances, or criminal allegations made against a candidate.		X	
5. Reputation: Consideration of a candidate's background will include the following: 1) the non-legal experience; 2) the candidate's involvement in community affairs, public office, or pro bono work; or 3) the candidate's views on social issues and his or her desire to affect public policy. A review will be undertaken to ensure a candidate has followed the Code of Judicial Conduct's prohibition against certain extra-judicial activities and rules governing the use of judicial office.		X	
6. Physical Health: The demands of the judicial office require a high level of performance, and a candidate must be both mentally and physically capable of performing the duties of the office sought with or without reasonable accommodation for any mental or physical impairment that substantially limits a major life activity.		X	
7. Mental Stability: The demands of the judicial office require a high level of performance, and a candidate must be both mentally and physically capable of performing the duties of the office sought with or without reasonable accommodation for any mental or physical impairment that substantially limits a major life activity.		X	

	Unqualified	Qualified	Well-Qualified
8. Experience: The extent and variety of a candidate's experience as an attorney or as a judge or both should be considered in light of the nature of the judicial vacancy to be filled.		X	
9. Judicial Temperament: A candidate's ability to consistently exhibit exemplary judicial temperament will be reviewed. Among the qualities that comprise such a temperament are patience, open-mindedness, courtesy, tact, firmness, understanding, compassion, and humility. Factors that indicate a lack of judicial temperament include arrogance, impatience, pomposity, arbitrariness, and tyranny.		X	

Related Comments:

1. Constitutional Qualifications:

2. Ethical Fitness:

3. Professional and Academic Ability:

4. Character:

5. Reputation:

6. Physical Health:

7. Mental Stability

8. Experience:

9. Judicial Temperament:

SUMMARY STATEMENT:

Nancy Jo Thomason
Committee Chair's Name

October 19, 2010
Date

Eric Englehardt
Candidate's Name

Upstate Citizens Committee Report/S.C. Bar Judicial Qualifications Committee Report

Court: Circuit Court, 13th Circuit, Seat 2

Candidate's Name: Anthony Mabry

Fall Screening 2010

	Unqualified	Qualified	Well-Qualified
1. Constitutional Qualifications: A candidate must meet the constitutional or statutory requirements of citizenship, residence, age, and professional experience.		X	
2. Ethical Fitness: A candidate must have the ability to perform adjudicative duties impartially and to deal with litigants, lawyers, witnesses, and other courtroom participants objectively and without bias. A candidate should have a sense of humor and must exhibit trustworthiness, moral vigor, and strength of character. A candidate's past action and deeds should demonstrate consistent adherence to high ethical principles and his or her reputation should be above reproach. A candidate must also follow campaigning and pledging laws. At a minimum, a sitting judge will be expected to have complied with the Code of Judicial Conduct's requirements to avoid impropriety, the appearance of impropriety, and partiality.		X	
3. Professional and Academic Ability: A candidate is expected to be well-versed in fundamental legal principles and in procedural and evidentiary rules. A candidate must have the ability to communicate in a style that is both lucid and persuasive and must have the intellectual capacity to interpret established legal principles, apply them to specific factual situations, and clearly and logically communicate the reasoning leading up to his or her conclusion. A candidate's academic record, participation in continuing legal education or other seminars, legal writing, and reputation among professional colleagues to evaluate legal knowledge and ability will be reviewed. On the appellate court level, consideration will be given to a candidate's ability to work well with others and to build or reach a consensus when appropriate.		X	
4. Character: The character of a candidate regarding his or her ethical standards, work habits, and financial responsibility, will be reviewed, as well as a thorough investigation of any complaints, grievances, or criminal allegations made against a candidate.		X	
5. Reputation: Consideration of a candidate's background will include the following: 1) the non-legal experience; 2) the candidate's involvement in community affairs, public office, or pro bono work; or 3) the candidate's views on social issues and his or her desire to affect public policy. A review will be undertaken to ensure a candidate has followed the Code of Judicial Conduct's prohibition against certain extra-judicial activities and rules governing the use of judicial office.		X	
6. Physical Health: The demands of the judicial office require a high level of performance, and a candidate must be both mentally and physically capable of performing the duties of the office sought with or without reasonable accommodation for any mental or physical impairment that substantially limits a major life activity.		X	
7. Mental Stability: The demands of the judicial office require a high level of performance, and a candidate must be both mentally and physically capable of performing the duties of the office sought with or without reasonable accommodation for any mental or physical impairment that substantially limits a major life activity.		X	

	Unqualified	Qualified	Well-Qualified
8. Experience: The extent and variety of a candidate's experience as an attorney or as a judge or both should be considered in light of the nature of the judicial vacancy to be filled.		X	
9. Judicial Temperament: A candidate's ability to consistently exhibit exemplary judicial temperament will be reviewed. Among the qualities that comprise such a temperament are patience, open-mindedness, courtesy, tact, firmness, understanding, compassion, and humility. Factors that indicate a lack of judicial temperament include arrogance, impatience, pomposity, arbitrariness, and tyranny.		X	

Related Comments:

1. Constitutional Qualifications:

2. Ethical Fitness:

3. Professional and Academic Ability:

4. Character:

5. Reputation:

6. Physical Health:

7. Mental Stability

8. Experience:

9. Judicial Temperament:

SUMMARY STATEMENT:

**Nancy Jo Thomason
Committee Chair's Name**

**October 19, 2010
Date**

**Anthony Mabry
Candidate's Name**

Upstate Citizens Committee Report/S.C. Bar Judicial Qualifications Committee Report

Court: Circuit Court, 13th Circuit, Seat 2

Candidate's Name: Andrew Mackenzie

Fall Screening 2010

	Unqualified	Qualified	Well-Qualified
1. <u>Constitutional Qualifications:</u> A candidate must meet the constitutional or statutory requirements of citizenship, residence, age, and professional experience.		X	
2. <u>Ethical Fitness:</u> A candidate must have the ability to perform adjudicative duties impartially and to deal with litigants, lawyers, witnesses, and other courtroom participants objectively and without bias. A candidate should have a sense of humor and must exhibit trustworthiness, moral vigor, and strength of character. A candidate's past action and deeds should demonstrate consistent adherence to high ethical principles and his or her reputation should be above reproach. A candidate must also follow campaigning and pledging laws. At a minimum, a sitting judge will be expected to have complied with the Code of Judicial Conduct's requirements to avoid impropriety, the appearance of impropriety, and partiality.		X	
3. <u>Professional and Academic Ability:</u> A candidate is expected to be well-versed in fundamental legal principles and in procedural and evidentiary rules. A candidate must have the ability to communicate in a style that is both lucid and persuasive and must have the intellectual capacity to interpret established legal principles, apply them to specific factual situations, and clearly and logically communicate the reasoning leading up to his or her conclusion. A candidate's academic record, participation in continuing legal education or other seminars, legal writing, and reputation among professional colleagues to evaluate legal knowledge and ability will be reviewed. On the appellate court level, consideration will be given to a candidate's ability to work well with others and to build or reach a consensus when appropriate.		X	
4. <u>Character:</u> The character of a candidate regarding his or her ethical standards, work habits, and financial responsibility, will be reviewed, as well as a thorough investigation of any complaints, grievances, or criminal allegations made against a candidate.		X	
5. <u>Reputation:</u> Consideration of a candidate's background will include the following: 1) the non-legal experience; 2) the candidate's involvement in community affairs, public office, or pro bono work; or 3) the candidate's views on social issues and his or her desire to affect public policy. A review will be undertaken to ensure a candidate has followed the Code of Judicial Conduct's prohibition against certain extra-judicial activities and rules governing the use of judicial office.		X	
6. <u>Physical Health:</u> The demands of the judicial office require a high level of performance, and a candidate must be both mentally and physically capable of performing the duties of the office sought with or without reasonable accommodation for any mental or physical impairment that substantially limits a major life activity.		X	
7. <u>Mental Stability:</u> The demands of the judicial office require a high level of performance, and a candidate must be both mentally and physically capable of performing the duties of the office sought with or without reasonable accommodation for any mental or physical impairment that substantially limits a major life activity.		X	

	Unqualified	Qualified	Well-Qualified
8. Experience: The extent and variety of a candidate's experience as an attorney or as a judge or both should be considered in light of the nature of the judicial vacancy to be filled.		X	
9. Judicial Temperament: A candidate's ability to consistently exhibit exemplary judicial temperament will be reviewed. Among the qualities that comprise such a temperament are patience, open-mindedness, courtesy, tact, firmness, understanding, compassion, and humility. Factors that indicate a lack of judicial temperament include arrogance, impatience, pomposity, arbitrariness, and tyranny.		X	

Related Comments:

1. Constitutional Qualifications:

2. Ethical Fitness:

3. Professional and Academic Ability:

4. Character:

5. Reputation:

6. Physical Health:

7. Mental Stability

8. Experience:

9. Judicial Temperament:

SUMMARY STATEMENT:

Nancy Jo Thomason
Committee Chair's Name

October 19, 2010
Date

Andrew Mackenzie
Candidate's Name

Upstate Citizens Committee Report/S.C. Bar Judicial Qualifications Committee Report

Court: Circuit Court, 13th Circuit, Seat 2

Candidate's Name: The Honorable Letitia Verdin

Fall Screening 2010

	Unqualified	Qualified	Well-Qualified
1. Constitutional Qualifications: A candidate must meet the constitutional or statutory requirements of citizenship, residence, age, and professional experience.		X	
2. Ethical Fitness: A candidate must have the ability to perform adjudicative duties impartially and to deal with litigants, lawyers, witnesses, and other courtroom participants objectively and without bias. A candidate should have a sense of humor and must exhibit trustworthiness, moral vigor, and strength of character. A candidate's past action and deeds should demonstrate consistent adherence to high ethical principles and his or her reputation should be above reproach. A candidate must also follow campaigning and pledging laws. At a minimum, a sitting judge will be expected to have complied with the Code of Judicial Conduct's requirements to avoid impropriety, the appearance of impropriety, and partiality.		X	
3. Professional and Academic Ability: A candidate is expected to be well-versed in fundamental legal principles and in procedural and evidentiary rules. A candidate must have the ability to communicate in a style that is both lucid and persuasive and must have the intellectual capacity to interpret established legal principles, apply them to specific factual situations, and clearly and logically communicate the reasoning leading up to his or her conclusion. A candidate's academic record, participation in continuing legal education or other seminars, legal writing, and reputation among professional colleagues to evaluate legal knowledge and ability will be reviewed. On the appellate court level, consideration will be given to a candidate's ability to work well with others and to build or reach a consensus when appropriate.		X	
4. Character: The character of a candidate regarding his or her ethical standards, work habits, and financial responsibility, will be reviewed, as well as a thorough investigation of any complaints, grievances, or criminal allegations made against a candidate.		X	
5. Reputation: Consideration of a candidate's background will include the following: 1) the non-legal experience; 2) the candidate's involvement in community affairs, public office, or pro bono work; or 3) the candidate's views on social issues and his or her desire to affect public policy. A review will be undertaken to ensure a candidate has followed the Code of Judicial Conduct's prohibition against certain extra-judicial activities and rules governing the use of judicial office.		X	
6. Physical Health: The demands of the judicial office require a high level of performance, and a candidate must be both mentally and physically capable of performing the duties of the office sought with or without reasonable accommodation for any mental or physical impairment that substantially limits a major life activity.		X	
7. Mental Stability: The demands of the judicial office require a high level of performance, and a candidate must be both mentally and physically capable of performing the duties of the office sought with or without reasonable accommodation for any mental or physical impairment that substantially limits a major life activity.		X	

	Unqualified	Qualified	Well-Qualified
8. Experience: The extent and variety of a candidate's experience as an attorney or as a judge or both should be considered in light of the nature of the judicial vacancy to be filled.		X	
9. Judicial Temperament: A candidate's ability to consistently exhibit exemplary judicial temperament will be reviewed. Among the qualities that comprise such a temperament are patience, open-mindedness, courtesy, tact, firmness, understanding, compassion, and humility. Factors that indicate a lack of judicial temperament include arrogance, impatience, pomposity, arbitrariness, and tyranny.		X	

Related Comments:

1. Constitutional Qualifications:

2. Ethical Fitness:

3. Professional and Academic Ability:

4. Character:

5. Reputation:

6. Physical Health:

7. Mental Stability

8. Experience:

9. Judicial Temperament:

SUMMARY STATEMENT:

Nancy Jo Thomason
Committee Chair's Name

October 19, 2010
Date

The Honorable Letitia Verdin
Candidate's Name

H:\SCREEN\2009\Screen 2\Citizens Committees\6.16.09.Citizens Committee&SCBarReportTemplateFall2009.docx

Citizens Committee Report/S.C. Bar Judicial Qualifications Committee Report

Court FAMILY COURT, RETIRED, Seat

Candidate's Name: STEPHEN BARTLETT

Fall Screening 2010

	Unqualified	Qualified	Well-Qualified
1. <u>Constitutional Qualifications:</u> A candidate must meet the constitutional or statutory requirements of citizenship, residence, age, and professional experience.			XX
2. <u>Ethical Fitness:</u> A candidate must have the ability to perform adjudicative duties impartially and to deal with litigants, lawyers, witnesses, and other courtroom participants objectively and without bias. A candidate should have a sense of humor and must exhibit trustworthiness, moral vigor, and strength of character. A candidate's past action and deeds should demonstrate consistent adherence to high ethical principles and his or her reputation should be above reproach. A candidate must also follow campaigning and pledging laws. At a minimum, a sitting judge will be expected to have complied with the Code of Judicial Conduct's requirements to avoid impropriety, the appearance of impropriety, and partiality.			XX
3. <u>Professional and Academic Ability:</u> A candidate is expected to be well-versed in fundamental legal principles and in procedural and evidentiary rules. A candidate must have the ability to communicate in a style that is both lucid and persuasive and must have the intellectual capacity to interpret established legal principles, apply them to specific factual situations, and clearly and logically communicate the reasoning leading up to his or her conclusion. A candidate's academic record, participation in continuing legal education or other seminars, legal writing, and reputation among professional colleagues to evaluate legal knowledge and ability will be reviewed. On the appellate court level, consideration will be given to a candidate's ability to work well with others and to build or reach a consensus when appropriate.			XX
4. <u>Character:</u> The character of a candidate regarding his or her ethical standards, work habits, and financial responsibility, will be reviewed, as well as a thorough investigation of any complaints, grievances, or criminal allegations made against a candidate.			XX
5. <u>Reputation:</u> Consideration of a candidate's background will include the following: 1) the non-legal experience; 2) the candidate's involvement in community affairs, public office, or pro bono work; or 3) the candidate's views on social issues and his or her desire to affect public policy. A review will be undertaken to ensure a candidate has followed the Code of Judicial Conduct's prohibition against certain extra-judicial activities and rules governing the use of judicial office.			XX
6. <u>Physical Health:</u> The demands of the judicial office require a high level of performance, and a candidate must be both mentally and physically capable of performing the duties of the office sought with or without reasonable accommodation for any mental or physical impairment that substantially limits a major life activity.			XX
7. <u>Mental Stability:</u> The demands of the judicial office require a high level of performance, and a candidate must be both mentally and physically capable of performing the duties of the office sought with or without reasonable accommodation for any mental or physical impairment that substantially limits a major life activity.			XX

	Unqualified	Qualified	Well-Qualified
8. Experience: The extent and variety of a candidate's experience as an attorney or as a judge or both should be considered in light of the nature of the judicial vacancy to be filled.			XX
9. Judicial Temperament: A candidate's ability to consistently exhibit exemplary judicial temperament will be reviewed. Among the qualities that comprise such a temperament are patience, open-mindedness, courtesy, tact, firmness, understanding, compassion, and humility. Factors that indicate a lack of judicial temperament include arrogance, impatience, pomposity, arbitrariness, and tyranny.			XX

Related Comments:

1. Constitutional Qualifications:

2. Ethical Fitness:

3. Professional and Academic Ability:

4. Character:

5. Reputation:

6. Physical Health:

7. Mental Stability

8. Experience:

9. Judicial Temperament:

SUMMARY STATEMENT:

NANCY JO THOMASON
Committee Chair's Name

10-21-09
Date

JUDGE STEPHEN S. BARTLETT
Candidate's Name

Laurie Traywick

From: Roche, Andrea [ARoche@wcc.sc.gov]
Sent: Tuesday, October 12, 2010 9:34 AM
To: Paula Benson; Jane Shuler; Laurie Traywick
Subject: RE: Change in PDQ

Dear Jane,

Please accept this e-mail as a request to amend my PDQ.

Question 50, Item E should read:

Beth Peake
Assistant Vice President

instead of

Jason Hutto
Branch Manager.

Thank you so much.

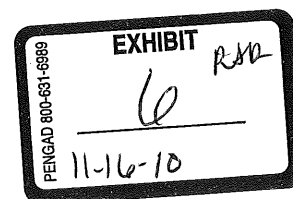
Andrea C. Roche

From: Paula Benson [PaulaBenson@scsenate.gov]
Sent: Monday, October 11, 2010 11:56 AM
To: Jane Shuler; Laurie Traywick
Cc: Roche, Andrea
Subject: Change in PDQ

Jane and Laurie,

During Commissioner Roche's interview today, we discussed a change that needed to be made in her PDQ. She will be communicating with you by e-mail for the record. The change will be in Question 50, item (e). The banking reference letter came from Beth Peake, Assistant Vice President instead of Jason Hutto, Branch Manager.

Thanks,
Paula



JUDICIAL MERIT SELECTION COMMISSION
PERSONAL DATA QUESTIONNAIRE

Court, Position, and Seat # for which you are applying:

Circuit Court, Fifth Judicial Circuit, Seat 1

1. NAME: Andrea C. Roche
BUSINESS ADDRESS: S.C. Workers' Compensation Commission
Post Office Box 1715
Columbia, S.C. 29202-1715
E-MAIL ADDRESS: aroche@wcc.sc.gov
TELEPHONE NUMBER: (office): (803) 737-5678
2. Date of Birth: 1966
Place of Birth: Columbus, GA
3. Are you a citizen of South Carolina? Yes
Have you been a resident of this state for at least the immediate past five years? Yes
5. Family Status: Married on December 3, 2005 to James Lawrence Roche, Jr.
Never divorced. One child.
6. Have you served in the military? No
7. List each college and law school you attended, including the dates of your attendance, the degrees you received, and if you left an institution without receiving a degree, the reason for your departure.
 - (a) University of North Carolina, August 1984-December 1988, A.B.;
 - (b) University of South Carolina Law School, August 1991-May 1992, transferred;
 - (c) Yale Law School, August 1992-May 1994, J.D.
8. List the states in which you have been admitted to practice law and the year of each admission. Also list any states in which you took the bar exam but were never admitted to the practice of law. If you took the bar exam more than once in any of the states listed, please indicate the number of times you took the exam in each state.
 - (a) South Carolina – 1994;
 - (b) Louisiana -- 1996.
9. List the significant activities in which you took part during your attendance at college, graduate, and law school. Give the dates you were involved in these activities and list any leadership positions you held.
 - (a) Yale Journal on Regulation;
 - (b) Symposium Editor;
 - (c) Barristers' Union, Pre-participation Chairman;
 - (d) Federalist Society;
 - (e) Trial Team Member, National Criminal Justice Trial Advocacy Competition;
 - (f) South Carolina Law Review;
 - (g) Student Government.

10. Describe your continuing legal or judicial education during the past five years. Include only the title and date of any continuing legal or judicial education course completed.

<u>Conference/CLE Name</u>	<u>Date(s)</u>
(a) SCAJ Annual Convention	8/5/10;
(b) SCWCEA Medical Seminar	2/28/10;
(c) SCWCC Annual Education Requirement	11/17/09;
(d) SCWCEA Educational Conference	10/18/09;
(e) SCAJ Annual Convention	8/6/09;
(f) SCDTAA Joint Meeting	7/23/09;
(g) SCWCEA Medical Seminar	3/1/09;
(h) SCWCC Annual Education Requirement	12/16/08;
(i) Injured Workers Advocates Convention	11/6/08;
(j) SCWCEA Educational Conference	10/19/08;
(k) S.C. Bar-Dissecting a Workers' Comp Case	9/5/08;
(l) SCAJ Annual Convention	8/7/08;
(m) SCDTAA Joint Meeting	7/24/08;
(n) SCWCEA Medical Seminar	2/24/08;
(o) SCWCC Ethics and Administrative Procedure	12/18/07;
(p) SCWCEA Educational Conference	10/21/07;
(q) SCDTAA Joint Meeting	7/26/07;
(r) SCWCEA Medical Conference	3/9/07;
(s) Assoc. of Claimant's Attorneys Convention	11/2/06
(t) SCWCEA Educational Conference	10/22/06;
(u) S.C. Trial Lawyers Convention	8/3/06;
(v) SCDTAA Joint Meeting	7/27/06;
(w) SCWCEA Educational Conference	10/24/05;
(x) USDCOC Attorney Training	7/20/05;
(y) SCWCEA Medical Seminar	2/25/05.

11. Have you taught law-related courses or lectured at bar association conferences, educational institutions, or continuing legal or judicial education programs?

- (a) I participate in panel discussions involving workers' compensation several times per year, including at educational conferences and meetings of SCDTTA, SCAJ, SCWCEA, Self-Insured's Association, and IWA.
- (b) I have taught CLEs on workers compensation.
- (c) I have taught CLEs on legal writing
- (d) I have taught legal writing at the USC Law School
- (e) I have taught several classes to undergraduate students at South University including International Law, Legal Writing, Workers' Compensation, Employment Law, Administrative Law, and Business Law.

12. List all published books and articles you have written and give citations and the dates of publication for each. None
13. List all courts in which you have been admitted to practice and list the dates of your admission. Give the same information for administrative bodies that require a special admission to practice.
 - (a) Admitted to practice in South Carolina in 1994
 - (b) Admitted to practice in Louisiana in 1996
 - (c) Admitted to the U.S. Court of Appeals for the Fourth Circuit in 1995
 - (d) Admitted to the U.S. District Court in South Carolina in 1999.
14. Describe chronologically your legal experience since graduation from law school and include a list of all law firms with which you have been associated. Describe the general character of your practice and divide it into periods with dates if its character has changed over the years.

If you are a judge and are not seeking a different type of judgeship, the following questions are inapplicable:

 - (b) If you are a candidate for Circuit Court, please provide a brief written description of your experience in criminal matters, including any cases handled over the past five years and include a brief description of the issues involved. Further, please provide a brief written description of your experience in civil matters, including any cases handled over the past five years and include a brief description of the types of matters handled, issues involved, and procedural history. Please include information such as the primary areas in civil court in which you practice, whether you represent plaintiffs or defendants, or both. You may go back further than five years if you feel it would assist the Commission with its assessment of your experience. If you lack experience in an area, describe how your background has prepared you to preside over such matters as a Circuit Court Judge, or how you would compensate for your lack of experience in this area.
 - (a) The Honorable Robert F. Chapman, U.S. Court of Appeals for the Fourth Circuit, September 1994-October 1996. Law Clerk. Duties included preparing bench memoranda and drafting opinions.
 - (b) Phelps Dunbar, New Orleans, LA, October 1996-December 1996. Associate Attorney. Areas of practice were commercial and construction litigation.
 - (c) South Carolina Court of Appeals, June 1997-August 1998. Law Clerk to the Honorable Carol Connor and Staff Attorney. Duties included preparing bench memoranda and drafting opinions.
 - (d) Barnes, Alford, Stork and Johnson, August 1998-June 2006. Associate/Partner. My practice consisted of more than half workers' compensation. I also dealt with medical malpractice, construction and general litigation, and appellate advocacy.

I have no experience in criminal matters. I worked on one post-conviction relief case while I was practicing. I recently, however, spent

six months on the Richland County Grand Jury as a juror. Because of that, I spent time studying the elements of various felonies and received first-hand knowledge of the grand jury. I feel strongly that with study and a period of observation, I can confidently preside over criminal proceedings.

Before being appointed to the Workers' Compensation Commission, my practice was a defense practice mostly before state court and the South Carolina Workers' Compensation Commission. My practice was approximately 75% workers' compensation. I also worked on medical malpractice cases. I did some work on construction litigation and general litigation as well. Because of my clerking background, I did a fair amount of the firm's appellate work on various issues. I have argued various motions before the circuit court and federal district court, tried cases before the Workers' Compensation Commission and magistrate's court, and appeared before the South Carolina Court of Appeals and South Carolina Supreme Court.

15. What is your rating in Martindale-Hubbell?
As a Workers' Compensation Commissioner, I am not listed.
16. What was the frequency of your court appearances during the past five years?
 - (a) federal: 5%;
 - (b) state: 95%.
17. What percentage of your practice involved civil, criminal, domestic, and other matters during the past five years?
 - (a) civil: 99%;
 - (b) criminal: 0%;
 - (c) domestic: 1%;
 - (d) other: 0%.
18. What percentage of your practice in trial court during the past five years involved matters that went to a jury, including those that settled prior to trial?
 - (a) jury: 25% associate counsel;
 - (b) non-jury: 75% lead counsel.
19. List five of the most significant litigated matters you have personally handled in either trial or appellate court or before a state or federal agency. Give citations if the cases were reported and describe why these matters were significant.
 - (a) MB Kahn Construction Co, Inc. v. Three Rivers Bank & Trust Co.
354 S.C. 412, 581 S.E.2d 481 (2003)
This case revolved around whether South Carolina had personal jurisdiction over a plaintiff for cross-claims in a foreclosure action. The supreme court decided the issue on one of the grounds argued.
 - (b) Dawkins v. Jordan, 341 S.C. 434, 534 S.E.2d 700 (2000)
This case involved whether an employer/employee relationship existed between the workers' compensation claimant and the employer. Although I lost this case at the Supreme Court, after winning below, the Supreme Court recently reversed itself and overruled this case.

- (c) William White v. SCE&G
This workers' compensation case involved whether the claimant could recover for mental injuries without underlying physical injuries. The case went through many levels of appeals with the defendants prevailing.
 - (d) Norman McIntyre v. Darlington County School District
This workers' compensation case involved the heart attack standard and the doctrine of laches.
 - (e) Sandy v. Miller Tire
This worker's compensation case involved issue of notice and injury by accident arising out of and in the course and scope of employment. The case went through many levels of appeals.
20. List up to five civil appeals you have personally handled. Give the case name, the court, the date of decision, and the citation if the case was reported.
- (a) Brunson v. American Koyo Bearings, 367 S.C. 161, 623 S.E.2d 870 (Ct. App. 2006), decided November 28, 2005 by the South Carolina Court of Appeals.
 - (b) M.B. Kahn Construction Co. v. Three Rivers Bank & Trust Co., 354 S.C. 412, 581 S.E.2d 481 (2003), decided May 19, 2003 by the South Carolina Supreme Court.
 - (c) Dawkins v. Jordan, 341 S.C. 434, 534 S.E.2d 700 (2000), decided July 10, 2000 by the South Carolina Supreme Court.
 - (d) Gray v. Club Group, LTD., 339 S.C. 173, 528 S.E.2d 435 (Ct. App. 2000), decided February 22, 2000 by the South Carolina Court of Appeals
 - (e) William White v. SCE&G, not cited.
21. List up to five criminal appeals that you have personally handled. Give the case name, the court, the date of decision and the citation if the case was reported. None
22. Have you ever held judicial office? No
24. Have you ever held public office other than judicial office?
Commissioner, S.C. Workers' Compensation Commission from July, 2006 to present. Chairman from July, 2008 to present.
This is an appointed position. I have timely filed my report with the State Ethics Commission during the period I have held the office.
25. List all employment you had while serving as a judge (whether full-time or part-time, contractual or at will, consulting or otherwise) other than elected judicial office. Specify your dates of employment, employer, major job responsibilities, and supervisor. Not applicable
26. Have you ever been an unsuccessful candidate for elective, judicial, or other public office?
In 2009, I was an unsuccessful candidate for Circuit Court, Judge, At Large, Seat 8.

27. Have you ever been engaged in any occupation, business, or profession other than the practice of law, teaching of law, or holding judicial or other public office?
- (a) Manager, Ripley's Believe It or Not! Museum, New Orleans, Louisiana, 1989-91;
- (b) Associate Editor, Sporting Classics magazine, 1991.
28. Are you now an officer or director or involved in the management of any business enterprise? No
29. A complete, current financial net worth statement was provided to the Commission.
30. Describe any financial arrangements or business relationships you have, or have had in the past, that could constitute or result in a possible conflict of interest in the position you seek. Explain how you would resolve any potential conflict of interest.

Before my appointment to the Commission, I represented insurance carriers and employers. If there was a possible conflict, I would inform the parties and recuse myself unless the parties waived the conflict.

31. Have you ever been arrested, charged, or held by federal, state, or other law enforcement authorities for violation or for suspicion of violation of any federal law or regulation, state law or regulation, or county or municipal law, regulation, or ordinance, or any other law, including another country's law? No.
32. Have you, to your knowledge, ever been under federal, state, or local investigation for possible violation of a criminal statute? No
33. Has a tax lien or other collection procedure ever been instituted against you by federal, state, or local authorities? Have you ever defaulted on a student loan? Have you ever filed for bankruptcy? No
34. Have you ever been sued, either personally or professionally, that is, have you ever been named as defendant or respondent in any court of law? No
36. Have you ever been investigated by the Department of Social Services? If so, give the details and the resolution. Has your name ever been enrolled on the Central Registry of Child Abuse and Neglect? No
37. Are you now or have you ever been employed as a "lobbyist," as defined by S.C. Code § 2-17-10(13), or have you acted in the capacity of a "lobbyist's principal," as defined by S.C. Code § 2-17-10(14)? No
38. Since filing with the Commission your letter of intent to run for judicial office, have you accepted lodging, transportation, entertainment, food, meals, beverages, money, or any other thing of value as defined by S.C. Code § 2-17-10(1) from a lobbyist or lobbyist's principal?

As a commissioner, I was a speaker at the annual meeting of the S.C. Association for Justice, a lobbyist's principal, on August 5-7, 2010. I received food and lodging while at the conference.

39. S.C. Code § 8-13-700 provides, in part, that "[n]o public official, public member, or public employee may knowingly use his official office,

membership, or employment to obtain an economic interest for himself, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated." Please detail any knowledge you have of any formal charges or informal allegations against you or any other candidate for violations of these provisions. None

40. S.C. Code § 8-13-765 provides, in part, that "[n]o person may use government personnel, equipment, materials, or an office building in an election campaign." Please detail any knowledge you have of any formal charges or informal allegations against you or any other candidate for violations of these provisions. None
41. Itemize (by amount, type, and date) all expenditures, other than those for travel and room and board, made by you, or on your behalf in furtherance of your candidacy for the position you seek. None
42. List the amount and recipient of all contributions made by you or on your behalf to members of the General Assembly since the announcement of your intent to seek election to a judgeship. None
43. Have you directly or indirectly requested the pledge of any member of the General Assembly as to your election for the position for which you are being screened? Have you received the assurance of any public official or public employee that they will seek the pledge of any member of the General Assembly as to your election for the position for which you are being screened? No
44. Have you requested a friend or colleague to contact members of the General Assembly on your behalf? Are you aware of any friends or colleagues contacting members of the General Assembly on your behalf? No
45. Have you or has anyone acting on your behalf solicited or collected funds to aid in the promotion of your candidacy? No
46. Have you or has anyone acting on your behalf contacted members of the Judicial Merit Selection Commission about your candidacy or intention to become a candidate? No
47. List all bar associations and professional organizations of which you are a member and give the titles and dates of any offices you have held in such groups. S.C. Bar
48. List all civic, charitable, educational, social, and fraternal organizations of which you are or have been a member during the past five years and include any offices held in such a group, any professional honors, awards, or other forms of recognition received and not listed elsewhere.
 - (a) Ex officio board member of the S.C. Workers' Compensation Education Association
 - (b) President of the Ladies' Guild at St. Mark's Catholic Church
49. Provide any other information that may reflect positively or negatively on your candidacy, or which you believe should be disclosed in connection with consideration of you for nomination for the position you seek.

Because of my position as a workers' compensation commissioner, I have experience in hearing contested cases, running a courtroom, dealing with attorneys and their clients as well as dealing with pro se litigants. I also have experience in ruling on cases and issuing orders. Although I have a great deal of academic ability, I also have the common sense and temperament to be an effective judge.

50. References:

- (a) Weldon R. Johnson
Barnes, Alford, Stork & Johnson
P.O. Box 8448
Columbia, S.C. 29202
803-799-1111
- (b) Charlie E. Nash
2272 South Waccamaw Drive
Garden City, S.C. 29576
843-651-0959
- (c) William P. H. Fincher
Harrison, Fincher & Associates, Inc.
P. O. Box 7428
Columbia, S.C. 29202-7428
803-254-0330
- (d) John J. Hearn
Rogers Townsend & Thomas
P.O. Box 100200
700 Gervais St.
Columbia, S.C. 29201
803-771-7900
- (e) Jason Hutto, Branch Manager
First Palmetto Saving Bank
3932 Forest Drive
Columbia, S.C. 29204
803-782-7030

YOUR SIGNATURE WILL BE HELD TO CONSTITUTE A WAIVER OF THE CONFIDENTIALITY OF ANY PROCEEDING BEFORE A GRIEVANCE COMMITTEE OR ANY INFORMATION CONCERNING YOUR CREDIT.

I HEREBY CERTIFY THAT MY ANSWERS ARE TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

Signature: Andrea Roche

Date: August 9, 2010

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

Circuit Court
(New Candidate)

Full Name: Andrea Culler Roche
Business Address: 1333 Main St., Suite 500
Post Office Box 1715
Columbia, SC 29202
Business Telephone: (803) 737-5678

1. Why do you want to serve as a Circuit Court judge?
I believe my abilities are such that I would make an extremely competent and fair judge. I would enjoy using these abilities to serve the people 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?
Not if elected.
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?
Generally, *ex parte* communications should not be permitted. The Code of Judicial Conduct provides for limited and specific circumstances whereby *ex parte* communications are permitted, such as an emergency or where the parties have consented.
6. 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 disqualify himself in a proceeding in which the judge's impartiality might reasonable be questioned. Each situation is different, but the judge should disclose information the lawyers might consider relevant to the question of disqualification.
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 hear the motion and grant the recusal if I thought my impartiality might reasonably be questioned.
8. How would you handle the appearance of impropriety because of the financial or social involvement of your spouse or a close relative?
A judge must at all times avoid even the appearance of

impropriety. If my impartiality might reasonably be questioned, I would recuse myself.

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

In my position as workers' compensation commissioner, I do not accept gifts or social hospitality from anyone likely to appear before me. Although the Code of Judicial Conduct allows it in certain circumstances, I plan to continue to refuse gifts and social hospitality from anyone likely to appear before me.

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

I would take appropriate action that may include direct communication with the judge or lawyer, other direct action, if available, and reporting the violation to the appropriate authority. If the violation raises a substantial question as to honesty, trustworthiness, or fitness, 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? No.

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

Depending on the order, I would either draft it myself or request proposed orders from the attorneys to be modified by me as appropriate.

14. If elected, what methods would you use to ensure that you and your staff meet deadlines? I will institute a deadline system that contains a back up in order to ensure nothing slips through.

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

I believe a judge should confine decisions to reasonable interpretations of the laws. It is not a judge's duty to create law. Although a judge may consider public policy rendering a decision, a judge should not set or promote his or her own idea of public policy.

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 plan to participate in any way I can in efforts to improve the law, legal system, and administration of justice, including speaking, writing, and teaching.

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 would address it by early and open communication.

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 sentence as provided by law, taking into account all circumstances that are properly considered in sentencing.

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

I would sentence as provided by law, taking into account all circumstances that are properly considered in sentencing.

c. White collar criminals:

I would sentence as provided by law, taking into account all circumstances that are properly considered in sentencing.

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

I would sentence as provided by law, taking into account all circumstances that are properly considered in sentencing.

e. Elderly defendants or those with some infirmity:

I would sentence as provided by law, taking into account all circumstances that are properly considered 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?

Yes, unless my impartiality might reasonably be questioned.

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 should be patient, dignified, and courteous to all.

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?

Seven days a week, twenty-four hours a day.

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 feel it is appropriate for a judge to show anger.

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.

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/Andrea C. Roche

Sworn to before me this 9th day of August, 2010 _____

Notary Public for S.C.

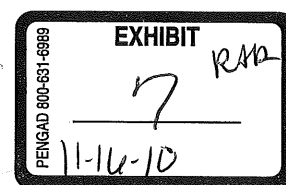
My Commission Expires: 1-18-2015 _____

JUDICIAL MERIT SELECTION COMMISSION
PERSONAL DATA QUESTIONNAIRE

Court, Position, and Seat # for which you are applying:

Circuit Court, Fifth Judicial Circuit, Seat 1

1. NAME: DeAndrea Gist Benjamin
BUSINESS ADDRESS: 4400 North Main Street
Columbia, S.C. 29203
E-MAIL ADDRESS: deandreabenedict@gistlawfirm.com
TELEPHONE NUMBER: (office): 803-771-8007
2. Date of Birth: 1972
Place of Birth: Columbia, S.C.
3. Are you a citizen of South Carolina? Yes
Have you been a resident of this state for at least the immediate past five years? Yes
5. Family Status: Married on June 8, 2002, to Stephen K. Benjamin. Never divorced. Two children.
6. Have you served in the military? No
7. List each college and law school you attended, including the dates of your attendance, the degrees you received, and if you left an institution without receiving a degree, the reason for your departure.
 - (a) Winthrop University – August 1990 – May 1994
 - (b) USC School of Law – August 1994 – May 1997
8. List the states in which you have been admitted to practice law and the year of each admission. Also list any states in which you took the bar exam but were never admitted to the practice of law. If you took the bar exam more than once in any of the states listed, please indicate the number of times you took the exam in each state.
 - (a) South Carolina - November 18, 1997
 - (b) Federal District Court of South Carolina – September 21, 2001
 - (c) Fourth Circuit Court of Appeals – November 18, 2002
9. List the significant activities in which you took part during your attendance at college, graduate, and law school. Give the dates you were involved in these activities and list any leadership positions you held.
 - (a) Winthrop University – Political Science National Honor Society (1993-94), Delta Sigma Theta Sorority, President (1992-94);
 - (b) USC School of Law – Student Bar Association, Executive Council (1994-97), Black Law Students Association (1994-97), Women in the Law (1994-97), W.G. Kellogg Foundation Child Advocacy Fellow (1996).
10. Describe your continuing legal or judicial education during the past five years. Include only the title and date of any continuing legal or judicial education course completed.



- | | <u>Conference/CLE Name</u> | <u>Date(s)</u> |
|-----|---|---------------------|
| | (a) Investigation and Prosecution of CDV | June 16, 2010; |
| | (b) Domestic Litigation | May, 21, 2010; |
| | (c) Child Welfare in S.C. | January 23, 2010; |
| | (d) Criminal Law Update | January 22, 2010; |
| | (e) S.C. Bar Family Law Update | January 22, 2010; |
| | (f) S.C. Black Lawyers Annual Conference | October 1, 2009; |
| | (g) Ethics 2008 | July 14, 2009; |
| | (h) 24 th Annual Criminal Law Update I & II | January 23, 2009; |
| | (i) S.C. Black Lawyers Annual Conference | October 30, 2008; |
| | (j) Ethics 2007 | July 14, 2008; |
| | (k) CDV: Law Enforcement Response | October 10, 2008; |
| | (l) A Day in Discovery Part 2 | January 26, 2008; |
| | (m) 23 rd Annual Criminal Law Update I & II | January 25, 2008; |
| | (n) STOP Domestic Violence | July 19, 2007; |
| | (o) Ethical Considerations in Criminal Cases | June 29, 2007; |
| | (p) 22 nd Annual Criminal Law Update I & II | January 26, 2007; |
| | (q) S.C. Bar Young Lawyers Division CLE | January 28, 2007; |
| | (r) S.C. Black Lawyers Retreat | September 28, 2006; |
| | (s) STOP Domestic Violence | September 21, 2006; |
| | (t) 21 st Annual Criminal Law Update I & II | January 27, 2006; |
| | (u) Orientation School for Municipal Judges | July 25, 2005; |
| | (v) S.C. Black Lawyers Retreat | October 2004; |
| | (w) ABA Young Lawyers Division Meeting | August 5, 2004; |
| | (x) Electronic Courtroom | March 24, 2004; |
| | (y) 19 th Annual Criminal Law Updates | January 23, 2004. |
| 11. | Have you taught law-related courses or lectured at bar association conferences, educational institutions, or continuing legal or judicial education programs? | |
| | (a) While employed at the Attorney General's Office, I assisted in training Summary Court Judges Criminal Domestic Violence classes. (1999-2001); | |
| | (b) S.C. Black Lawyers Association – Family Law Panel Discussion (Fall 2008); | |
| | (c) I have also presented to the Young Lawyers Division Section at the Division's Conferences in the past; | |
| | (d) I recently presented at a Family Court Seminar on the drafting of Family Court orders. (May 2010). | |
| 12. | List all published books and articles you have written and give citations and the dates of publication for each. | |
| | "Why Doesn't She Leave? The Psychology of a Domestic Violence Victim." The American Bar Association Affiliate Newsletter, Volume 26 Number 2, Nov/Dec 2000. | |

13. List all courts in which you have been admitted to practice and list the dates of your admission. Give the same information for administrative bodies that require a special admission to practice.
- (a) Admitted to practice before the State Courts of South Carolina on November 18, 1997;
 - (b) Also admitted to practice before the S.C. Federal District Court on September 21, 2001, and Fourth Circuit Court of Appeals on November 18, 2002.
14. Describe chronologically your legal experience since graduation from law school and include a list of all law firms with which you have been associated. Describe the general character of your practice and divide it into periods with dates if its character has changed over the years.
- (a) South Carolina Judicial Department, Judicial Law Clerk, The Honorable L. Casey Manning. (August 1997–August 1998);
 - (b) Fifth Circuit Solicitor’s Office, Assistant Solicitor, Juvenile/Family Court Division. (August 1998–November 1999) – I prosecuted felonies and misdemeanors involving juvenile offenders. I also served on the local Juvenile Drug Court;
 - (c) South Carolina Attorney General’s Office, Assistant Attorney General (November 1999–July 2001). I was assigned to the prosecution division where I prosecuted cases involving violent acts against women and children, sexual assault offenses, elder abuse cases, and civil commitments under the Sexually Violent Predator (SVP) law;
 - (d) South Carolina Juvenile Parole Board, Member and Vice Chair (July 2001–June 2004). I was a member of a ten-member board that presided over the retention and release of juveniles from the South Carolina Department of Juvenile Justice. I served as Vice-Chair from July 2002–June 2003;
 - (e) Gist Law Firm, Partner (July 2001–present). I am a partner in my family law firm. I handle all of the family court cases in our office. My family law practice includes marital litigation, child custody disputes, child support cases, DSS abuse and neglect cases, adoptions, and representation of juveniles in family court. My practice also includes Employment Law, Criminal law, and some Personal Injury work. I have also been appointed in the past to serve as a Guardian ad Litem in DSS cases and in child custody disputes;
 - (f) City of Columbia Municipal Court, Municipal Judge (July 2004–present). Presides over the municipal courts for the City of Columbia. I handle misdemeanor criminal and traffic offenses, specialized Criminal Domestic Violence court and Quality of Life court. I preside over a term of Jury Trials every six weeks.

If you are a judge and are not seeking a different type of judgeship, the following questions are inapplicable:

- (b) If you are a candidate for Circuit Court, please provide a brief written description of your experience in criminal matters, including any cases handled over the past five years and include a brief description of the issues involved. Further, please provide a brief written description of your experience in civil matters, including any cases handled over the past five years and include a brief description of the types of matters handled, issues involved, and procedural history. Please include information such as the primary areas in civil court in which you practice, whether you represent plaintiffs or defendants, or both. You may go back further than five years if you feel it would assist the Commission with its assessment of your experience. If you lack experience in an area, describe how your background has prepared you to preside over such matters as a Circuit Court Judge, or how you would compensate for your lack of experience in this area.

Criminal Court – My criminal experience as an attorney dates back to my days as an Assistant Solicitor in the Richland County Solicitor's office. I was assigned to the Juvenile prosecution section and handled detention hearings, juvenile trials, Juvenile truancy cases and I participated on the Juvenile Drug Court team.

After leaving the Solicitor's office, I worked in the Prosecution division of the Attorney General's Office. There I was assigned as a special prosecutor handling Violence against Women and children matters. I traveled the state prosecuting criminal domestic violence cases, criminal sexual conduct cases, criminal sexual conduct with minor cases and other related offenses. I also was assigned to handle elder abuse cases and serve on the Elder Abuse interagency task force.

I entered private practice when I left the Attorney General's office and handled criminal matters of all types in State court. I also was appointed to serve on the Juvenile Parole Board from 2001-04. I was elected by the board as Vice-Chair from 2002-03.

I currently serve as a Municipal Judge for the City of Columbia. I handle a range of misdemeanor crimes to include Criminal Domestic Violence cases and Driving Under the Influence cases. I have been a Municipal Judge for the past six years. I preside over bond court, criminal court, preliminary hearings and jury trials.

Civil Court - While employed at the Attorney General's office I was assigned to handle the then new Civil Commitments of Sexually Violent Predators. I handled these cases statewide and won one of the first jury trials of this kind.

In addition to working part-time at the City of Columbia municipal court, I practice law with my father at the Gist Law Firm. Our office focuses on employment law, family law, contract law, and civil litigation. Most of our work is representing Plaintiffs although at

times, we have represented defendants. A huge part of our employment practice is in federal court with the remaining part of our civil practice being in state court. I have primarily handled contract disputes and personal injury matters in state court.

15. What is your rating in Martindale-Hubbell?

I do not have a Martindale-Hubbell rating. I have never applied for a rating.

16. What was the frequency of your court appearances during the past five years?

(a) federal: A part of my private practice is employment law. I currently have five pending Civil Federal Court cases.

(b) state: I appear in the Family Court bi-weekly, Court of Common Pleas bi-monthly, and I handle approximately 5-6 criminal cases a year in my private practice and I exclusively handle criminal matters as a Municipal Judge. I have limited my criminal private practice due to potential conflicts with my Municipal Judgeship and City of Columbia criminal cases.

17. What percentage of your practice involved civil, criminal, domestic, and other matters during the past five years?

(a) civil: 40%;

(b) criminal: 10% of my private practice, 100% of my Municipal Court work is criminal;

(c) domestic: 50% of my private practice is domestic;

(d) other: 0%.

18. What percentage of your practice in trial court during the past five years involved matters that went to a jury, including those that settled prior to trial?

(a) jury: 40%;

(b) non-jury: 60%.

Did you most often serve as sole counsel, chief counsel, or associate counsel in these matters?

My law partner and I work together during federal court trials; I solely handle my Family Law trials and civil trials.

19. List five of the most significant litigated matters you have personally handled in either trial or appellate court or before a state or federal agency. Give citations if the cases were reported and describe why these matters were significant.

(a) Weston v. Margaret J. Weston Medical Center – This was a contract dispute between my client and his former employer. It was significant because my client was a trailblazing doctor who was wronged by his employer. The jury returned a verdict in my client's favor. The case was appealed to the S.C. Court of Appeals and S.C. Supreme Court where both courts upheld the jury's verdict.

(b) In the Matter of the Care and Treatment of Billy Ray Tucker – I tried this case in Aiken County not long after the Sexually Violent Predator

Law was enacted. This case was one of the first cases that was tried and won under the Sexually Violent Predator Law.

- (c) McKinney vs. Richland County Sheriff's Department (431 F.3d 415, 4th Cir. 2005) – This was a civil action in the Federal District Court of South Carolina. My client was successful at the District level and the Defendant appealed the case to the Fourth Circuit Court of Appeals. Although the case was not decided in my clients favor, it afforded me the opportunity to appear before the Fourth Circuit Court of Appeals in Richmond, Virginia.
- (d) Staley v. Brown – This was a family court child support/child custody case that was tried in Richland County. The issues in the case dealt with child support outside the guidelines and custody of an incorrigible child. My client ultimately prevailed in a case where the custodial parent was seeking an increase in support and a significant amount of attorney's fees and cost.
- (e) State vs. Adam Self – This was a Criminal Domestic Violence Case that I handled in Lexington County involving a husband that not only abused his wife but assaulted his mother in law. The Defendant was sentenced to jail time, the wife later made a plea to the court to have his sentence lifted because of the financial hardship on her family. This case sparked a debate about the financial sustainability of a family when the husband is incarcerated for domestic abuse.

20. List up to five civil appeals you have personally handled. Give the case name, the court, the date of decision, and the citation if the case was reported.
McKinney vs. Richland County Sheriff's Department, 431 F.3d 415 (4th Cir. 2005)

21. List up to five criminal appeals that you have personally handled. Give the case name, the court, the date of decision and the citation if the case was reported. None

22. Have you ever held judicial office?

I am a City of Columbia Municipal Judge, I was appointed in July of 2004.

23. If the answer to question 22 is yes, describe or list five of your most significant orders or opinions and give the citations if they were reported. Also list citations to any appellate review of these orders or opinions.

As a Municipal Judge I handle traffic court, criminal court, Criminal Domestic Violence court and Quality of Life court. These cases do not usually warrant formal judicial opinions and orders other than form orders. I recently had a case upheld on appeal regarding the constitutionality of a City Ordinance, City of Columbia vs. Boatwright.

24. Have you ever held public office other than judicial office?

I served on the Juvenile Parole Board from July 2001–June 2004. I was appointed by Governor James H. Hodges, Jr. I timely filed all State Ethics reports.

25. List all employment you had while serving as a judge (whether full-time or part-time, contractual or at will, consulting or otherwise) other than elected judicial office. Specify your dates of employment, employer, major job responsibilities, and supervisor.

My current employment with the Gist Law Firm. I have been affiliated with the firm since July 2001 to present. I currently serve in the role of managing partner.

26. Have you ever been an unsuccessful candidate for elective, judicial, or other public office?

I had an unsuccessful bid for Family Court (Fifth Circuit Family Court Seat 1) in February 2010.

27. Have you ever been engaged in any occupation, business, or profession other than the practice of law, teaching of law, or holding judicial or other public office? No

28. Are you now an officer or director or involved in the management of any business enterprise? No

29. A complete, current financial net worth statement was provided to the Commission.

30. Describe any financial arrangements or business relationships you have, or have had in the past, that could constitute or result in a possible conflict of interest in the position you seek. Explain how you would resolve any potential conflict of interest. None

31. Have you ever been arrested, charged, or held by federal, state, or other law enforcement authorities for violation or for suspicion of violation of any federal law or regulation, state law or regulation, or county or municipal law, regulation, or ordinance, or any other law, including another country's law? No

32. Have you, to your knowledge, ever been under federal, state, or local investigation for possible violation of a criminal statute? No

33. Has a tax lien or other collection procedure ever been instituted against you by federal, state, or local authorities? No Have you ever defaulted on a student loan? No Have you ever filed for bankruptcy? No

34. Have you ever been sued, either personally or professionally, that is, have you ever been named as defendant or respondent in any court of law? No

36. Have you ever been investigated by the Department of Social Services? Has your name ever been enrolled on the Central Registry of Child Abuse and Neglect? No

37. Are you now or have you ever been employed as a "lobbyist," as defined by S.C. Code § 2-17-10(13), or have you acted in the capacity of a "lobbyist's principal," as defined by S.C. Code § 2-17-10(14)? No

38. Since filing with the Commission your letter of intent to run for judicial office, have you accepted lodging, transportation, entertainment, food, meals, beverages, money, or any other thing of value as defined by S.C. Code § 2-17-10(1) from a lobbyist or lobbyist's principal? No

39. S.C. Code § 8-13-700 provides, in part, that "[n]o public official, public member, or public employee may knowingly use his official office, membership, or employment to obtain an economic interest for himself, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated." Please detail any knowledge you have of any formal charges or informal allegations against you or any other candidate for violations of these provisions. None
40. S.C. Code § 8-13-765 provides, in part, that "[n]o person may use government personnel, equipment, materials, or an office building in an election campaign." Please detail any knowledge you have of any formal charges or informal allegations against you or any other candidate for violations of these provisions. None
41. Itemize (by amount, type, and date) all expenditures, other than those for travel and room and board, made by you, or on your behalf in furtherance of your candidacy for the position you seek. None
42. List the amount and recipient of all contributions made by you or on your behalf to members of the General Assembly since the announcement of your intent to seek election to a judgeship. None
43. Have you directly or indirectly requested the pledge of any member of the General Assembly as to your election for the position for which you are being screened? Have you received the assurance of any public official or public employee that they will seek the pledge of any member of the General Assembly as to your election for the position for which you are being screened? No
44. Have you requested a friend or colleague to contact members of the General Assembly on your behalf? Are you aware of any friends or colleagues contacting members of the General Assembly on your behalf? No
45. Have you or has anyone acting on your behalf solicited or collected funds to aid in the promotion of your candidacy? No
46. Have you or has anyone acting on your behalf contacted members of the Judicial Merit Selection Commission about your candidacy or intention to become a candidate? No
47. List all bar associations and professional organizations of which you are a member and give the titles and dates of any offices you have held in such groups.
- (a) S.C. Bar Board of Governors - 2007-09;
 - (b) S.C. Bar, Chair, Children's Law Committee - 2010-11;
 - (c) S.C. Bar, Chair, Young Lawyers Division - 2006-07;
 - (d) S.C. Bar, House of Delegates - 2002-09;
 - (e) S.C. Bar, Young Lawyers Division, Fifth Circuit Representative 2001-03;
 - (f) American Bar Association, Young Lawyers Division, District Representative - 2003-05;

- (g) American Bar Association, Minorities in the Profession Scholar–1998-99;
 - (h) Women Lawyers Association;
 - (i) S.C. Black Lawyers Association;
 - (j) Columbia Lawyers Association;
 - (k) Appleseed Legal Justice Center, Board Member.
48. List all civic, charitable, educational, social, and fraternal organizations of which you are or have been a member during the past five years and include any offices held in such a group, any professional honors, awards, or other forms of recognition received and not listed elsewhere.
- (a) Edventure Children's Museum;
 - (b) Congaree Girls Scouts;
 - (c) Appleseed Legal Justice Center Board;
 - (d) St. John Preparatory School Board;
 - (e) Columbia Alumnae Chapter of Delta Sigma Theta;
 - (f) USC Community Advisory Board.
49. Provide any other information that may reflect positively or negatively on your candidacy, or which you believe should be disclosed in connection with consideration of you for nomination for the position you seek.
- My experience as a prosecutor, private attorney, Parole Board Member, and Municipal Judge has afforded me the opportunity to practice in many areas of the law. My experience reflects positively upon my candidacy, I have experience in both civil law and criminal law.
- During my time as a Municipal Judge I have received excellent ratings from my peers, lawyers appearing before me, police officers, jurors and community members. I have been a fair and impartial judge and I believe in treating everyone with dignity and respect.
50. References:
- (a) Leitra Maxwell Young
527 River North Blvd
Macon, GA 31211
(478)-442-0671
 - (b) Aviance Davenport-Young
S.C. State Credit Union
800 Huger Street
Columbia, S.C. 29202
(803)-343-0300 (mailed directly)
 - (c) John Nichols
Bluestein, Nichols, Thompson & Delgado
1614 Taylor Street
Columbia, S.C. 29201
(803)-779-7599 (mailed directly)
 - (d) Vance Bettis, Esquire,
Gignilliat Savitz & Bettis. LLP

900 Elmwood Avenue
Columbia, S.C. 29202
(803)-799-9311 (mailed directly)
(e) Reverend Dr. Jamey O. Graham, Sr.
Saint John Baptist Church
3404 West Beltline Blvd
Columbia, S.C. 29204
(803)-254-4170 (mailed directly)

YOUR SIGNATURE WILL BE HELD TO CONSTITUTE A WAIVER OF THE
CONFIDENTIALITY OF ANY PROCEEDING BEFORE A GRIEVANCE COMMITTEE OR
ANY INFORMATION CONCERNING YOUR CREDIT.

I HEREBY CERTIFY THAT MY ANSWERS ARE TRUE AND COMPLETE TO THE BEST
OF MY KNOWLEDGE.

Signature: DeAndrea Benjamin

Date: August 5, 2010

<p style="text-align: center;">JUDICIAL MERIT SELECTION COMMISSION Sworn Statement to be included in Transcript of Public Hearings</p>
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Circuit Court
(New Candidate)

Full Name: DeAndrea Gist Benjamin
Business Address: 4400 North Main Street
Columbia, SC 29203
Business Telephone: 803-771-8007

1. Why do you want to serve as a Circuit Court judge?

I have served as Municipal Court Judge the last six years. I have enjoyed presiding over criminal matters and serving victims, members of the community and those who appear before me. My experience as a prosecutor, Juvenile Parole Board Member, private attorney and Municipal Judge has afforded me the knowledge to preside over all aspects of Circuit Court. My record as a Municipal Judge reflects my fairness, impartiality, and excellent temperament in the review and disposition of cases I preside over. I believe that I would be an asset to the Fifth Circuit Court Bench.

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 am 37 years old; I'm sure at some point I will return to private practice.

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?

Canon 3(B)(7) covers *ex parte* communications. Every Litigant or lawyer should have their cases heard according to the rules of law. This involves avoiding even the appearance of impropriety and a judge should not do or say anything that suggests one side has some advantage in appearing before the court. *Ex parte* communications in Circuit Court are proper under certain circumstances. For example: Administrative purposes; *Ex Parte* temporary restraining orders; With the consent of both parties

6. 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 herself in situations when the Judge cannot be fair and impartial. In my current role as a Municipal Judge for the City of Columbia, lawyer-legislators regularly appear before me, I am not affected by the appearance of lawyer-legislators, I give them

the same consideration and impartial decisions that I give other litigants who appear. My law partner is my father; it would be inappropriate for him to appear before me. I would also recuse myself from hearing any cases in which former associates of my firm are involved.

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 always disclose any relationship that I may have with a party. If the opposing party asked me to recuse myself, I would more than likely recuse myself. The public has a right to feel that they are getting a fair and impartial appearance before a judge and I would not want to compromise that.

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 recuse myself in situations where there is the appearance of financial gain by my spouse or other close relatives. I would consider cases where there is an appearance of social involvement by my spouse or close relative on a case-by-case basis. I would consider the extent of my spouse or relatives involvement in the organization, if they were directly involved in the issue before the court, and if I could be fair and impartial in my decision.

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

I would not accept gifts or social hospitality from litigants who have pending cases before me. I would report all gifts and social hospitality on my State Ethics Commission Statement of Economic Interest form.

10. How would you handle a situation in which you became aware of misconduct of a lawyer or of a fellow judge? I would report it to the appropriate authorities.

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

No. I have disclosed all boards that I am affiliated with in my application.

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?

I would use form orders in cases where it is appropriate. For orders that require more detail than a form order, I would draft them myself with the assistance of my law clerk or I would ask the lawyers to draft proposed orders and forward them to me electronically for review.

14. If elected, what methods would you use to ensure that you and your

staff meet deadlines?

I strongly believe in the tickler system on my calendar that reminds me of upcoming deadlines. I try to complete task days or weeks before my deadline. I would comply with all standards regarding deadlines that are set by the S.C. Supreme Court.

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

I believe that public policy is for the legislature to set. My job as a judge is to follow the black letter law.

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 think that people's perception of the legal system is determined by their experience before the court. My job as a judge would be to treat everyone with respect, dignity and fairness and to run a timely and efficient court. I would continue to participate with the S.C. Bar Association and to make legal presentations to attorneys and the community. I also enjoy educating students about the law and the judicial 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?

No. I have young children and I have worked since they were infants. I have a strong family support system.

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:

Defendants who have very little or no regard for the law and the community should be of serious concern to the court and handled in a tough and strict manner.

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

Juveniles who are waived up should be punished according to the crime. In dealing with juveniles the court should consider alternatives and treatment that may lead to a juvenile offender becoming a productive member of society after he or she completes their sentence.

It is the courts responsibility to insure that the juvenile is competent in understanding court proceedings.

- c. White collar criminals:

White collar crimes are no different than any other crime and should be treated the same.

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

In sentencing the court should consider the nature of the crime, the impact on victims and mitigating circumstances regarding the

Defendant and then make an informed decision.

e. Elderly defendants or those with some infirmity:

Elderly Defendants and those with infirmities should be evaluated to determine competency if necessary. Once again, in sentencing the court should consider the nature of the crime, the impact on victims and mitigating circumstances regarding the Defendant and then make an informed decision.

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? No
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?
Patience and good temperament.
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?
24 hours a day, seven days a week and 365 days a year.
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. Never.
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? Zero.
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/DeAndrea Benjamin

Sworn to before me this 5th day of August, 2010.

Notary Public for S.C.

My Commission Expires: 8-8-2011 _____

JUDICIAL MERIT SELECTION COMMISSION

In the Matter of: **DeAndrea Gist Benjamin**

Candidate for: **Judge in Seat 1, Fifth Judicial Circuit**

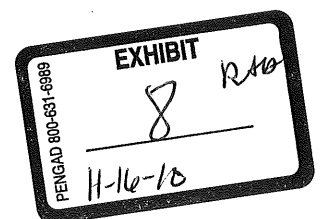
)
)
) **WITNESS AFFIDAVIT FORM**

I will appear to testify concerning the qualifications of the above-named candidate and will produce all documents in my possession, if any, which will further develop or corroborate my testimony.

I understand that this written statement must be completed and returned to the Judicial Merit Selection Commission at least five (5) days prior to the hearing at which I wish to testify in order for the commission to hear my testimony and that the deadline for complaints is

In regard to my intended testimony, I will offer information as to the following:

- (1) Set forth your full name, age, address, and both home and work telephone numbers. NAME: **Marie-Therese H. Assa'ad-Faltas, MD, MPH** AGE: **57** ADDRESS: **P.O. Box 9115, Columbia, SC 29290.** CELL PHONE: **(330) 232-4164** E-MAIL: **Marie_Faltas@hotmail.com**
- (2) Set forth the names, addresses, and telephone numbers (if known) of other persons who have knowledge of the facts concerning your testimony. **Please see the transcripts and copies of court records I will, God willing, e-mail to your Committee before noon on Tuesday, 2 November 2009. Generally, they relate to my three false arrests by Columbia's Police Department (CPD) on 2 and 12 December 2009 and 8 July 2010. That was a scheme to shake my family and me down. The witnesses are the judges, lawyers, witnesses, law enforcement officers, clerks and court reporters whose names appear in the transcripts and court documents and other exhibits to be timely e-mailed to you.**
- (3) State the nature of your testimony regarding the qualifications of the above-named judicial candidate, including: **Generally, a seat open after the Honorable Judge Kinard's retirement must be filled with someone approaching Judge Kinard's intellect and integrity. Neither Columbia Municipal "Judge" DeAndrea Gist Benjamin nor Fifth Circuit Deputy Solicitor John Meadors approaches the minimal requirements for that seat. As a municipal judge, appointed by City Council, DeAndrea Gist Benjamin was insensitive to conflicts of interest and the rights of defendants before her. She displayed little knowledge of the U.S. Constitution and a close mind to challenges to City of Columbia ordinances and to actions of City's police department (CPD). I wish to submit for your consideration the transcripts of two hearings before her: one where she would not even hear my argument that Columbia's "front-yard parking" ordinance is unconstitutional and the other where she claimed that "yelling and screaming" is not protected by the First Amendment. In the latter hearing, she bound me over for alleged "first-degree harassment" after refusing to allow me to fully question purported CPD Investigator Blanton on her conflict of interest and on the veracity and reliability of her alleged "victims" and witnesses. I had a 5-day jury trial in General Sessions Court where I defended myself *pro se* ably and was **not** convicted. Thereafter, I gathered irrefutable evidence from public records that the witnesses against me were suborned for perjury and the documents against me had been forged and fabricated. More shockingly, the CPD-made videos of my arrest and ransacking of my apartment and car on 2 December 2009 show Blanton displaying the warrants to her friend Larry Wayne Mason (a defendant in a civil suit I brought) and boasting "I signed them for you, Wayne." She then lies and claims they were "felony warrants" in order to have a sergeant threaten to knock down the door if I did not open. The charges are only misdemeanors and none of the allegations were committed in any law enforcement officer's presence. So, they had no right to arrest me at all. All I had done was maintain a neighborhood watch. Two alleged "victims" of my alleged "harassment" were known to CPD to be a drug dealer and a prostitute. I was arrested for allegedly "making them uncomfortable" when they came to my parking lot and threatened to rape me. As Chief Deputy Fifth Circuit Solicitor, John Meadors knew the charges against me were false and brought only to shake me and my family down. He took no action to halt that waste of taxpayers' money and attack on the integrity of the courts as temples of truth. To the contrary, when I tried to show him the evidence I had of my false accusers' perjury, he ran**



(figuratively crying like a baby) to Circuit Judge G. Thomas Cooper, Jr., falsely claimed I "harassed" Meadors by talking the elevator with him down to his car to tell him in details why he should exercise his supervisory duties and stop a retrial using fabricated evidence. While he is adamant *against* the innocent, Meadors showed little skills against the guilty. His office often "throws" DUI cases, possibly for a price. This is a danger to all of us. Meadors did not deserve the trust placed in him as a prosecutor. He does not deserve to be elevated to the bench. I seek an opportunity to testify live against both DeAndrea Gist Benjamin and John Meadors.

- (a) specific facts relating to the candidate's character, competency, or ethics, including any and all allegations of wrongdoing or misconduct on the part of the candidate; **Generally**, the candidate showed little respect for the U.S. Constitution, little sensitivity to conflicts of interest, and no care for the integrity of the courts (which are supposed to be temples of truth, not game parlors where the best liar wins) or the rights of the **innocent and unjustly-framed** criminal defendant.
- (b) specific dates, places, and times at which or during which such allegations took place; **Generally**, from November 2008 to the present.
- (c) names of any persons present during such alleged actions or possessing evidence of such alleged actions; **Generally**, please see the transcripts and other court documents and exhibits to be timely e-mailed to your Committee. A narrative with analysis will also be prepared and e-mailed.
- and (d) how this information relates to the qualifications of the judicial candidate. Because the candidate showed little respect for the U.S. Constitution, little sensitivity to conflicts of interest, and no care for the integrity of the courts (which are supposed to be temples of truth, not game parlors where the best liar wins) or the rights of the **innocent and unjustly-framed** criminal defendant.
- (4) Set forth a list of and provide a copy of any and all documents to be produced at the hearing which relate to your testimony regarding the qualifications of the judicial candidate. **Generally**, please see the transcripts and other court documents and exhibits to be timely e-mailed to your Committee. A narrative with analysis will also be prepared and e-mailed.
- (5) State any other facts you feel are pertinent to the screening of this judicial candidate. **Generally**, please see the transcripts and other court documents and exhibits to be timely e-mailed to your Committee. A narrative with analysis will also be prepared and e-mailed.

I understand that the information I have provided herein is confidential and is not to be disclosed to anyone except the Judicial Merit Selection Commission, the candidate and counsel.

WAIVER

I further understand that my testimony before the Judicial Merit Selection Commission may require the disclosure of information that would otherwise be protected by the attorney-client privilege. Therefore, in order that my complaint may be fully investigated by the commission, I hereby waive any right that I may have to raise the attorney-client privilege as that privilege may relate to the subject of my complaint. I further understand that by waiving the attorney-client privilege for this matter, I am authorizing the commission to question other parties, including my attorney, concerning the facts and issues of my case.

Signature

Affirmed and subscribed to me before me this **first** day of **November** 2010,

L.S.

Notary Public of South Carolina, My commission expires: _____

**DEANDREA GIST BENJAMIN
4400 NORTH MAIN STREET
COLUMBIA, SOUTH CAROLINA 29203
(803) 771-8007
(803) 771-0063 (Facsimile)**

November 10, 2010

Jane Shuler
SC Senate Judiciary Committee
P.O. Box 142
Columbia, SC 29202

Re: Dr. Maria Faltas

Dear Mrs. Shuler:

Please accept this letter and its attachments as my formal response to Dr. Faltas's complaint.

I am a Municipal Judge with the City of Columbia Municipal Court. I have held this position since July 2004. I preside over misdemeanor criminal violations, traffic violations, code violations and preliminary hearings. I am also scheduled to preside over a term of jury trials every 4-6 weeks.

In my position as a Municipal Judge, I have had numerous encounters with Dr. Maria Faltas. Dr. Faltas is a perpetual litigant who frequently appears before me. I have always been more than patient and respectful to Dr. Faltas. I have afforded her an opportunity to be heard and I have always treated her fairly. Dr. Faltas insists on appearing Pro Se and makes every attempt to delay matters before the court. When the court does not agree with her position and rules against her, Dr. Faltas becomes irate and disrupts court proceedings.

On December 19, 2008, Dr. Faltas appeared before me with countless motions regarding her front yard parking violation. She was informed that her case was scheduled for December 20, but insisted on being heard despite not appearing on the docket. On December 20, 2008, Dr. Faltas appeared before me again regarding the same charge. She was afforded the opportunity to be heard, we selected a jury and attempted to proceed with the trial. During the State's opening statement, Dr. Faltas would interrupt the prosecutor and make loud outbursts.

Dr. Faltas filed a motion questioning the constitutionality of the City's Ordinance. I heard arguments from Dr. Faltas and the City's attorney. After consideration of the law and the arguments of the parties, I determined that the ordinance was constitutional. I am sure that Dr. Faltas has appealed my ruling. I am unsure as to the status of that appeal.

After realizing that I was not going to dismiss her case, Dr. Faltas became angry with me. Shortly thereafter she said that she began to feel ill and was unable to proceed. I called an ambulance and she was transported to Palmetto Richland.

On December 21st, Dr. Faltas contacted me from Palmetto Richland. She informed me that she was still in the hospital; I informed her that I would declare a mistrial.

On January 6, 2010, I was presiding over Preliminary Hearings. Dr. Faltas appeared on my docket in regards to a harassment charge against her that was pending in General Sessions. In handling Preliminary Hearings the court must determine if probable cause existed to arrest a Defendant. Testimony is usually provided by the arresting officer or investigator assigned to the case. On an average Preliminary Hearings last 15-30 minutes, an average of 10-20 cases appear on the docket.

On the day in question, Dr. Faltas made numerous motions to include a motion for me to recuse myself because I was appointed by City Council. I informed her that all of the City of Columbia Judges are appointed by City Council and that there was no conflict. After further inquiry, she explained that she was suing the City of Columbia and that it was a conflict of interest for me or any city judge to preside over her case. I informed her that I was not aware of any suit and denied her motion. During any appearance before the court, Dr. Faltas motions the court to relieve itself for a variety of reasons in an attempt to delay proceedings.

The Preliminary Hearing proceeded with Dr. Faltas making countless motions to dismiss her case. After hearing 2 ½ hours of testimony, cross-examination by Dr. Faltas, and motions, I determined that probable cause existed and bound over the case to General Sessions. It is my understanding that at a later date that there was a week long trial in which there was a hung jury.

I have enclosed copies of orders limiting Dr. Faltas access to the Supreme Court, Richland County Courthouse and City of Columbia Municipal Court. On recent occasions Dr. Faltas has had to be removed from the City of Columbia Municipal Court because of her behavior. I have enclosed an incident report for your review. She has begun to behave in a harassing manner through visits, phone calls and even following Judges to their cars.

I have also enclosed a copy of the transcripts from the preliminary hearing and trial that she refers to in her complaint. After reviewing these transcripts you will see that I have always treated Dr. Faltas fairly and with respect. I have afforded her every opportunity to be heard and I have been more than tolerant and patient with her.

Dr. Faltas' complaints against me are frivolous and lack merit. I will be more than happy to answer any further questions that you may have.

Sincerely,


DeAndrea Gist Benjamin

**JOHN P. MEADORS
237 SPRING LAKE ROAD
COLUMBIA, SC 29206**

TO: Judicial Selection Commission Members
FROM: John P. Meadors
RE: Amendment to Personal Data Questionnaire

Please add the following case under question 34 on my Personal Data Questionnaire:

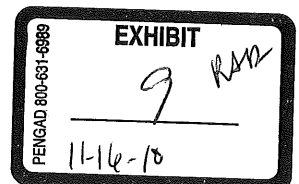
Lawrence Crawford #300839 vs. SC Attorney Generals Office; John Meadors; W. Barney Giese; Ronald W. Moak; Dr. Joel Sexton; and Janice E. Ross.

Mr. Crawford was tried, convicted and sentenced to life imprisonment in March 2004 in Kershaw County General Sessions Court for the murder of his eleven (11) year old daughter. Mr. Crawford's complaint was dismissed by United States District Judge Terry L. Wooten on December 18, 2006. Please see the attached report and recommendation by United States Magistrate Judge Bristow Marchant and the order dismissing the action by Judge Wooten.

Also, please substitute the letter of recommendation by attorney Jack Swerling with the attached letter from Mrs. Helen Zoch. Mrs. Zoch's address is 201 Ashton Hill Drive, Columbia, SC 29229.

Thank you.

Attachments



November 5, 2010

Attention : The Members of the Judicial Commission, Columbia, South Carolina


On behalf of John Meadors, we would like to state that in 2006, we were victims of a violent crime, have lost a wonderful Grandson, at the age of 19 years old. Joshua was murdered in his home in Kershaw County, at the hands of three violent young men. We met the Prosecuting Attorney, John Meadors, in January 2007, at a Bond Hearing for the murderers. Our hearts sank just thinking that these criminals might be allowed back on the streets of Columbia NE. We feared who they might attack next. Possibly us.

Upon meeting Mr. Meadors, he immediately calmed our family, in as much as, we were able to feel he was a Caring individual and we could Trust his guidance when we were completely lost at a horrible time in our lives. It was evident he had the Respect of the Court, the Sheriffs Department, and of all entities involved. He always did what he said he intended to do. He is an Honest, Ethical, Moral man. He is Knowledgeable, Fair & open minded to all concerned. We believe He desires to make our communities safer and a better place for all to live. It takes a disciplined individual to have the Courage, John has, to stand up to criminals, their families, and Defense Attorneys. When we were frightened to tears, He was kind, compassionate, empathetic and considerate of our fears and needs. He was strong for the Prosecution and never backed down during 8 days of a murder trial in May, 2008. It was remarkable to watch this man Prosecute not one criminal; but three in one trial. He presented material to the Jury and pulled together incriminating evidence that was unbelievable and astounding. He is persistent and follows the letter of the law making explanations that are clear and understandable to families in distress.

We highly recommend John Meadors would make an excellent Judge. This gentleman carries himself well in the Court Room and a moral force is present when he speaks. He thinks before he acts and is very quick to respond. He has the Courage to do the right thing for all. He will work to obtain the sentence for the perpetrator that fits the crime and follows through to the absolute end. His methods are well thought out, and in the ultimate end, the sentence will fit the crime. He stays driven to the end of his case. We believe that John has excellent qualities, is responsible, and has the character our community would want in a Judge. He would serve the community well having the ability to deal peacefully with criminal behavior.

Our hearts remain heavy with our loss. We know placing John Meadors in a Court Room as a Judge would definitely be an Asset to our Judicial System. Our Family had every confidence in his knowledge that he was doing his best for our dear Joshua; and that the guilty parties in his murder will spend as much time incarcerated as the law allows. Please consider this expertly qualified individual for the position of a Judge.

Sincerely,

John & Helen Zoch

United States District Court
District of South Carolina

Lawrence Crawford, #300839;)	C/A No. 0:06-0908-TLW-BM
)	
Plaintiff;)	
)	
vs.)	Report and Recommendation
)	
SC Attorney Generals Office; John Meadors; W. Barney)	
Giese; Ronald W. Moak; Dr. Joel Sexton; and Janice E.)	
Ross;)	
)	
Defendants.)	
)	

The Plaintiff, Lawrence Crawford Nelson, a state prisoner proceeding *pro se*, seeks relief pursuant to Title 42 United States Code § 1983. Plaintiff is incarcerated at the Lieber Correctional Institution in Ridgeville, South Carolina.

In March 2004, Plaintiff was tried, convicted and sentenced to life imprisonment in the Kershaw County Court of General Sessions for the beating murder of his eleven-year-old daughter, Korresha Crawford. See State v. Crawford, 2004-GS-28-0385. Plaintiff sues the Attorney General of South Carolina, the Solicitor for the Fifth Judicial Circuit (Defendant Giese), two assistant solicitors (Defendants Meadors and Moak), together with two forensic pathologists who presumably testified at his criminal trial. The Complaint is a rambling twelve page attack on all of the Defendants, with references also to various investigators, the Kershaw County Department of Social Services, and his own appellate counsel. Plaintiff has also sued the State of South Carolina in the Richland County Court of Common Pleas. See Crawford v. State of South Carolina, 2006-CP-40-0549. That action was dismissed in February 2006, and Plaintiff attaches handwritten copies of various papers apparently filed in that case. Their relevance to this action is not clear. Plaintiff does



not demand an award of monetary damages for his incarceration. In fact, the precise relief he seeks cannot be discerned.

DISCUSSION

As Plaintiff is a *pro se* litigant, his pleadings are accorded liberal construction. Hughes v. Rowe, 449 U.S. 5 (1980); Estelle v. Gamble, 429 U.S. 97 (1976); Haines v. Kerner, 404 U.S. 519 (1972); Loe v. Armistead, 582 F. 2d 1291 (4th Cir. 1978); Gordon v. Leeke, 574 F. 2d 1147 (4th 1978). Even under this less stringent standard, however, the undersigned finds and concludes that this *pro se* Complaint is still subject to summary dismissal. The requirement of liberal construction does not mean that the Court can ignore a clear failure in the pleading to allege facts which set forth a claim currently cognizable in a federal district court. Weller v. Dep't of Social Services, 901 F.2d 387 (4th Cir. 1990).

First, the State of South Carolina and its governmental agencies – including the Office of the Attorney General – are immune from suit in this Court under the Eleventh Amendment to the United States Constitution. See Kimel v. Florida Board of Regents, 528 U.S. 62 (2000); Alden v. Maine, 527 U.S. 706 (1999); College Savings Bank v. Florida Prepaid Education Expense Board, 527 U.S. 666 (1999); Seminole Tribe of Fla. v. Florida, 517 U.S. 44 (1996); Blatchford v. Native Village of Noatak, 501 U.S. 775 (1991); Will v. Michigan Department of State Police, 491 U.S. 58 (1989); Alabama v. Pugh, 438 U.S. 781 (1978); and ultimately, Hans v. Louisiana, 134 U.S. 1 (1890). Therefore, the South Carolina Attorney General's Office is entitled to dismissal as a party Defendant.

The Defendants Meadows, Giese and Smoak are entitled to dismissal as party Defendants because South Carolina Solicitors are protected by immunity for activities in or connected with

judicial proceedings, such as a criminal trial, bond hearings, grand jury proceedings, pre-trial "motions" hearings, and ancillary civil proceedings. See Buckley v. Fitzsimmons, 509 U.S. 259 (1993); Burns v. Reed, *supra*, 500 U.S. 478 (1991).

Finally, the Defendants Sexton and Ross are entitled to dismissal as party Defendants because no cause of action can be stated against witnesses in a judicial proceeding as a result of testimony or other participation. As with Eleventh Amendment immunity, this rule is so well settled that citation to authority is hardly required. See Briscoe v. LaHue, 460 U.S. 325, 331-334 (1983), which contains an authoritative review of witness immunity in its historical context.

In addition to the immunities described above, to the extent Plaintiff's lawsuit would or is intended to call into question his conviction, the Defendants cannot be sued under 42 U.S.C. § 1983 so long as that conviction has not been vacated or set aside. See Heck v. Humphrey, 512 U.S. 477 (1994), which held that

in order to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm whose unlawfulness would render a conviction or sentence invalid, . . . a § 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such a determination, or called into question by a federal court's issuance of a writ of habeas corpus, 28 U.S.C. § 2254. A claim for damages bearing that relationship to a conviction or sentence that has not been so invalidated is not cognizable under § 1983. Thus, when a state prisoner seeks damages in a § 1983 suit, the district court must consider whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence; if it would, the complaint must be dismissed unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated.

512 U.S. at 486-87.

CONCLUSION

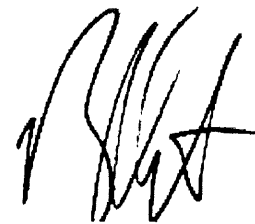
Based on the foregoing, it is recommended that the within Complaint be dismissed without prejudice and without issuance or service of process. It is further recommended that this case be

deemed a "strike" under 28 U.S.C. § 1915(e)(2) and (g). See German v. Baker, No. 04-20421, 2005 WL 419500 (5th Cir. Feb. 23, 2005) [Heck dismissal frivolous under 28 U.S.C. § 1915(e)(2)(B)(i)]; Barr v. South Carolina Dep't of Probation Parole, No. 02-1060, 2002 WL 32332074 (D.S.C. Nov. 8, 2002) [Heck dismissal a strike under § 1915(g)], aff'd, 2003 WL 1901062 (4th Cir. Apr. 18, 2003); Douglas v. Scott, No. 02-2378, 2002 WL 32333163, at *5 (D.S.C. Nov. 6, 2002), aff'd, 2003 WL 320910 (4th Cir. Feb. 13, 2003); Dewitt v. Adduci, No. 02-942, 2002 WL 32332077 (D.S.C. Aug. 13, 2002), aff'd, 2003 WL 1998894 (4th Cir. May 1, 2003).

Plaintiff's attention is directed to the Notice on the following page.

Respectfully Submitted,

Bristow Marchant
United States Magistrate Judge



March 27, 2006
Columbia, South Carolina



**Notice of Right to File Objections to Magistrate Judge's "Report and Recommendation"
& The Serious Consequences of a Failure to Do So**

The petitioner is hereby notified that any objections to the attached Report and Recommendation must be filed within **ten (10) days** of the date of its filing. 28 U.S.C. § 636 and Fed. R. Civ. P. 72(b). The time calculation of this ten-day period excludes weekends and holidays and provides for an additional three days for filing by mail. Fed. R. Civ. P. 6. Based thereon, this Report and Recommendation, any objections thereto, and the case file will be **delivered to a United States District Judge** fourteen (14) days after this Report and Recommendation is filed. A magistrate judge makes only a recommendation, and the authority to make a final determination in this case rests with the United States District Judge. See Mathews v. Weber, 423 U.S. 261, 270-271 (1976).

During the ten-day period, but not thereafter, a party must file with the Clerk of Court specific, written objections to the Report and Recommendation, if he or she wishes the United States District Judge to consider any objections. **Any written objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections.** See Keeler v. Pea, 782 F. Supp. 42, 43-44 (D.S.C. 1992). Failure to file specific, written objections shall constitute a waiver of a party's right to further judicial review, including appellate review, if the recommendation is accepted by the United States District Judge. See United States v. Schronce, 727 F.2d 91, 94 & n. 4 (4th Cir.), cert. denied, Schronce v. United States, 467 U.S. 1208 (1984); and Wright v. Collins, 766 F.2d 841, 845-847 & nn. 1-3 (4th Cir. 1985). Moreover, if a party files specific objections to a portion of a magistrate judge's Report and Recommendation, but does not file specific objections to other portions of the Report and Recommendation, that party waives appellate review of the portions of the magistrate judge's Report and Recommendation to which he or she did not object. In other words, a party's failure to object to one issue in a magistrate judge's Report and Recommendation precludes that party from subsequently raising that issue on appeal, even if objections are filed on other issues. Howard v. Secretary of HHS, 932 F.2d 505, 508-509 (6th Cir. 1991). See also Praylow v. Martin, 761 F.2d 179, 180 n. 1 (4th Cir.) (party precluded from raising on appeal factual issue to which it did not object in the district court), cert. denied, 474 U.S. 1009 (1985). In Howard, supra, the Court stated that general, non-specific objections are not sufficient:

A general objection to the entirety of the [magistrate judge's] report has the same effects as would a failure to object. The district court's attention is not focused on any specific issues for review, thereby making the initial reference to the [magistrate judge] useless. * * * This duplication of time and effort wastes judicial resources rather than saving them, and runs contrary to the purposes of the Magistrates Act. * * * We would hardly countenance an appellant's brief simply objecting to the district court's determination without explaining the source of the error.

Accord Lockert v. Faulkner, 843 F.2d 1015, 1017-1019 (7th Cir. 1988), where the Court held that the appellant, who proceeded pro se in the district court, was barred from raising issues on appeal that he did not specifically raise in his objections to the district court:

Just as a complaint stating only 'I complain' states no claim, an objection stating only 'I object' preserves no issue for review. * * * A district judge should not have to guess what arguments an objecting party depends on when reviewing a [magistrate judge's] report.

See also Branch v. Martin, 886 F.2d 1043, 1046 (8th Cir. 1989) ("no de novo review if objections are untimely or general"), which involved a pro se litigant; and Goney v. Clark, 749 F.2d 5, 7 n. 1 (3rd Cir. 1984) ("plaintiff's objections lacked the specificity to trigger de novo review").

This notice apprises the petitioner of the consequences of a failure to file specific, written objections. See Wright v. Collins, supra; and Small v. Secretary of HHS, 892 F.2d 15, 16 (2nd Cir. 1989). Filing by mail pursuant to Fed. R. Civ. P. 5 may be accomplished by mailing objections addressed as follows:

Larry W. Propes, Clerk
United States District Court
901 Richland Street
Columbia, South Carolina 29201

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

Lawrence Crawford, #3000839)	C.A. No. 0:06-908
)	
Plaintiff,)	
)	
vs.)	ORDER
)	
SC Attorney Generals Office; John)	
Meadors; W. Barney Giese; Ronald W.)	
Moak; Dr. Joel Sexton; and Janice E.)	
Ross;)	
)	
Defendants.)	
)	

This action, seeking relief pursuant to Title 42, United States Code, Section 1983, was filed by *pro se* Plaintiff Lawrence Crawford on March 22, 2006. (Doc. #1). On March 28, 2006, Magistrate Judge Bristow Marchant, to whom this matter had been previously assigned, issued a Report and Recommendation (“the Report”) in this case recommending “that the within Complaint be dismissed without prejudice and without issuance or service of process” and “that this case be deemed a ‘strike’ under 28 U.S.C. § 1951(e)(2) and (g).” (Doc. #5). On April 7, 2006, the Plaintiff timely filed objections to the Report. (Doc. #6). This matter is now before the Court for review of the Report issued by the Magistrate Judge.

In conducting this review, the Court applies the following standard:

The magistrate judge makes only a recommendation to the Court, to which any party may file written objections. . . . The Court is not bound by the recommendation of the magistrate judge but, instead, retains responsibility for the final determination. The Court is required to make a *de novo* determination of those portions of the report or specified findings or recommendation as to which an objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual

or legal conclusions of the magistrate judge as to those portions of the Report and Recommendation to which no objections are addressed. While the level of scrutiny entailed by the Court's review of the Report thus depends on whether or not objections have been filed, in either case, the Court is free, after review, to accept, reject, or modify any of the magistrate judge's findings or recommendations.

Wallace v. Housing Auth. of the City of Columbia, 791 F.Supp. 137, 138 (D.S.C. 1992) (citations omitted). In light of this standard, the Court has carefully reviewed the Report and the objections thereto. The Court elects to accept the Report.

Therefore, for the reasons articulated by the Magistrate Judge, it is hereby **ORDERED** that the Magistrate Judge's Report and Recommendation is **ACCEPTED** (Doc. #5) and that the complaint be dismissed without prejudice and without issuance or service of process and this case be deemed a "strike" under 28 U.S.C. § 1951(e)(2) and (g).

IT IS SO ORDERED.

S/ Terry L. Wooten
Terry L. Wooten
United States District Judge

December 18, 2006
Florence, South Carolina

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION

Lawrence Crawford, #3000839

Plaintiff

**JUDGMENT IN A
CIVIL CASE**

vs.

Case Number: 0:06-908-TLW-BM


SC Attorney Generals Office;
John Meadors;
W. Barney Giese;
Ronald W. Moak;
Dr. Joel Sexton; and
Janice E. Ross;

Defendants

Decision on the Record. This action came before the court on the record, the Honorable Terry L. Wooten, United States District Judge, presiding. The issues have been reviewed by the Honorable Bristow Marchant, United States Magistrate Judge, who recommended in his Report and Recommendation that the defendants' motion to dismiss and/or for summary judgment be granted,

IT IS ORDERED AND ADJUDGED that judgment is hereby entered for the above-named defendants. The plaintiff, Lawrence Crawford shall take nothing of the defendants on his complaint filed pursuant to Title 42 U.S.C. 1983 and this action is dismissed without prejudice.

LARRY W. PROPES, Clerk

By 
Deputy Clerk

December 18, 2006

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

FILED
May 17, 2007

No. 07-6056
0:06-cv-00908-TLW

LAWRENCE CRAWFORD

Plaintiff - Appellant

v.

ATTORNEY GENERAL'S OFFICE OF SC; JOHN MEADORS; W BARNEY
GIESE; RONALD W. MOAK; JOEL SEXTON, Dr.; JANICE E. ROSS

Defendants - Appellees

M A N D A T E

The judgment of this Court, entered 4/25/07, takes effect
this date.

A certified copy of this Court's judgment and a copy of its
decision are issued to the district court and constitute the
mandate of this Court.

/s/ Patricia S. Connor

CLERK

201 MAY 21 AM 11:30

JUDGMENT

FILED: April 25, 2007

UNITED STATES COURT OF APPEALS

for the
Fourth Circuit

No. 07-6056
0:06-cv-00908-TLW

LAWRENCE CRAWFORD

Plaintiff - Appellant

v.

ATTORNEY GENERAL'S OFFICE OF SC; JOHN MEADORS; W BARNEY
GIESE; RONALD W. MOAK; JOEL SEXTON, Dr.; JANICE E. ROSS

Defendants - Appellees

Appeal from the United States District Court for the
District of South Carolina at Rock Hill

In accordance with the written opinion of this Court filed
this day, the Court dismisses the appeal.

A certified copy of this judgment will be provided to the
District Court upon issuance of the mandate. The judgment will
take effect upon issuance of the mandate.

/s/ Patricia S. Connor

CLERK

A True Copy, Teste:

Patricia S. Connor, Clerk

BY Anthony W. Webb
Deputy Clerk

2007 MAY 21 AM 11:30

JUDICIAL MERIT SELECTION COMMISSION
PERSONAL DATA QUESTIONNAIRE

Court, Position, and Seat # for which you are applying:

Circuit Court, Fifth Judicial Circuit, Seat 1

1. NAME: John P. Meadors
E-MAIL ADDRESS: Meadorsjp@aol.com
TELEPHONE NUMBER: (office): 803-576-1862
2. Date of Birth: 1961
Place of Birth: Loris, S.C.
3. Are you a citizen of South Carolina? Yes.
Have you been a resident of this state for at least the immediate past five years? Yes
5. Family Status: Married on September 12, 1987, to Patricia Ann (Rogers) Meadors. Never divorced. Four children.
6. Have you served in the military? No
7. List each college and law school you attended, including the dates of your attendance, the degrees you received, and if you left an institution without receiving a degree, the reason for your departure.
 - (a) Wofford College 1979-83 B.A.;
 - (b) University of South Carolina – School of Law 1984-87 J.D.
8. List the states in which you have been admitted to practice law and the year of each admission. Also list any states in which you took the bar exam but were never admitted to the practice of law. If you took the bar exam more than once in any of the states listed, please indicate the number of times you took the exam in each state. South Carolina – May 1988. I took the exam twice.
9. List the significant activities in which you took part during your attendance at college, graduate, and law school. Give the dates you were involved in these activities and list any leadership positions you held.

Wofford College:

 - (a) President of the Student Body 1982-83;
 - (b) Vice – President of the Student Body 1981-82;
 - (c) Vice – President of Kappa Sigma Fraternity 1982-83;
 - (d) President of Inter-Fraternity Council 1981-82;
 - (e) Who's Who Among Students in American Universities and Colleges-1983.

University of South Carolina School of Law:

 - (a) Lewis, Lewis, Bruce and Truslow – Law Clerk, 2L and 3L years; helped draft standard residential lease for Board of Realtors to comply with Landlord;
 - (b) Tenant Act;
 - (c) Fifth Judicial Circuit Solicitor's Office – Law Clerk, 3L year.

10. Describe your continuing legal or judicial education during the past five years. Include only the title and date of any continuing legal or judicial education course completed.

<u>Conference/CLE Name</u>	<u>Date(s)</u>
(a) 2010 Mid-Year Bar Association	1/21/2010;
(b) 2009 S.C. Solicitor's Conference	9/27/2009;
(c) 2008 S.C. Solicitors' Association	9/28/2008;
(d) Capital litigation Prosecution	9/11/2008;
(e) Prosecuting the Impaired Driver	7/17/2008;
(f) 2007 Solicitor's Conference	9/23/2007;
(f) 2006 Solicitor conferences	1/27/2006;
(g) 21st Annual Criminal Law Update	1/27/2006;
(h) 2005 Solicitor's Conference	9/25/2005.

11. Have you taught law-related courses or lectured at bar association conferences, educational institutions, or continuing legal or judicial education programs?

- (a) S.C. Solicitors' Association 1997 Annual Conference – Taught “Back to the Basics”;
- (b) Boot Camp for New Prosecutors 2/18/2009 – Taught and instructed new attorneys in criminal prosecution.

12. List all published books and articles you have written and give citations and the dates of publication for each. None

13. List all courts in which you have been admitted to practice and list the dates of your admission. Give the same information for administrative bodies that require a special admission to practice.

- (a) Admitted to practice before the State Courts of South Carolina in 1988;
- (b) Admitted to practice before the Federal District Court for South Carolina in 1994.

14. Describe chronologically your legal experience since graduation from law school and include a list of all law firms with which you have been associated. Describe the general character of your practice and divide it into periods with dates if its character has changed over the years.

I started my legal career in the Fifth Judicial Circuit Solicitor's Office as an assistant solicitor. From 1988-91, I prosecuted everything from magistrate court offenses to rapes, armed robberies and murders.

From 1991-95 I worked for the S.C. Attorney General's Office in the State Grand Jury Division. Under the supervision of (now) Judge Cameron Currie, I was part of a team that prosecuted major drug conspiracies statewide. In addition to presenting evidence to the State Grand Jury and prosecuting the cases, we also handled the civil forfeiture aspect of the cases. During this time I personally prosecuted numerous cases around the state, including a multi-county drug conspiracy case involving 8 defendants that culminated in a conviction after a three week jury trial in Kershaw County. I also was the lead prosecutor in the second child pornography prosecution and the first money

laundrying case for the State Grand Jury. In addition, I was also appointed a Special Assistant US Attorney and worked with the US Attorney's Office in the presentation of evidence to the Federal Grand Jury and preparation of a joint federal/state drug conspiracy prosecution.

From 1995-2003 I was the First Assistant Solicitor in charge of the Kershaw County Solicitor's office in the Fifth Judicial Circuit. I was responsible for the prosecution of all General Sessions Court and Family Court cases in Kershaw County.

From 2003 to the present I have been the Deputy Solicitor for Fifth Judicial Circuit (Richland and Kershaw). I have been responsible for the supervision of over 30 attorneys and the prosecution of criminal cases in the Fifth Judicial Circuit. As Deputy Solicitor, I have primarily tried murder cases.

Throughout my career I have prosecuted over ten thousand cases, and more than 100 murder cases.

If you are a judge and are not seeking a different type of judgeship, the following questions are inapplicable:

- (b) If you are a candidate for Circuit Court, please provide a brief written description of your experience in criminal matters, including any cases handled over the past five years and include a brief description of the issues involved. Further, please provide a brief written description of your experience in civil matters, including any cases handled over the past five years and include a brief description of the types of matters handled, issues involved, and procedural history. Please include information such as the primary areas in civil court in which you practice, whether you represent plaintiffs or defendants, or both. You may go back further than five years if you feel it would assist the Commission with its assessment of your experience. If you lack experience in an area, describe how your background has prepared you to preside over such matters as a Circuit Court Judge, or how you would compensate for your lack of experience in this area.

I have been involved in the prosecution of hundreds of jury trials including non violent and violent felonies. In the past five years I have primarily prosecuted murder cases including Homicide by Child Abuse and Felony DUI Resulting in Death cases.

Cases I have tried in the past year:

- (a) State v. Andrea Pearson: The defendant worked as a daycare worker and was convicted of killing one of the babies in her care (Homicide by Child Abuse). The victim died in 1998 and two other babies in her care died in the ten years following. She was tried and convicted for the first death. In this case I cross-examined an expert in false confessions who was presented by the defense.
- (b) State v. Johnny Gaskins: The defendant shot and killed a bouncer and customer at a Super Bowl party at Club 360 in

Richland County after being asked to leave the bar. He was also charged with three counts of Assault and Battery with Intent to Kill (ABIK) for wounding three other individuals at the establishment.

- (c) State v. John Portee: The defendant, an employee at Wendy's restaurant on Two Notch Road in Richland County, killed his supervisor and another employee after a dispute earlier that week regarding working at the drive thru window.
- (d) State v. Christopher Arant: The defendant slammed his wife's head into his truck window the morning after her son had beaten him for previously assaulting the victim (his mother). The victim died as a result of her injuries.
- (e) State v. Rafael Goodwin, State v. Timark Hammonds, State v. Isiah Smith, State v. Terran Clark: This case involved a gang related retaliation which resulted in homicide. All defendants pled guilty.
- (f) State v. William Jenkins: The defendant killed three people at Wellesly Place Condominiums in Richland County.

I handled a case in Kershaw County juvenile court where a child shot and killed his brother.

Some of the cases I have tried over the past five years:

- (a) State v. Oliver, State v. Gallman, State v. Joy: A triple homicide case involving three co-defendants and statements which had to be redacted according to Bruton v. United States, 391 U.S. 123, 88 S.Ct. 1620 (1968).
- (b) State v. Whitehead, State v. Robert Cannon, State v. Derreck McDonald: Three co-defendants beat a young man to death in his home in Kershaw Country. This case had numerous legal issues including redaction of defendants' statements pursuant to Bruton and voice identification.
- (c) State v. Tobias Lee: A Georgia man killed an elderly victim and stole his car. The defendant was wanted for several armed robberies in Columbia and also wanted in Georgia for murder and rape. The defendant was ultimately captured in Monroe, LA after being featured on America's Most Wanted.
- (d) State v. Christopher Caldwell: The defendant was a young man who pled guilty to murder; he decapitated his mother with a medieval axe.
- (e) State v. Jaime Marrero: The defendant killed the clerk at a Kangaroo convenience store on Garners Ferry Road. This case went unsolved for years. Co-defendants and the defendant's ex-girlfriend testified at his trial, which resulted in a murder conviction.

- (f) State v. Christopher Pittman: The defendant, a twelve year old boy, killed his grandparents in Chester County. His defense counsel unsuccessfully attempted to blame the killings on the anti-depressant Zoloft.
- (g) State v. Dwaine Herring: The defendant, a local attorney, killed a bouncer at a night-club in Richland County. The defense unsuccessfully attempted an involuntary intoxication defense.
- (h) State v. Jason Dickey: The defendant was a night watchman at Cornell Arms Apartments in downtown Columbia who killed an unruly young man who was visiting a resident. The case involved issues surrounding the Castle Doctrine and its application. The defendant shot the victim on the sidewalk in front of Cornell Arms and presented expert testimony regarding the difference between public and private property. The defendant was convicted of voluntary manslaughter.
- (i) State v. Kevin Goodwin: The defendant killed a Forest Acres physician who came home while the defendant was burglarizing his house. The defendant was identified through a C.O.D.I.S. hit by DNA left on a cigar butt which was discarded at the scene.
- (j) State v. John Moore: This case involved road rage; the defendant shot and killed a passenger in a vehicle on I-20. This case went unsolved for years but was resolved by a witness' cooperation and defendant's statements.
- (k) State v Timothy Green, State v. Curtis Harris: Two teenagers killed an elderly store owner in Hopkins. One of the defendants stated he wanted to rob the store for his birthday.
- (l) State v. Lawrence Crawford: The defendant killed his child by beating her to death. He would not allow his family to leave their home without him and initially coerced another child to claim she had committed the act. He was ultimately convicted of murder for killing his daughter.
- (m) State v. Vincent Filyaw: The defendant kept a young girl in an underground bunker for ten days and raped her repeatedly. The young victim escaped after law enforcement tracked the text messages that she sent to her mother. The defendant received 421 years imprisonment.
- (n) State v. Dennis Kirk: The victim had asked the defendant for directions to the post office and the defendant offered to ride with him. The defendant pulled a gun on him, ordered him to drive to a remote area, shot him in the head, and later burned his truck.
- (o) State v. Carmen Rice: A female defendant shot the victim five times in a remote area of Richland Country. The defendant

planned on robbing the victim; the case involved a female accomplice's testimony.

- (p) State v. Sharon Smith: Female defendant stabbed her husband to death and unsuccessfully argued that she did not intend to kill him.
- (q) State v. June Harris: Three children testified as eyewitnesses against their mother's ex-boyfriend who shot their mother and killed her new boyfriend.
- (r) State v. Christopher Commander: The defendant suffocated his wife and for over a month led her family to believe she was still alive. Several weeks after he had killed her mother, the defendant sent her daughter a text message from the victim's phone saying "I'm alive." He was ultimately captured by the New Orleans Police Department and was brought back to Richland County for trial, where he was convicted of murder.
- (s) State v. Keith Sims: Richland County defendant killed a victim and then dumped the body in Molly's Rock Park in Newberry County and then disposed of the victim's clothes in Charleston. Defendant unsuccessfully claimed self-defense.

I have also prosecuted five Capital Murder cases, two of which went to trial. In one of these cases, I conducted the first hearing in the state on the applicability of Capital Punishment to a defendant claiming mental retardation.

My significant experience trying cases in General Sessions Court has provided me a solid foundation to become a circuit court judge. As a result of my trial experience I have dealt with all aspects of criminal law including evidentiary issues such as eyewitness identification, DNA evidence, competency of defendants, search and seizure, and other related issues. I have presented and cross-examined experts in forensic psychiatry, forensic pathology, statistics, bloodhounds, eyewitness identification, fingerprints, crime scenes, firearms and ballistics, gun-shot residue and other fields of expertise.

My experience in civil matters includes assisting in handling asset forfeitures in drug cases, driving offenses, and judicial commitment proceedings. Because the rules of evidence are the same in both criminal and civil trials, my trial experience in General Sessions Court provides me with a good foundation which I can build upon to become proficient in Common Pleas Court. Furthermore, I have studied the rules of civil procedure and have followed the changes in the law by reading the Advance Sheets. Prior to taking the bench, I will continue to educate myself by attending Common Pleas Court when possible and reviewing CLE materials involving civil matters.

15. What is your rating in Martindale-Hubbell? Not listed. I have been a prosecutor my entire career.

16. What was the frequency of your court appearances during the past five years?
- (a) federal: minimal – Have appeared in Federal Court to inform Judge of state defendant's cooperation for downward departure sentencing;
 - (b) state: Extensive.
17. What percentage of your practice involved civil, criminal, domestic, and other matters during the past five years?
- (a) civil: 5%;
 - (b) criminal: 85%;
 - (c) domestic: 0%;
 - (d) other: 10% Family Court – Helped prosecute juveniles in Kershaw County this past year.
18. What percentage of your practice in trial court during the past five years involved matters that went to a jury, including those that settled prior to trial?
- (a) jury: 80%;
 - (b) non-jury: 20%.
- Did you most often serve as sole counsel, chief counsel, or associate counsel in these matters? Chief Counsel
19. List five of the most significant litigated matters you have personally handled in either trial or appellate court or before a state or federal agency. Give citations if the cases were reported and describe why these matters were significant.
- (a) State v. Pittman, 373 S.C. 527, 647 S.E.2d 144 (2007) – This case drew national attention because the defendant was twelve years old at the time of the murders and the anti-depressant Zoloft was a potential issue. The defense had argued that the drug had caused the defendant to lose control and that he was not responsible for the death of his grandparents. Legally this case was significant because the opinion held that lay testimony may be used to rebut the presumption of incapacity regarding children under fourteen years of age. Court held that the *M'Naughten* test is the correct standard for determining criminal responsibility at the time of the offense. This includes the defense of involuntary intoxication.
 - (b) State v. Herring, 387 S.C. 291, 692 S.E.2d 490 (2009) – An attorney shot and killed a bouncer in a local nightclub. Police responded to the defendant's residence and peeked into his garage where they saw the defendant's vehicle that was seen earlier on a videotape. The South Carolina Supreme Court discussed the Fourth Amendment and its exceptions. Held that the officer's minimal intrusion was objectively reasonable and did not constitute a Fourth Amendment violation. Held it was objectively reasonable for the officer to take precautions to protect his own safety, and the safety of the other officers by looking in the garage, to see if suspect was present. After seeing no one in the garage, police knocked on the front door and waited to get a search warrant. Looking in garage yielded no evidence, in as much as the

police already knew the make and model and license tag of the car, as well as the address of the suspect.

- (c) State v. Goodwin, 384 S.C. 588, 683 S.E.2d 500 (2009) – The victim, a retired Forest Acres physician, was shot in the head inside his home after he surprised the intruder. The defendant was linked to the crime by a cigar butt he left outside of the window of the residence which was determined to be the point of entry. This was the first case in this jurisdiction where a suspect was identified from the SLED DNA database, C.O.D.I.S. Held that probable cause was established at least for the burglary from the fact that the defendant's DNA was on the cigar butt outside the point of entry. The court further held that the statement of defendant was freely and voluntarily given.
 - (d) State v. Childers, 373 S.C. 367, 645 S.E.2d 244 (2007) – The opinion discussed the difference between murder and voluntary manslaughter. The opinion held that an overt act from a third party is not sufficient legal provocation to entitle a defendant who is charged with murder to a voluntary manslaughter charge. The provocation must come from some act of or related to the victim in order to constitute sufficient legal provocation.
 - (e) State v. Adams, 319 S.C. 509, 462 S.E.2d 308 (1995). Edward Gray, IV, was arrested and began cooperating with law enforcement in the investigation of an active cocaine conspiracy. This organization was bringing drugs from New York, New Jersey and Georgia into South Carolina for distribution to third parties. The conspiracy continued after Gray's arrest. Gray made a purchase of drugs from the Atlanta source while working undercover for the police. Gray and the defendant had dealt with this source on numerous occasions prior to Gray's arrest. The Court of Appeals held that even though Gray was working for the police during the transaction in question, the act of purchasing cocaine from the source, a co-conspirator, was an act in furtherance of the conspiracy and admissible to prove the existence of the conspiracy.
- 20. List up to five civil appeals you have personally handled. Give the case name, the court, the date of decision, and the citation if the case was reported. None
 - 21. List up to five criminal appeals that you have personally handled. Give the case name, the court, the date of decision and the citation if the case was reported. None
 - 22. Have you ever held judicial office? N/A
 - 24. Have you ever held public office other than judicial office? N/A
 - 25. List all employment you had while serving as a judge (whether full-time or part-time, contractual or at will, consulting or otherwise) other than elected judicial office. Specify your dates of employment, employer, major job responsibilities, and supervisor. N/A
 - 26. Have you ever been an unsuccessful candidate for elective, judicial, or other public office?

- (a) Fifth Circuit Solicitor – 1994;
 - (b) Circuit Court Judge 2002 – found qualified;
 - (c) Fifth Circuit Solicitor – 2010 – lost in run-off.
27. Have you ever been engaged in any occupation, business, or profession other than the practice of law, teaching of law, or holding judicial or other public office? No
28. Are you now an officer or director or involved in the management of any business enterprise? No
29. A complete, current financial net worth statement was provided to the Commission.
30. Describe any financial arrangements or business relationships you have, or have had in the past, that could constitute or result in a possible conflict of interest in the position you seek. Explain how you would resolve any potential conflict of interest. None
31. Have you ever been arrested, charged, or held by federal, state, or other law enforcement authorities for violation or for suspicion of violation of any federal law or regulation, state law or regulation, or county or municipal law, regulation, or ordinance, or any other law, including another country's law? No
32. Have you, to your knowledge, ever been under federal, state, or local investigation for possible violation of a criminal statute? No
33. Has a tax lien or other collection procedure ever been instituted against you by federal, state, or local authorities? Have you ever defaulted on a student loan? Have you ever filed for bankruptcy? No
34. Have you ever been sued, either personally or professionally, that is, have you ever been named as defendant or respondent in any court of law? No
36. Have you ever been investigated by the Department of Social Services? If so, give the details and the resolution. Has your name ever been enrolled on the Central Registry of Child Abuse and Neglect? No
37. Are you now or have you ever been employed as a "lobbyist," as defined by S.C. Code § 2-17-10(13), or have you acted in the capacity of a "lobbyist's principal," as defined by S.C. Code § 2-17-10(14)? No
38. Since filing with the Commission your letter of intent to run for judicial office, have you accepted lodging, transportation, entertainment, food, meals, beverages, money, or any other thing of value as defined by S.C. Code § 2-17-10(1) from a lobbyist or lobbyist's principal? No
39. S.C. Code § 8-13-700 provides, in part, that "[n]o public official, public member, or public employee may knowingly use his official office, membership, or employment to obtain an economic interest for himself, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated." Please detail any knowledge you have of any formal charges or informal allegations against you or any other candidate for violations of these provisions. I have no knowledge of any violations.

40. S.C. Code § 8-13-765 provides, in part, that “[n]o person may use government personnel, equipment, materials, or an office building in an election campaign.” Please detail any knowledge you have of any formal charges or informal allegations against you or any other candidate for violations of these provisions. None
41. Itemize (by amount, type, and date) all expenditures, other than those for travel and room and board, made by you, or on your behalf in furtherance of your candidacy for the position you seek. None
42. List the amount and recipient of all contributions made by you or on your behalf to members of the General Assembly since the announcement of your intent to seek election to a judgeship. None
43. Have you directly or indirectly requested the pledge of any member of the General Assembly as to your election for the position for which you are being screened? Have you received the assurance of any public official or public employee that they will seek the pledge of any member of the General Assembly as to your election for the position for which you are being screened? No
44. Have you requested a friend or colleague to contact members of the General Assembly on your behalf? Are you aware of any friends or colleagues contacting members of the General Assembly on your behalf? No
45. Have you or has anyone acting on your behalf solicited or collected funds to aid in the promotion of your candidacy? No
46. Have you or has anyone acting on your behalf contacted members of the Judicial Merit Selection Commission about your candidacy or intention to become a candidate? No
47. List all bar associations and professional organizations of which you are a member and give the titles and dates of any offices you have held in such groups.
- (a) Richland County Bar;
 - (b) Kershaw County Bar;
 - (c) South Carolina Bar.
48. List all civic, charitable, educational, social, and fraternal organizations of which you are or have been a member during the past five years and include any offices held in such a group, any professional honors, awards, or other forms of recognition received and not listed elsewhere.
- (a) Camden Rotary Club:
Board of Directors, July 1999–2002,
Chair of the Club Service Committee, July 1999–2002,
Health and happiness committee 2007–present.
Paul Harris Fellow;
 - (b) Columbia Classical Ballet Company:
Board of Directors – January 2009–present;
 - (c) Kershaw County Board of Disabilities and Special Needs –
Prior Board member.

49. Provide any other information that may reflect positively or negatively on your candidacy, or which you believe should be disclosed in connection with consideration of you for nomination for the position you seek.

The biggest influence on my life has been my father and mother, Bishop Jack Meadors and the late Hannah Meadors. My siblings and I were raised to treat people with fairness and respect. My parents instilled in all of us the value of service to others. These values have shaped my personal life and professional career. We were also taught that there are rules and that there are consequences when the rules are not followed. I learned early in life that my greatest power was my power to choose. After 22 years as a prosecutor, dealing with victims, law enforcement, attorneys and judges I have the temperament, experience and judgment to be an effective Circuit Court Judge

As an assistant solicitor I was named "Victim/Witness Assistant of the Year" in the State of Maryland in 1989. I was nominated by the parents of a murder victim in a case I prosecuted in Richland County. The family was from Baltimore and their son was attending Columbia Bible College.

I was appointed by the Governor to the State Child Fatality Review Board – 2007 -present.

In 2005, I was the recipient of the Ernest F. Hollings Award for excellence in State Court prosecution. I received this award for my work on six murder cases in 2005.

I am a member of Shandon United Methodist Church in Columbia and periodically teach t Sunday school. In addition I have coached the girl's basketball team for over twenty years. I am currently chairperson of the Staff-Parish Relations committee at my church.

50. References:

- (a) Ms. Karen Eckford, VP/Market President NBSC
P.O. Box 1565
Camden, S.C. 29201
803-708-5687
- (b) Dennis N. Cannon, Esquire
512 Rutledge Street
P.O. Box 532
Camden, S.C. 29020
803-432-4402
- (c) Solicitor W. Barney Giese
1701 Main Street
Columbia, S.C. 29201
803-576-1802
- (d) Dr. Michael L. Guffee, Senior Minister - Shandon United Methodist Church
3407 Devine Street
Columbia, S.C. 29205
803-256-8383

(e) Jack B. Swerling, Esquire
1720 Main Street, Suite 301
Columbia, S.C. 29201
803-765-2626

YOUR SIGNATURE WILL BE HELD TO CONSTITUTE A WAIVER OF THE
CONFIDENTIALITY OF ANY PROCEEDING BEFORE A GRIEVANCE COMMITTEE OR
ANY INFORMATION CONCERNING YOUR CREDIT.

I HEREBY CERTIFY THAT MY ANSWERS ARE TRUE AND COMPLETE TO THE BEST
OF MY KNOWLEDGE.

Signature: John P. Meadors

Date: August 11, 2010

<p style="text-align: center;">JUDICIAL MERIT SELECTION COMMISSION Sworn Statement to be included in Transcript of Public Hearings</p>
--

Circuit Court
(New Candidate)

Full Name: John Paschal Meadors
Business Address: 1701 Main Street
Columbia, South Carolina 29201
Business Telephone: 803-576-1802

1. Why do you want to serve as a Circuit Court judge?

I have spent my entire legal career inside a courtroom trying cases. I love being in court and participating in the judicial process. I want to be a Circuit Court Judge so I can help administer justice to all parties. I believe my significant trial experience and my ability to relate and communicate with people will make this a rewarding and fun job. I believe I can be fair, firm and just. I really think my background has prepared me to be an effective Circuit Court Judge.

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 prosecuted my entire career. After I retire as a judge I would like to spend a few years in private practice.

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?

As per Canon 3 of the Code of Judicial Conduct, I believe that *ex parte* communications should be discouraged, and allowed only to assist in scheduling, administrative matters and emergencies that do not deal with substantive matters or issues on the merits. A judge must reasonably believe that no party will gain an advantage and notify all parties of the nature of the *ex parte* communication and give all parties an opportunity to respond. *Ex parte* communication may be expressly authorized by law for the issuance of a temporary restraining order under certain limited circumstances, the issuance of a writ of supersedes under exigent circumstances, the determination of fees and expenses for indigent capital defendants, the issuance of temporary orders related to child custody and support where conditions warrant and the issuance of a seizure order regarding delinquent insures. I believe that *ex parte* communications should never be allowed where one side will possibly gain an advantage over the other side.

6. What is your philosophy on recusal, especially in situations in which

lawyer-legislators, former associates, or law partners are to appear before you?

I understand and intend to follow Canon 3(E) of the Code of Judicial Conduct which deals with the recusal or disqualification of a judge. I believe that justice requires that the litigants are served by an impartial judge. A judge's failure to disclose conflicts or recuse himself where necessary robs those litigants of the justice that is the judge's duty to provide them. Recusal is required where a judge's impartiality might reasonably be questioned. I do not believe recusal is required when lawyer-legislators appear before me. These lawyers have to be able to perform their trade and recusal just because they appoint judges would not be fair to the legislators. The Canon states that a judge should recuse himself if his impartiality might reasonably be questioned; if he has a personal bias or prejudice concerning a party or a party's lawyer, personal knowledge of disputed facts; was a lawyer in the matter in controversy, or a lawyer with whom the judge used to practice law served as a lawyer in the matter or the judge is a material witness concerning the matter. The Canon additionally states there are times when a judge shall recuse when the judge or a family member has more than a *de minimis* interest in the proceeding. If former associates or law- partners appeared before me, and I do not believe my impartiality could reasonably be questioned, I would still disclose on the record that the party was a former associate or law partner. After such disclosure, I would hear both parties as to whether or not they felt I needed to recuse. In the situation where a matter comes before me that I was involved in before I became a judge, I would recuse myself.

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?

If I felt I should recuse, I would disqualify myself, regardless of what the party had to say. Where I didn't feel that I should recuse, I would disclose the relevant information and would then listen to what the parties had to say and include their respective positions in the analysis of recusal. This would really depend on the nature of the potential bias. Assuming it is a matter where I could be impartial I would weigh on one side the appearance of bias against my duty as a judge to dispose of all judicial matters promptly, efficiently and fairly. If my impartiality might reasonably be questioned, I would recuse myself.

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 recuse myself if the interest was more than *de minimis*. I would follow Canon 3(E)(1)(c) and (d) of the Code of Judicial Conduct.

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

I would only accept ordinary social hospitality or gifts from family for special occasions. I would also follow myself and advise my family to follow the requirements of Canon 4(D)(4) and (5) of the Code of Judicial Conduct. Canon 4 lays out the guidelines for such gifts and hospitality. I would also follow all of the necessary disclosure requirements that the Canon also imposes for such gifts or hospitality.

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

I would take the appropriate action and inform the appropriate authority, pursuant to Canon 3(D) of the Code of Judicial Conduct

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?

Depending on the issue, I will draft most orders myself and on occasion ask opposite counsel to submit proposed orders. I will either adopt or amend such proposed orders to reflect my rulings.

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

I will institute a calendaring system using both electronic and paper calendars.

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

I believe that the judiciary should be independent and that separation of powers is a fundamental part of the American system of government. I also believe that a judge should be faithful to the law. A judge's responsibility is to hear those cases or controversies that are placed before him and to apply and interpret the applicable laws and provisions of the South Carolina and Federal Constitutions to those controversies. Public policy issues would only come before a judge to the extent that some actual case or controversy before the judge implicated a public policy issue. In deciding such a conflict, a judge is charged to remain faithful to the law. Outside of actual cases or controversies before a judge, such public policy issues should properly be set by one of the other two branches. Any outside activity by a judge is governed by Canon 4(B) of the Code of Judicial Conduct.

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?

A key to access to and confidence in the judicial system is the education of the citizens as to the role and workings of the judicial system. I plan on being active with the Bar associations and community in order to foster such education. I also plan on assisting and advocating, within the appropriate boundaries, for any changes that I

feel may improve the delivery, administration, or integrity of judicial system to the citizens of South Carolina.

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?

As of today, I have spent 22 years serving in the quasi-judicial function of gatekeeper to the criminal justice system as either a Deputy Solicitor, Assistant Solicitor, or Assistant Attorney General. As such, I have dealt with many of the same or similar pressures or strains that I believe that I would face as a judge. My relationships with my family and all of my personal relationships have all developed in light of those strains. In all of this, I have been blessed with the assistance of a wonderful wife who has helped keep me grounded. I look forward to meeting the new pressures with her support.

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:

Offenders in this category have not been rehabilitated or learned from their prior encounters with the criminal justice system. Generally the sentences for repeat offenders should be more severe than first time offenders. If they have a probation violation along with their new charge or have not been successful on a prior probationary sentence, a straight sentence with no probation may be appropriate. Offenders that show no respect for the law or their neighbors and continue to violate the law should receive a sentence reflecting that conduct. However, this will depend on the type of crime and the type of criminal. A judge must determine whether an offender is a non-violent career criminal, a violent offender or an addict who steals to support his habit. Violent repeat offenders should be incarcerated. Alternatives to prison may be appropriate in certain circumstances for non-violent repeat offenders if an effective alternative to prison is available. Such sentences should be closely supervised. A sentence with successful completion of drug rehabilitation may be appropriate for an addict in certain cases with jail time hanging over the offender if he is not successful. If there are alternatives to incarceration where the public can be protected, then they should be explored under certain situations. Each case must be decided on a case by case basis. I do believe that a Judge should be consistent with his sentences. Similarly situated offenders should be treated the same.

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

If a juvenile has been waived from Family Court to the Court of General Sessions, a hearing would have been held before a Family Court Judge to accomplish that waiver. Part of the waiver procedure is that a pre-waiver evaluation of the offender is conducted. The Family Court

Judge has that evaluation at hand when deciding to waive the juvenile to adult court or not. One of the considerations taken into account in such a hearing is whether or not the child can be adequately served by the Family Court. The goal in Family Court is what is in the best interest of the child. Once they are waived to General Sessions Court they are treated adults. Each case must be evaluated on its on merits. I would review the pre-waiver evaluation in my decision on what to do with the offender. In General Sessions court I believe the judge is to consider deterrence, retribution and rehabilitation. The ultimate goal is to find justice for all parties including society as a whole. Options include an adult sentence with probation, an active YOA sentence, a YOA sentence suspended on probation, or an active adult sentence. Again all factors should be taken into consideration before sentencing, such as whether the individual has previously been adjudicated delinquent in Family Court. I believe that my experience working in juvenile court and general sessions will assist me in evaluating these types of cases. There are times when an adult crime demands an adult sentence and times when mercy should be shown. It must also be remembered that the decision to waive a juvenile to adult court begins with the Solicitor prosecuting the case. I am particularly qualified in this area since I have made the decision to both request or not to request such a waiver when appropriate.

c. White collar criminals:

The impact on society by white collar criminals is often worse than the impact of traditional violent criminals. Through the use of fraudulent schemes, the effect of one robbery is multiplied countless times. Whole companies lose significant assets that they need to stay in business. Thousands of innocent people can be robbed of their retirement. The seriousness of these crimes makes it necessary for each case to be evaluated individually. For example, an employee with an addiction who stole from his employer may only need to pay restitution and receive probation. However, a senior officer of a company who manipulated financial records may deserve more serious punishment, such as restitution and a jail sentence. If elected to serve as judge, I plan to treat white collar crimes as seriously as other kinds of criminal activity.

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

The majority of cases before a circuit court judge are in this category. This category also includes individuals who are both economically disadvantaged and also suffer from other issues such as mental illness or addiction issues. If they are before a judge, they are usually economically disadvantaged. Many thefts or robberies would not occur if the offender already had the benefit of an advantageous economic situation. The goal is to be fair, firm and consistent with

sentencing. Each case is different and must be evaluated on its merits. The sentence would depend on the crime. Being economically deprived is not a reason to kill someone. If a probationary sentence was called for, I would include successful completion of GED as a condition of successful completion. Where available, I would also consider placing offenders at the restitution center if appropriate.

e. Elderly defendants or those with some infirmity:

I would weigh the severity of the crime versus the realistic consequences of punishment to this particular offender. A ten year sentence for a 70 year old is like a life sentence to a twenty year old. Depending on the specific infirmity, offenders in this category may be particularly difficult to rehabilitate. I would evaluate the crime and the impact on the victims versus the cost of incarceration and care for the elderly offender and the likelihood of the individual re-offending. When weighing the offense committed against the age or infirmity of the offender, home detention or other alternative sentencing may be appropriate. In situations where egregious offenses have been committed, the safety of the public in general may demand that an elderly offender be incarcerated even where a relatively short period of incarceration may be a life sentence.

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? I would follow Canon 3(E)(1)(c) and (d) of the Code of Judicial Conduct. Generally a *de minimis* interest does not require recusal. As such, I would hear such a case unless there are other circumstances in addition to a *de minimis* interest that might make recusal appropriate.
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 should be fair, patient, firm, respectful and consistent.
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?
They would apply at all times. I believe and was raised to treat everyone as you would want to be treated. I have attempted to do that in my personal and professional career thus far and, I will continue to do so as a judge.
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 think anger is appropriate or professional in dealing with an attorney, criminal defendant or a member of the public. A judge must have control of the courtroom. If a judge cannot control himself, he cannot control his courtroom. If a participant gets out of line and violates court rules, I believe the matter can be remedied in a respectful but firm manner without getting angry.

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.
27. If you are a sitting judge, have you used judicial letterhead or the services of your staff while campaigning for this office? N/A
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/John Meadors

Sworn to before me this 11th day of August, 2010.

Notary Public for S.C.

My Commission Expires: 7-18-2011

JUDICIAL MERIT SELECTION COMMISSION)

In the Matter of: **John Meadors**)

Candidate for: **Judge in Seat 1, Fifth Judicial Circuit**)

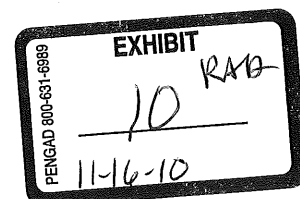
WITNESS AFFIDAVIT FORM

I will appear to testify concerning the qualifications of the above-named candidate and will produce all documents in my possession, if any, which will further develop or corroborate my testimony.

I understand that this written statement must be completed and returned to the Judicial Merit Selection Commission at least five (5) days prior to the hearing at which I wish to testify in order for the commission to hear my testimony and that the deadline for complaints is

In regard to my intended testimony, I will offer information as to the following:

- (1) Set forth your full name, age, address, and both home and work telephone numbers. **NAME: Marie-Therese H. Assa'ad-Faltas, MD, MPH AGE: 57 ADDRESS: P.O. Box 9115, Columbia, SC 29290. CELL PHONE: (330) 232-4164 E-MAIL: Marie_Faltas@hotmail.com**
- (2) Set forth the names, addresses, and telephone numbers (if known) of other persons who have knowledge of the facts concerning your testimony. **Please see the transcripts and copies of court records I will, God willing, e-mail to your Committee before noon on Tuesday, 2 November 2009. Generally, they relate to my three false arrests by Columbia's Police Department (CPD) on 2 and 12 December 2009 and 8 July 2010. That was a scheme to shake my family and me down. The witnesses are the judges, lawyers, witnesses, law enforcement officers, clerks and court reporters whose names appear in the transcripts and court documents and other exhibits to be timely e-mailed to you.**
- (3) State the nature of your testimony regarding the qualifications of the above-named judicial candidate, including: **Generally, a seat open after the Honorable Judge Kinard's retirement must be filled with someone approaching Judge Kinard's intellect and integrity. Neither Columbia Municipal "Judge" DeAndrea Gist Benjamin nor Fifth Circuit Deputy Solicitor John Meadors approaches the minimal requirements for that seat. As a municipal judge, appointed by City Council, DeAndrea Gist Benjamin was insensitive to conflicts of interest and the rights of defendants before her. She displayed little knowledge of the U.S. Constitution and a close mind to challenges to City of Columbia ordinances and to actions of City's police department (CPD). I wish to submit for your consideration the transcripts of two hearings before her: one where she would not even hear my argument that Columbia's "front-yard parking" ordinance is unconstitutional and the other where she claimed that "yelling and screaming" is not protected by the First Amendment. In the latter hearing, she bound me over for alleged "first-degree harassment" after refusing to allow me to fully question purported CPD Investigator Blanton on her conflict of interest and on the veracity and reliability of her alleged "victims" and witnesses. I had a 5-day jury trial in General Sessions Court where I defended myself *pro se* ably and was **not** convicted. Thereafter, I gathered irrefutable evidence from public records that the witnesses against me were suborned for perjury and the documents against me had been forged and fabricated. More shockingly, the CPD-made videos of my arrest and ransacking of my apartment and car on 2 December 2009 show Blanton displaying the warrants to her friend Larry Wayne Mason (a defendant in a civil suit I brought) and boasting "I signed them for you, Wayne." She then lies and claims they were "felony warrants" in order to have a sergeant threaten to knock down the door if I did not open. The charges are only misdemeanors and none of the allegations were committed in any law enforcement officer's presence. So, they had no right to arrest me at all. All I had done was maintain a neighborhood watch. Two alleged "victims" of my alleged "harassment" were known to CPD to be a drug dealer and a prostitute. I was arrested for allegedly "making them uncomfortable" when they came to my parking lot and threatened to rape me. As Chief Deputy Fifth Circuit Solicitor, John Meadors knew the charges against me were false and brought only to shake me and my family down. He took no action to halt that waste of taxpayers' money and attack on the integrity of the courts as temples of truth. To the contrary, when I tried to show him the evidence I had of my false accusers' perjury, he ran**



(figuratively crying like a baby) to Circuit Judge G. Thomas Cooper, Jr., falsely claimed I "harassed" Meadors by talking the elevator with him down to his car to tell him in details why he should exercise his supervisory duties and stop a retrial using fabricated evidence. While he is adamant *against* the innocent, Meadors showed little skills against the guilty. His office often "throws" DUI cases, possibly for a price. This is a danger to all of us. Meadors did not deserve the trust placed in him as a prosecutor. He does not deserve to be elevated to the bench. I seek an opportunity to testify live against both DeAndrea Gist Benjamin and John Meadors.

- (a) specific facts relating to the candidate's character, competency, or ethics, including any and all allegations of wrongdoing or misconduct on the part of the candidate; **Generally**, the candidate showed little respect for the U.S. Constitution, little sensitivity to conflicts of interest, and no care for the integrity of the courts (which are supposed to be temples of truth, not game parlors where the best liar wins) or the rights of the **innocent and unjustly-framed** criminal defendant.
- (b) specific dates, places, and times at which or during which such allegations took place; **Generally**, from November 2008 to the present.
- (c) names of any persons present during such alleged actions or possessing evidence of such alleged actions; **Generally**, please see the transcripts and other court documents and exhibits to be timely e-mailed to your Committee. A narrative with analysis will also be prepared and e-mailed.
- and (d) how this information relates to the qualifications of the judicial candidate. Because the candidate showed little respect for the U.S. Constitution, little sensitivity to conflicts of interest, and no care for the integrity of the courts (which are supposed to be temples of truth, not game parlors where the best liar wins) or the rights of the **innocent and unjustly-framed** criminal defendant.
- (4) Set forth a list of and provide a copy of any and all documents to be produced at the hearing which relate to your testimony regarding the qualifications of the judicial candidate. **Generally**, please see the transcripts and other court documents and exhibits to be timely e-mailed to your Committee. A narrative with analysis will also be prepared and e-mailed.
- (5) State any other facts you feel are pertinent to the screening of this judicial candidate. **Generally**, please see the transcripts and other court documents and exhibits to be timely e-mailed to your Committee. A narrative with analysis will also be prepared and e-mailed.

I understand that the information I have provided herein is confidential and is not to be disclosed to anyone except the Judicial Merit Selection Commission, the candidate and counsel.

WAIVER

I further understand that my testimony before the Judicial Merit Selection Commission may require the disclosure of information that would otherwise be protected by the attorney-client privilege. Therefore, in order that my complaint may be fully investigated by the commission, I hereby waive any right that I may have to raise the attorney-client privilege as that privilege may relate to the subject of my complaint. I further understand that by waiving the attorney-client privilege for this matter, I am authorizing the commission to question other parties, including my attorney, concerning the facts and issues of my case.

Signature

Affirmed and subscribed to me before me this **first** day of **November** 2010,

L.S.

Notary Public of South Carolina, My commission expires: _____

**JOHN P. MEADORS
237 SPRING LAKE ROAD
COLUMBIA, SC 29206**

TO: Judicial Merit Selection Commission
FROM: John P. Meadors
RE: Complaint of Dr. Marie Faltas

Dr. Faltas was prosecuted by an Assistant Solicitor in the Fifth Circuit Solicitor's Office for Harassment First Degree. The trial ended on February 26, 2010 after the jury deadlocked and the presiding judge declared a mistrial.

Several weeks later, I was leaving my office and was approached by Dr. Faltas. She informed me that several of the witnesses in her case had committed perjury. I was respectful and listened to Dr. Faltas. I informed her that any issue that she had concerning her case should be heard on the record before the Chief Administrative Judge for General Sessions Court in the Fifth Circuit. I told Dr. Faltas I had a meeting with a victim in Kershaw County and had to leave.

I informed a co-worker, First Assistant Solicitor David Ross of my encounter with Dr. Faltas. Mr. Ross told me that Judge G. Thomas Cooper, Chief Administrative Judge for General Sessions Court in the Fifth Circuit had requested that anyone in the Richland County Courthouse who was approached by Dr. Faltas should report the incident to the Court. Mr. Ross informed Judge Cooper of my encounter as he had been ordered to do. This ended my involvement in this matter.

In addition, Dr. Faltas' contention that the Fifth Circuit Solicitor's Office "throws" DUI cases is without merit.

Thank you.

Attachment

November 16, 2010

Jane Shuler
Chief Legal Counsel
Judicial Merit Selection Commission
P.O. Box 142
Columbia, South Carolina 29202

Re: Amendment to Personal Data Questionnaire

Dear Ms. Shuler:


Please be advised that I wish to amend my answer to Question # 41 on the Personal Data Questionnaire as follows:

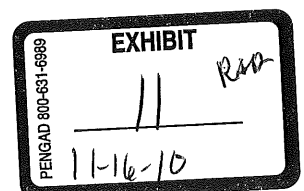
Stationary:	\$42.87
Envelopes:	\$28.29
Stamps:	<u>\$20.00</u>
Total	\$91.16

Thank you for your assistance.

With warm regards, I remain,

Sincerely,


Lisa C. Glover



JUDICIAL MERIT SELECTION COMMISSION
PERSONAL DATA QUESTIONNAIRE

Court, Position, and Seat # for which you are applying:

Circuit Court, Fifth Judicial Circuit, Seat 1

1. NAME: Lisa C. Glover
BUSINESS ADDRESS: 100 Executive Center Drive, Suite 101
Columbia, S.C. 29210
E-MAIL ADDRESS: lcglover@sif.sc.gov
TELEPHONE NUMBER: (office): (803) 798-2722 x 124
2. Date of Birth: 1964
Place of Birth: Orangeburg, S.C.
3. Are you a citizen of South Carolina? Yes
Have you been a resident of this state for at least the immediate past five years? Yes
5. Family Status: Married on October 9, 2004, to Titus Daniel Glover, Jr. Never divorced. Two children.
6. Have you served in the military? N/A
7. List each college and law school you attended, including the dates of your attendance, the degrees you received, and if you left an institution without receiving a degree, the reason for your departure.
 - (a) University of South Carolina August 1982–May 1986 B.S. Degree Criminal Justice
 - (b) University of South Carolina School of Law August 1988–May 1991 J.D.
8. List the states in which you have been admitted to practice law and the year of each admission. Also list any states in which you took the bar exam but were never admitted to the practice of law. If you took the bar exam more than once in any of the states listed, please indicate the number of times you took the exam in each state.

South Carolina 1991. I have not taken the Bar Exam in any other state
9. List the significant activities in which you took part during your attendance at college, graduate, and law school. Give the dates you were involved in these activities and list any leadership positions you held.
 - (a) University of South Carolina Marching and Concert Bands 1982-86
 - (b) Tau Beta Sigma Band Sorority 1982-86
 - (c) Black Law Student Association 1988-91
 - (d) Phi Alpha Delta 1990-91
10. Describe your continuing legal or judicial education during the past five years. Include only the title and date of any continuing legal or judicial education course completed.

<u>Conference/CLE Name</u>	<u>Date(s)</u>
(a) 75 th Anniversary of S.C. Workers' Comp Act	06/25/10;
(b) Everything You Wanted to Know about Everything	02/19/10;

- (c) Gain the Edge: Negotiating Strategies for Lawyers 01/15/10;
 - (d) Dissecting Workers' Comp Case 09/05/08;
 - (e) S.C. Local Government 12/07/07;
 - (f) Ethics for Government Lawyers 11/09/07;
 - (g) S.C. Workers' Compensation Law 09/07/07;
 - (h) Workers' Comp Spring Seminar 05/12/06;
 - (i) 27th Annual Workers' Comp Conference 03/03/06;
 - (j) Ethical Issues in ADR 02/27/06;
 - (k) Workers' Comp Medical Seminar March '03-06;
 - (l) Workers' Comp Annual Seminar October '03-06;
 - (m) ASCCAWC Seminar November '03-06;
 - (n) Ethics 2003-2005.
11. Have you taught law-related courses or lectured at bar association conferences, educational institutions, or continuing legal or judicial education programs?
- (a) I have served as an Adjunct Professor at Midlands Technical College from May 2005 through December 2007 in the Paralegal Studies Department. I taught a Workers' Compensation course.
 - (b) I have served as a lecturer for the S.C. Bar CLE Division, speaking during the CLEs entitled "75th Anniversary of the S.C. Workers' Compensation Act" and "Dissecting A Workers' Comp Case-Second Injury Fund, Uninsured Employers' Fund, State Accident Fund Do's and Don'ts.
12. List all published books and articles you have written and give citations and the dates of publication for each. None
13. List all courts in which you have been admitted to practice and list the dates of your admission. Give the same information for administrative bodies that require a special admission to practice.
Admitted to practice before the State Courts of South Carolina in 1991
14. Describe chronologically your legal experience since graduation from law school and include a list of all law firms with which you have been associated. Describe the general character of your practice and divide it into periods with dates if its character has changed over the years.
- (a) Deputy General Counsel – S.C. Second Injury Fund and Workers' Compensation Uninsured Employers' Fund January 8, 2007–present
I attend and participate in Workers' Compensation hearing representing both Funds before the S.C. Workers' Compensation Commission, Circuit Court, Court of Appeals and Supreme Court.
 - (b) Commissioner – S.C. Workers' Compensation Commission July 1, 2000–June 30, 2006
Presided over Workers' Compensation hearings statewide, issued rulings, signed settlement documents, and served on an Appellate panel.
 - (c) Assistant Solicitor – 5th Judicial Circuit (Richland and Kershaw Counties) November 1991 – May 31, 2000
Criminal Prosecution in Magisterial and Circuit Courts

If you are a judge and are not seeking a different type of judgeship, the following questions are inapplicable:

- (b) If you are a candidate for Circuit Court, please provide a brief written description of your experience in criminal matters, including any cases handled over the past five years and include a brief description of the issues involved. Further, please provide a brief written description of your experience in civil matters, including any cases handled over the past five years and include a brief description of the types of matters handled, issues involved, and procedural history. Please include information such as the primary areas in civil court in which you practice, whether you represent plaintiffs or defendants, or both. You may go back further than five years if you feel it would assist the Commission with its assessment of your experience. If you lack experience in an area, describe how your background has prepared you to preside over such matters as a Circuit Court Judge, or how you would compensate for your lack of experience in this area.

Criminal matters

I worked for approximately eight and one-half years as an Assistant Solicitor for the Fifth Judicial Circuit. During that time I handled Preliminary hearing and trials in Magistrate, Family and General Sessions Court. I participated in the prosecution of all types of criminal cases. I handled cases involving Shoplifting, Driving Under the Influence, Arson, Assault & Battery with Intent to Kill and Murder. I also appeared before the Grand Jury for Richland County. Further, I also appeared in Bond Court to set bonds on behalf of the State of South Carolina. Before leaving the Solicitor's office I served as the first Plea Court Coordinator. I was responsible for ensuring that Judges had enough guilty pleas to process for the entire one-week term of court. I performed this job duty while also handling an active caseload.

Civil matters

I frankly do not have much experience in handling civil matters. I currently appear in Common Pleas court to handle appeals of Workers' Compensation cases. I believe that my background has prepared me to handle civil matters. I have extensive General Sessions court experience. I understand the Rules of Evidence and Rules of Civil Procedure. I will further prepare myself by studying the law by attending CLEs, reviewing Advance Sheets and other publications offered by the Bar. I will review the files prior to the court date to research the law and identify any evidentiary issues that may arise. Additionally, I will conduct pre-trial conferences to outline the issues.

Furthermore, during my tenure as a Workers' Compensation Commissioner, I presided over cases on a weekly basis. While presiding over these hearings I made evidentiary rulings, applied the facts of the case to the procedural and substantive law as well as judge the

credibility of the witnesses. I believe these are all essential skills in civil court. Additionally, I served on a three person appellate panels ruling on Orders from other Single Commissioners.

15. What is your rating in Martindale-Hubbell?

I am not rated in Martindale-Hubbell. I sought a rating while serving as a Commissioner with the S.C. Workers' Compensation Commission. I was informed that I could not be rated since the lawyers who would offer comments could appear before me. I have not sought a rating since that time.

16. What was the frequency of your court appearances during the last five years?

- (a) federal: 0%;
(b) state: 10%.

All court appearance within the past five years have been before the S.C. Workers' Compensation Commission and Circuit Court involving Workers' Compensation cases.

17. What percentage of your practice involved civil, criminal, domestic, and other matters during the past five years?

- (a) civil: 10%;
(b) criminal: 0%;
(c) domestic: 0%;
(d) other: 0%.

All court appearances within the past five years in Common Pleas court are related to Workers' Compensation cases.

18. What percentage of your practice in trial court during the past five years involved matters that went to a jury, including those that settled prior to trial?
N/A

Did you most often serve as sole counsel, chief counsel, or associate counsel in these matters? N/A

19. List five of the most significant litigated matters you have personally handled in either trial or appellate court or before a state or federal agency. Give citations if the cases were reported and describe why these matters were significant.
N/A

20. List up to five civil appeals you have personally handled. Give the case name, the court, the date of decision, and the citation if the case was reported. N/A

21. List up to five criminal appeals that you have personally handled. Give the case name, the court, the date of decision and the citation if the case was reported. N/A

22. Have you ever held judicial office?

Yes. I was appointed to and served a six-year term on the S.C. Workers' Compensation Commission from July 1, 2000-June 30, 2006. My jurisdiction was limited to Workers' Compensation cases only.

23. If the answer to question 22 is yes, describe or list five of your most significant orders or opinions and give the citations if they were reported. Also list citations to any appellate review of these orders or opinions.

- (a) Bryan Patrick Robbins v. Walgreens and Broadspire Services, Inc., 375 S.C. 259, 652 S.E.2d 90 (S.C. App. 2007) (Single Commissioner)
 - (b) Ronnie W. Ellison v. Frigidaire Home Products, 371 S.C. 159, 638 S.E.2d 664 (S.C. 2006) (Single Commissioner)
 - (c) Mary Lizée v. South Carolina Department of Mental Health, 367 S.C. 122, 623 S.E.2d 860 (S.C. App. 2005) (Single Commissioner)
 - (d) Carol Roberts v. McNair Law Firm, 366 S.C. 50, 619 S.E.2d 453 (S.C.App.2005) (Single Commissioner)
 - (e) Virginia Cox v. Bellsouth 356 S.C. 468, 589 S.E.2d 766 (S.C. App. 2003) (Single Commissioner)
24. Have you ever held public office other than judicial office? N/A
25. List all employment you had while serving as a judge (whether full-time or part-time, contractual or at will, consulting or otherwise) other than elected judicial office. Specify your dates of employment, employer, major job responsibilities, and supervisor.
- Adjunct Professor Midlands Technical College, Paralegal Studies Department teaching a Workers' Compensation course, August 2004-December 2004, May 2005-July 2005, January 2006-May 2006, August 2007-December 2007, Supervisor: Bill McSorley, Esq.
(803) 822-3620
26. Have you ever been an unsuccessful candidate for elective, judicial, or other public office?
- Yes. I was a candidate for Administrative Law Seat 5. I was found Qualified but not Nominated March 2006. Further, I was a candidate for Circuit Court At-Large Seat 1. I was again found Qualified but not Nominated December 2008.
27. Have you ever been engaged in any occupation, business, or profession other than the practice of law, teaching of law, or holding judicial or other public office? No
28. Are you now an officer or director or involved in the management of any business enterprise? No
29. A complete, current financial net worth statement was provided to the Commission.
30. Describe any financial arrangements or business relationships you have, or have had in the past, that could constitute or result in a possible conflict of interest in the position you seek. Explain how you would resolve any potential conflict of interest. N/A
31. Have you ever been arrested, charged, or held by federal, state, or other law enforcement authorities for violation or for suspicion of violation of any federal law or regulation, state law or regulation, or county or municipal law, regulation, or ordinance, or any other law, including another country's law? No
32. Have you, to your knowledge, ever been under federal, state, or local investigation for possible violation of a criminal statute? No

33. Has a tax lien or other collection procedure ever been instituted against you by federal, state, or local authorities? Yes. Have you ever defaulted on a student loan? No. Have you ever filed for bankruptcy? No
State tax liens filed and satisfied.

34. Have you ever been sued, either personally or professionally, that is, have you ever been named as defendant or respondent in any court of law?

I have been sued in my professional capacity as an Assistant Solicitor by a defendant name Robert Jackson as a result of his criminal prosecution. The suit was dismissed.

I have also been sued in my professional capacity as a Commissioner with the South Carolina Workers' Compensation Commission. In 2001, the Full Commission voted to terminate the employment of each Commissioner's court reporter and 7-8 other employees due to a reduction-in-force, which became effective November 2, 2002. Six of the seven court reporters sued. The actions were entitled Kellie Lindler v. The South Carolina Workers' Compensation Commission and the South Carolina Budget and Control Board 2007-MO-006, and Skylet Morris, Kathy Snelling, Jo Elizabeth Wheat v. The South Carolina Workers' Compensation Commission, J. Alan Bass, Lisa Denese Chavis, Sherry Shealy Martschink, W. Lee Catoe, Holly Saleeby Atkins, J. Michelle Childs, George N. Funderburk, as Commissioners of the South Carolina Workers' Compensation Commission, and Alicia K. Clawson, as Executive Director of the South Carolina Workers' Compensation Commission, in their official capacities, 370 S.C. 85 (2006).

In the Lindler case the Court of Appeals affirmed the Circuit Court's finding that Ms. Lindler served at the pleasure of her Commissioner pursuant to § 42-3-60, and further that since she was an "at will" employee she could not use that State's grievance procedure to appeal her termination.

In the Morris, et al case, the Supreme Court reversed the Circuit Court's finding of Summary Judgment in favor of the Respondents, which reinstated the Respondents.

On or about September 19, 2008, I was personally served with a complaint entitled S.C. Community Bank v. Lisa C. Glover. This was an action regarding foreclosure. That action was dismissed and I am currently in good standing with my lender.

36. Have you ever been investigated by the Department of Social Services? If so, give the details and the resolution. Has your name ever been enrolled on the Central Registry of Child Abuse and Neglect? N/A

37. Are you now or have you ever been employed as a "lobbyist," as defined by S.C. Code § 2-17-10(13), or have you acted in the capacity of a "lobbyist's principal," as defined by S.C. Code § 2-17-10(14)? N/A

38. Since filing with the Commission your letter of intent to run for judicial office, have you accepted lodging, transportation, entertainment, food, meals, beverages, money, or any other thing of value as defined by S.C. Code § 2-17-10(1) from a lobbyist or lobbyist's principal? N/A

39. S.C. Code § 8-13-700 provides, in part, that "[n]o public official, public member, or public employee may knowingly use his official office, membership, or employment to obtain an economic interest for himself, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated." Please detail any knowledge you have of any formal charges or informal allegations against you or any other candidate for violations of these provisions. N/A
40. S.C. Code § 8-13-765 provides, in part, that "[n]o person may use government personnel, equipment, materials, or an office building in an election campaign." Please detail any knowledge you have of any formal charges or informal allegations against you or any other candidate for violations of these provisions. N/A
41. Itemize (by amount, type, and date) all expenditures, other than those for travel and room and board, made by you, or on your behalf in furtherance of your candidacy for the position you seek. N/A
42. List the amount and recipient of all contributions made by you or on your behalf to members of the General Assembly since the announcement of your intent to seek election to a judgeship. N/A
43. Have you directly or indirectly requested the pledge of any member of the General Assembly as to your election for the position for which you are being screened? Have you received the assurance of any public official or public employee that they will seek the pledge of any member of the General Assembly as to your election for the position for which you are being screened? N/A
44. Have you requested a friend or colleague to contact members of the General Assembly on your behalf? Are you aware of any friends or colleagues contacting members of the General Assembly on your behalf? N/A
45. Have you or has anyone acting on your behalf solicited or collected funds to aid in the promotion of your candidacy? N/A
46. Have you or has anyone acting on your behalf contacted members of the Judicial Merit Selection Commission about your candidacy or intention to become a candidate? N/A
47. List all bar associations and professional organizations of which you are a member and give the titles and dates of any offices you have held in such groups.
South Carolina Bar Association
48. List all civic, charitable, educational, social, and fraternal organizations of which you are or have been a member during the past five years and include any offices held in such a group, any professional honors, awards, or other forms of recognition received and not listed elsewhere.
- (a) National Council of Negro Women "Living the Legacy Award" Honoree 2005
 - (b) Brookland Academy Child Development Center Board of Directors Member

49. Provide any other information that may reflect positively or negatively on your candidacy, or which you believe should be disclosed in connection with consideration of you for nomination for the position you seek.

I have previously been found Qualified but not Nominated by this Commission on two prior occasions. I am a diligent and hardworking individual. I enjoy serving the public in the capacities I have held and want to continue to serve.

I believe that I will be a fair and impartial judge if elected. I will prepare myself as best I can to handle the matters assigned to me.

50. References:

- (a) Karen Alexander
Auntie Karen Foundation
3419 Hazelhurst Road
Columbia, S.C. 29203
803-748-7124
- (b) Deborah Dawson
South Carolina Community Bank
1545 Sumter Street,
Columbia, S.C. 29201
803-733-8100 x 1114
- (c) Bruce Pope
Northwestern Mutual
1901 Bull Street
Columbia, S.C. 29201
803-254-0133 x 3026
- (d) Rev. Charles B. Jackson, Sr.
Brookland Baptist Church
1066 Sunset Boulevard
West Columbia, S.C. 29169
- (e) Carl W. Stent, Esq.
P.O. Box 11949
Columbia, S.C. 29211
803-737-2002

YOUR SIGNATURE WILL BE HELD TO CONSTITUTE A WAIVER OF THE CONFIDENTIALITY OF ANY PROCEEDING BEFORE A GRIEVANCE COMMITTEE OR ANY INFORMATION CONCERNING YOUR CREDIT.

I HEREBY CERTIFY THAT MY ANSWERS ARE TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

Signature: Lisa C. Glover

Date: August 12, 2010

<p style="text-align: center;">JUDICIAL MERIT SELECTION COMMISSION Sworn Statement to be included in Transcript of Public Hearings</p>
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Circuit Court
(New Candidate)

Full Name: Lisa C. Glover
Business Address: 100 Executive Center Drive, Suite 101
Columbia, SC 29210
Business Telephone: (803) 798-2722 x 124

1. Why do you want to serve as a Circuit Court judge?

I want to serve as a Circuit Court judge because I continue to be humbled by the profession I have chosen. The law is constantly evolving and I believe that all persons should have access to the legal process. I am qualified for this position based on my education, work experience, ability to be impartial, my professionalism, and my work ethic.

2. Do you plan to serve your full term if elected?

Yes. I plan to serve out the full term if elected.

3. Do you have any plans to return to private practice one day?

I have never been in private practice. I have always worked in County and State government. I do not plan to enter private practice.

4. Have you met the Constitutional requirements for this position regarding age, residence, and years of practice?

Yes. I am 46 years of age, a lifelong resident of South Carolina and have been licensed to practice law since 1991.

5. What is your philosophy regarding *ex parte* communications? Are there circumstances under which you could envision *ex parte* communications being tolerated?

I do not believe Ex Parte communication should take place. However, if a situation arises that warrants this type of communication I will make sure that the communication does not involve any substantive matters or issues involving the merits of the case. Further I would notify opposing counsel that the communication occurred and the content of the communication.

6. What is your philosophy on recusal, especially in situations in which lawyer-legislators, former associates, or law partners are to appear before you?

If I have a prior relationship with a party appearing before me I will disclose that a relationship exist and the nature of the relationship. I will then offer to recuse myself. If neither party has an objection to my hearing the case I will proceed otherwise I will recuse myself.

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 will defer to the party requesting the recusal and recuse myself.

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

I will recuse myself if the parties perceive that my I cannot carry out my duties impartially and competently.

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

I will not accept gifts from litigants who may appear before me even though I am mindful that there are certain rules for accepting gifts in certain situations.

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

If I have knowledge of misconduct on the part of a lawyer or judge I would directly communicate with that individual and/or report the misconduct to the appropriate authorities.

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?

I would rely on the transcript of record, my notes taken during the proceeding in order to draft the Order. I may also request the parties to submit Proposed Orders within 14-30 days to opposing counsel and myself for consideration.

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

If elected, I will set a deadline for submission of requested materials and check the status as the deadline approaches. I along with my staff would be responsible for checking the status of matters outstanding in my office.

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

I do not believe a Judge should be an activist or promote any public policy. Activism and promotion of public policy are the roles of the legislature. I believe Judges should remain active in bar associations and the community to be aware of updated legal standards and rulings.

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 plan to continue participating in Bar activities, such as Mock Trial.

17. Do you feel that the pressure of serving as a judge would strain personal relationships (i.e. spouse, children, friends, or relatives)?

No. I believe you must balance your home and work life so that one does not affect the other. This can be accomplished through time management and support of family and friends.

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 will take into consideration the prior criminal history, prior sentences and the current charge to sentence the offender.

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

The waiver of a juvenile to General Sessions Court is very serious. Once again I will take into consideration the prior criminal history if any and the current charge to sentence the offender.

c. White collar criminals:

Typically, persons accused of White Collar crimes do not have prior criminal histories. I will take into consideration the nature of the crime, the impact of the crime in the community and make restitution a part of any sentence imposed.

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

Social and/or economic disadvantage is not an excuse for engaging in criminal behavior. I will take that factor into consideration along with the crime committed and fashion a sentence accordingly.

e. Elderly defendants or those with some infirmity:

Consideration will be given to age and physical condition. I will also consider any prior criminal history, prior sentences, and the current charge to sentence the offender appropriately.

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? No.

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 a Judge should be courteous and patient with all parties involved in the process while conducting the business of the court.

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?

These rules apply to my life on daily basis.

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 an appropriate response. While our system is adversarial a judge must always display a calm and professional demeanor.

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 approximately \$50.00 on stationary and postage.
27. If you are a sitting judge, have you used judicial letterhead or the services of your staff while campaigning for this office? N/A
28. Have you sought or received the pledge of any legislator prior to this date? N/A
29. Have you sought or been offered a conditional pledge of support by any legislator pending the outcome of your screening? N/A
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? No. 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/Lisa C. Glover

Sworn to before me this 12th day of August, 2010.

Notary Public for S.C.

My Commission Expires: 8-26-2019

J. P. STROM, JR. P.A.
MARIO A. PACELLA*
ROBERT E. HOOD
JOHN R. ALPHIN
ROBYN W. MADDEN
* ALSO ADMITTED IN GA. AND N.Y.

STROM
LAW FIRM L.L.C.
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WWW.STROMLAW.COM

October 19, 2010

Jane Shuler
Judicial Merit Screening Committee
P. O. Box 142
Columbia, South Carolina 29202

Re: 5th Judicial Circuit, Circuit Court, Seat 1

Dear Ms. Shuler:

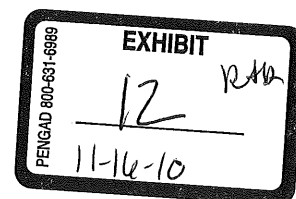
To date, I have spent the following on this campaign:

Postage:	\$ 39.60
Paper:	17.98
Paper	20.98
Envelopes:	7.99

TOTAL:	\$ 86.55
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Thank you.


Robert E. Hood



**JUDICIAL MERIT SELECTION COMMISSION
PERSONAL DATA QUESTIONNAIRE**

Court, Position, and Seat # for which you are applying:

Circuit Court, Fifth Judicial Circuit, Seat 1

1. NAME: Robert Eldon Hood
BUSINESS ADDRESS: 2110 N. Beltline Blvd.
Columbia, S.C. 29204
E-MAIL ADDRESS: rhood@stromlaw.com
TELEPHONE NUMBER: (office): 803-252-4800
2. Date of Birth: 1975
Place of Birth: Decatur, GA
3. Are you a citizen of South Carolina? Yes
Have you been a resident of this state for at least the immediate past five years? Yes
5. Family Status: Married on April 17, 2004, to Kristina Kirk Hood. Never divorced. Two children.
6. Have you served in the military? No
7. List each college and law school you attended, including the dates of your attendance, the degrees you received, and if you left an institution without receiving a degree, the reason for your departure.
 - (a) University of South Carolina School of Law–Fall 1998–Spring 2001–J.D.
 - (b) The Citadel – Fall 1994–Spring 1998 – B.A. – Political Science
8. List the states in which you have been admitted to practice law and the year of each admission. Also list any states in which you took the bar exam but were never admitted to the practice of law. If you took the bar exam more than once in any of the states listed, please indicate the number of times you took the exam in each state.

South Carolina – 2001 (took the bar exam 1 time)
9. List the significant activities in which you took part during your attendance at college, graduate, and law school. Give the dates you were involved in these activities and list any leadership positions you held.

The Citadel:

 - (a) Cadre Corporal – Sophomore Year;
 - (b) Company Clerk – Sophomore Year;
 - (c) Cadre Platoon Sergeant and Platoon Sergeant – Junior Year;
 - (d) Regimental Drum Major – Senior Year;
 - (e) Dean’s List – Junior and Senior Year;
 - (f) Gold Stars – Senior Year;
 - (g) Commandant’s List;
 - (h) President’s List;
 - (i) Most Outstanding Disciplinary Record;
 - (j) The Citadel, Inn of Court;
 - (k) Political Science Honor Society.

USC School of Law:

- (a) Moot Court Bar;
- (b) Order of the Barristers.

10. Describe your continuing legal or judicial education during the past five years. Include only the title and date of any continuing legal or judicial education course completed.

<u>Conference/CLE Name</u>	<u>Date(s)</u>
(a) SCAJ	August 2010;
(b) Sporting Clays Ethics with the Judges	2010;
(c) Sporting Clays CLE	2009;
(d) SCAJ	August 2009;
(e) SCTLA	August 2008;
(f) Beginning Westlaw	2008;
(g) Guideline Seminar	2008;
(h) Federal Criminal Practice Seminar	2008;
(i) Sporting Clays/Skeet Shoot	2008;
(j) Fighting to Win your DUI	2008;
(k) Skeet Shoot	2007;
(l) AILA Annual Conference	2006;
(m) Criminal Law Update	2006;
(n) Federal Sentencing Guidelines	2005;
(o) Attorney ECF Training	2005.

11. Have you taught law-related courses or lectured at bar association conferences, educational institutions, or continuing legal or judicial education programs? No
12. List all published books and articles you have written and give citations and the dates of publication for each. None
13. List all courts in which you have been admitted to practice and list the dates of your admission. Give the same information for administrative bodies that require a special admission to practice.
- (a) South Carolina – 2001
 - (b) United States District Court for S.C. – 2005
 - (c) 4th Circuit Court of Appeals -2006
14. Describe chronologically your legal experience since graduation from law school and include a list of all law firms with which you have been associated. Describe the general character of your practice and divide it into periods with dates if its character has changed over the years.
- (a) 5th Judicial Circuit Solicitor's Office – Fall 2001-03:
Handled prosecution cases as an Assistant Solicitor including violent crimes, property crimes, white collar crimes, and misdemeanors.
 - (b) South Carolina Attorney General's Office – 2003-05
Prosecutor for the Statewide Grand Jury. Handled multi-county drug trafficking cases, large scale securities fraud cases, and white collar/public corruption cases throughout the state.

(c) Strom Law Firm, LLC 2005–Present

I handle mainly criminal defense cases involving white collar crime, property crime, violent crimes, drug crimes, and all levels of misdemeanor crimes. I practice extensively in state and federal court almost on a daily basis. I also handle all levels of civil litigation mainly focused on representation of plaintiff's.

If you are a judge and are not seeking a different type of judgeship, the following questions are inapplicable:

- (b) If you are a candidate for Circuit Court, please provide a brief written description of your experience in criminal matters, including any cases handled over the past five years and include a brief description of the issues involved. Further, please provide a brief written description of your experience in civil matters, including any cases handled over the past five years and include a brief description of the types of matters handled, issues involved, and procedural history. Please include information such as the primary areas in civil court in which you practice, whether you represent plaintiffs or defendants, or both. You may go back further than five years if you feel it would assist the Commission with its assessment of your experience. If you lack experience in an area, describe how your background has prepared you to preside over such matters as a Circuit Court Judge, or how you would compensate for your lack of experience in this area.

Experience in Criminal Matters:

I have extensive experience in handling criminal matters both as a prosecutor and as a criminal defense attorney. I served as an Assistant Solicitor and an Assistant Attorney General during my first four years of practice. While serving in these capacities, I have handled jury trials, bench trials and hundreds of guilty pleas. I have tried murder cases both as a prosecutor and as a defense attorney. I have worked on a capital murder trial as a prosecutor. I have handled violent crimes, property crimes, drug crimes, and misdemeanors both as a prosecutor and as a defense attorney. I have practiced almost daily in a federal, state, magistrate, or local criminal court. I have represented victims as a prosecutor and as a defense attorney. I have represented defendants charged with all levels of crimes from murder to disorderly conduct. I have also practiced extensively in federal criminal court throughout my time as a criminal defense attorney. I have handled issues involving search and seizure, admissibility of statements, complex legal issues, securities law, change of venue in high profile cases, and complex plea negotiations involving corporations both as the victim and as the defendant. While at the Attorney General's office, I worked in the Statewide Grand Jury division and prosecuted the first ever criminal securities fraud trial in South Carolina. Also, while at the Attorney General's office, I successfully tried and convicted the largest

methamphetamine dealer in the state (at the time), whose case was affirmed on appeal. I have also handled multiple PCR cases from basic guilty plea PCRs to murder cases that went through a full trial.

Experience in Civil Matters:

All of my dealings with civil matters have been on the plaintiff's side of the case. I have drafted and argued motions, taken depositions, and prepared multiple cases for trial. I have also been involved in settlement negotiations on multiple cases and have a strong understanding of the civil system in South Carolina. I have handled cases from the pleadings and discovery stages through to jury or bench trial. I continue to research and study cases and authoritative sources concerning procedure and substantive aspects of civil law.

15. What is your rating in Martindale-Hubbell?
Rated 2.9 out of 5, and I have met the very high criteria of General Ethical Standing
16. What was the frequency of your court appearances during the past five years?
 - (a) federal: Weekly to Monthly;
 - (b) state: three to five days a week.
17. What percentage of your practice involved civil, criminal, domestic, and other matters during the past five years?
 - (a) civil: 10%;
 - (b) criminal: 90%;
 - (c) domestic: 0%;
 - (d) other: 0%.
18. What percentage of your practice in trial court during the past five years involved matters that went to a jury, including those that settled prior to trial?
 - (a) jury: 99%;
 - (b) non-jury: 1%.

Did you most often serve as sole counsel, chief counsel, or associate counsel in these matters? Sole Counsel
19. List five of the most significant litigated matters you have personally handled in either trial or appellate court or before a state or federal agency. Give citations if the cases were reported and describe why these matters were significant.
 - (a) State v. Larry C. Owen – In this trial I was an assistant attorney general for the state grand jury. The case was a large scale securities fraud trial which took place in Greenville, South Carolina. After one week of a three week trial, Mr. Owen pled guilty to all charges pending against him. What makes this case significant is the fact that it was the first ever securities fraud prosecution in South Carolina and at the time it was the largest fraud case ever in South Carolina State court history.
 - (b) State v. Earle Morris – In this trial I was an assistant attorney general for the state grand jury. This case was part of the same basic fact pattern as the Larry Owen trial above. The difference is that Mr. Morris did not plead guilty after the first week of trial. This was a three week trial in

Greenville County before the Honorable James Johnson. During this trial the number of complicated legal issues that arose are too many to name. During the trial the judge listened to arguments and ruled with no precedent from South Carolina courts to rely on. The case went to jury and Mr. Morris was convicted on all counts pending against him. The case was upheld on appeal.

- (c) State v. Denise Hagan – In this trial I was an assistant attorney general for the state grand jury. At the time, Ms. Hagan was considered by law enforcement to be the largest methamphetamine dealer in the state. Ms. Hagan was represented by Jack Swerling at trial and the case went through to jury verdict. Ms. Hagan was convicted of all charges pending against her. The case had complicated search issues, admissibility of statements issues, co-conspirator hearsay issues, and confrontation clause issues. Ms. Hagan's case was upheld on appeal.
 - (d) State v. Eugene King – In this trial, I was appointed by the Honorable James C. Williams, Jr., to represent Mr. King in his pending Murder trial. Mr. King had been previously represented by the public defender's office in Orangeburg County, when he asked the court to have them removed as his counsel. Over a year after his arrest and just a few months short of trial, I was appointed to represent him. In his murder trial, there were complicated issues dealing with the admissibility of his statements, his mental health, and the evidence located at the crime scene. Mr. King was eventually convicted by the jury for Murder. Based on my legal arguments, Judge Williams agreed to charge the jury on the crime of involuntary manslaughter, to which the solicitor greatly objected. Mr. King appealed his case and his case was upheld on appeal.
 - (e) Campbell Soup Company v. Mehder – In this civil case, our firm was retained by Campbell Soup to bring a civil action against Ms. Mehder for inappropriately taking in excess of one million dollars from the Corporation. I have handled all of the pleadings, motions, settlement negotiations, and hearings in this case. The case is significant due to the amount of fraud alleged and complications that have occurred throughout the proceedings.
20. List up to five civil appeals you have personally handled. Give the case name, the court, the date of decision, and the citation if the case was reported.
None
21. List up to five criminal appeals that you have personally handled. Give the case name, the court, the date of decision and the citation if the case was reported.
United States of America v. Jamar Robinson, 4th Circuit Court of Appeals, No. 05-5276, Unpublished, January 11, 2007.
22. Have you ever held judicial office? No
24. Have you ever held public office other than judicial office? No

25. List all employment you had while serving as a judge (whether full-time or part-time, contractual or at will, consulting or otherwise) other than elected judicial office. Specify your dates of employment, employer, major job responsibilities, and supervisor. None
26. Have you ever been an unsuccessful candidate for elective, judicial, or other public office?
The Citadel, Board of Visitors, Spring 2010. I ran for the At-large Board of Visitors seat and withdrew weeks prior to the election.
27. Have you ever been engaged in any occupation, business, or profession other than the practice of law, teaching of law, or holding judicial or other public office? No
28. Are you now an officer or director or involved in the management of any business enterprise? No
29. A complete, current financial net worth statement was provided to the Commission.
30. Describe any financial arrangements or business relationships you have, or have had in the past, that could constitute or result in a possible conflict of interest in the position you seek. Explain how you would resolve any potential conflict of interest. None
31. Have you ever been arrested, charged, or held by federal, state, or other law enforcement authorities for violation or for suspicion of violation of any federal law or regulation, state law or regulation, or county or municipal law, regulation, or ordinance, or any other law, including another country's law? None
32. Have you, to your knowledge, ever been under federal, state, or local investigation for possible violation of a criminal statute? No
33. Has a tax lien or other collection procedure ever been instituted against you by federal, state, or local authorities? Have you ever defaulted on a student loan? Have you ever filed for bankruptcy? No
34. Have you ever been sued, either personally or professionally, that is, have you ever been named as defendant or respondent in any court of law? No
36. Have you ever been investigated by the Department of Social Services? If so, give the details and the resolution. Has your name ever been enrolled on the Central Registry of Child Abuse and Neglect? No
37. Are you now or have you ever been employed as a "lobbyist," as defined by S.C. Code § 2-17-10(13), or have you acted in the capacity of a "lobbyist's principal," as defined by S.C. Code § 2-17-10(14)? No
38. Since filing with the Commission your letter of intent to run for judicial office, have you accepted lodging, transportation, entertainment, food, meals, beverages, money, or any other thing of value as defined by S.C. Code § 2-17-10(1) from a lobbyist or lobbyist's principal? No
39. S.C. Code § 8-13-700 provides, in part, that "[n]o public official, public member, or public employee may knowingly use his official office, membership, or employment to obtain an economic interest for himself, a

member of his immediate family, an individual with whom he is associated, or a business with which he is associated." Please detail any knowledge you have of any formal charges or informal allegations against you or any other candidate for violations of these provisions. None

40. S.C. Code § 8-13-765 provides, in part, that "[n]o person may use government personnel, equipment, materials, or an office building in an election campaign." Please detail any knowledge you have of any formal charges or informal allegations against you or any other candidate for violations of these provisions. None
41. Itemize (by amount, type, and date) all expenditures, other than those for travel and room and board, made by you, or on your behalf in furtherance of your candidacy for the position you seek. None
42. List the amount and recipient of all contributions made by you or on your behalf to members of the General Assembly since the announcement of your intent to seek election to a judgeship. None
43. Have you directly or indirectly requested the pledge of any member of the General Assembly as to your election for the position for which you are being screened? Have you received the assurance of any public official or public employee that they will seek the pledge of any member of the General Assembly as to your election for the position for which you are being screened? No
44. Have you requested a friend or colleague to contact members of the General Assembly on your behalf? Are you aware of any friends or colleagues contacting members of the General Assembly on your behalf? No
45. Have you or has anyone acting on your behalf solicited or collected funds to aid in the promotion of your candidacy? No
46. Have you or has anyone acting on your behalf contacted members of the Judicial Merit Selection Commission about your candidacy or intention to become a candidate? No
47. List all bar associations and professional organizations of which you are a member and give the titles and dates of any offices you have held in such groups.
 - (a) SCAJ;
 - (b) Richland County Bar Association;
 - (c) SCACDL.
48. List all civic, charitable, educational, social, and fraternal organizations of which you are or have been a member during the past five years and include any offices held in such a group, any professional honors, awards, or other forms of recognition received and not listed elsewhere.
None
49. Provide any other information that may reflect positively or negatively on your candidacy, or which you believe should be disclosed in connection with consideration of you for nomination for the position you seek.

I believe that my unique experiences throughout my legal career provide me with the skill set to effectively be a competent, courteous, compassionate, and concerned judge. My experience in both sides of criminal matters and in civil matters gives me a broad and balanced perspective on the legal system.

50. References:

- (a) Kevin Lindler (Banker)
4020 Kilbourne Road
Columbia, S.C. 29205
803-413-0724
- (b) Sherri Lydon
2530 Canterbury Road
Columbia, S.C. 29204
803-331-8690
- (c) Johnny Gasser
2 East Bend Court
Columbia, S.C. 29223
803-730-1693
- (d) Scott Darby
2166 Quinn Road
Chester, S.C. 29706
803-519-7944
- (e) Dr. James "Pate" Cooper
1536 Tanglewood Road
Columbia, S.C. 29205
803-238-2092

YOUR SIGNATURE WILL BE HELD TO CONSTITUTE A WAIVER OF THE CONFIDENTIALITY OF ANY PROCEEDING BEFORE A GRIEVANCE COMMITTEE OR ANY INFORMATION CONCERNING YOUR CREDIT.

I HEREBY CERTIFY THAT MY ANSWERS ARE TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

Signature: Robert Hood

Date: August 12, 2010

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

Full Name: Robert Eldon Hood
Business Address: 2110 N. Beltline Blvd.
Columbia, SC 29204
Business Telephone: 803-252-4800

1. Why do you want to serve as a Circuit Court judge?

I want to serve as a Circuit Court Judge to continue my tradition of public service. During the early years of my legal career as a prosecutor I was involved in public service. Even in private practice I continued to be appointed to represent criminal defendants in complex and simple criminal matters. I have appeared before many judges from Municipal and Magistrate Courts to Family Court to Circuit Court to federal court and appellate courts. I believe that my knowledge and demeanor provides me with the competency, knowledge, and ability to serve effectively and with courtesy and humility as a Circuit Court Judge.

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 at this time.

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 communications should not take place unless allowed by the Professional Responsibility Rules and the Judicial Canons.

6. What is your philosophy on recusal, especially in situations in which lawyer-legislators, former associates, or law partners are to appear before you?

I would recuse myself if the judicial canons or rules of professional responsibility require me to recuse myself.

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?

Even if I believed that there was no prejudice or impartiality on my part, I would grant deference to a party that requests recusal. I would discuss this with all parties involved, review the appropriate ethical rules, and make an appropriate decision.

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 take steps to ensure that my spouse or close relatives do their best to remove themselves from any situation that may arise. I would evaluate the case, the circumstances and the prevailing law and make an appropriate decision based on the law. I would recuse myself where my wife or close relative had more than a de minimis interest.

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

I would not accept gifts or social hospitality that did not comply with ethical rules in place, and anything accepted would be reported on my financial disclosure form.

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

I would first go to the rules of professional responsibility and the judicial canons to see how they direct I deal with the situation. I would start handling the situation by talking with the lawyer or judge directly and then consider (if applicable or mandatory) reporting the situation to the correct authority over the matter.

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 will depend on the complexity of the issue. If it is a rather simple issue I will have one party or both parties draft proposed orders, making sure that the other side has an opportunity to review and comment. If a complex issue is involved, I would more than likely draft the order myself.

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

I would develop a calendar system between myself and the staff to allow for coordination and communication. I would use both a computer system calendar and a hard copy calendar.

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

I am not an advocate of judicial activism. Judges should have no effect on public policy. Public policy should be set by 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 would participate in the Mock-Trial Programs for school aged children and would also like to participate in the creation of additional diversion programs for our court 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?

Certainly travel and other responsibilities of a circuit court judge could strain family and personal relationships. I have already discussed these issues and have an understanding with my family, extended family, and friends.

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.

I would like to address how I view sentencing in general and what a judge should consider:

(1) the nature and circumstances of the offense and the history and characteristics of the defendant;

(2) the need for the sentence imposed—

a. to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;

b. to afford adequate deterrence to criminal conduct;

c. to protect the public from further crimes of the defendant; and

d. to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;

(3) the kinds of sentences available;

(4) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and

(5) the need to provide restitution to any victims of the offense.

a. Repeat offenders:

These offenders have to be treated differently than other participants in the criminal justice system. To properly sentence these defendants a judge needs to know more than what their prior record contains. You also need to know what specific sentences they previously received. Knowing this information enables a judge to make a proper sentencing decision. Understanding what types of sentences the defendant has served before, and whether or not he or she completed those sentences, will lead to a proper sentencing result in the current case.

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

In sentencing a juvenile that has been waived, a judge must consider what the juvenile would have received had they remained in family court. While this is not the only factor, it should be weighed before making a decision, while keeping in mind that if a juvenile has been waived then it is a serious and violent offense. The need to hear from the victims of those crimes is important and must be weighed also.

c. White collar criminals:

In sentencing white collar criminals, one of the most important considerations is the ability to pay restitution. Victims often have strong viewpoints on whether or not they want the defendant to go to prison or they want restitution. It is also important to evaluate the defendant's ability to pay restitution. If the defendant has been on bond for a year and has no money to

pay towards restitution, what makes anyone think he is going to pay restitution if he is given probation? The track record of the person and their ability to pay restitution are crucial in determining the appropriate sentence.

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

A defendant's background is crucial to a proper sentencing decision. However, this factor must be weighed with the other factors mentioned above in determining the appropriate sentence.

e. Elderly defendants or those with some infirmity:

These defendants must be evaluated as to their ability to get the proper care depending on the circumstances of their situation. The factors mentioned above coupled with the understanding of the person's infirmity are all necessary to appropriately render the best sentence.

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?

I would, only if the judicial canons and rules of professionally responsibility allowed me to hear the case. I would disclose to the parties involved the *de minimis* interest.

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 appropriate demeanor for a judge is even-tempered, respectful, courteous, attentive, fair, patient, gracious, and considerate to all lawyers, litigants, jurors, court staff and the general public. A judge should also have a strong work ethic and run an efficient court.

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?

Seven days a week, twenty-four hours a day.

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, never. Anger has no place on the bench.

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

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/Robert E. Hood

Sworn to before me this 12th day of August, 2010. _____

Notary Public for S.C.

My Commission Expires: 5-20-2015 _____



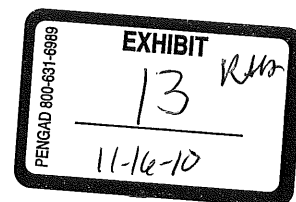
Shadd Law Firm, LLC

James Shadd, III,
Attorney at Law

shaddlawfirmllc@bellsouth.net
www.shaddlaw.com

November 4, 2010

J.J. Gentry, Esquire
SC Judicial Merit Selection Commission
P.O. Box 142
Columbia, SC 29202



RE: Personal Data Questionnaire- Fifth Judicial Circuit-Seat 1

Dear Mr. Gentry:

Please accept this letter as an amendment to my previously filed Personal Data Questionnaire Form.

- 14(b) If you are a candidate for Circuit Court, please provide a brief written description of your experience in criminal matters, including any cases handled over the past five years and include a brief description of the issues involved. Further, please provide a brief written description of your experience in civil matters, including any cases handled over the past five years and include a brief description of the types of matters handled, issues involved, and procedural history. Please include information such as the primary areas in civil court in which you practice, whether you represent plaintiffs or defendants, or both. You may go back further than five years if you feel it would assist the Commission with its assessment of your experience. If you lack experience in an area, describe how your background has prepared you to preside over such matters as a Circuit Court Judge, or how you would compensate for your lack of experience in this area.

I have handled several of criminal cases in the past five years ranging from small misdemeanors to those involving the death of a child. I have only represented those accused of crimes from magistrate's court, juvenile court, Circuit Court as well as in federal court. These cases have been throughout the state but primarily in this Circuit. Most cases have ended in either a plea, prosecutorial and judicial dismissals or some pretrial intervention program. A few have resulted in trial.

I have also been involved in a some civil cases including, but not limited to, personal injury, defamation, contractual disputes and medical negligence. These have also been handled on the magistrate level, Master in Equity and in the Court of Common Pleas. While I have gone to trial on a minority of these cases, most end in a settlement prior to trial. I have primarily represented plaintiffs but have also represented a few individual and institutional defendants. I recognize that I may be lacking in this area but will compensate for the shortfall through CLE's, researching of case law and counsel with other members of the Bench.



Shadd Law Firm, LLC

James Shadd, III,
Attorney at Law

shaddlawfirmllc@bellsouth.net
www.shaddlaw.com

27. Have you ever been engaged in any occupation, business, or profession other than the practice of law, teaching of law, or holding judicial or other public office? If so, give details, including a description of your occupation, business, or profession, the dates of your employment, and the name of your business or employer.

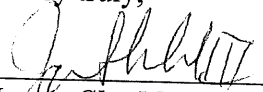
While I would say I have yet to engage in the profession, I am a licensed contractual advisor (sports agent) for the National Football League as of November 2009. I have not taken any measures to pursue potential clients yet and, if elected to this seat, I would resign this position and not pursue that profession.

49. Provide any other information that may reflect positively or negatively on your candidacy, or which you believe should be disclosed in connection with consideration of you for nomination for the position you seek. This information may include how your life experiences have affected or influenced the kind or type of judge you have been or plan to be.

Throughout my practice and in my life experiences, I have represented all walks of like and come into contact with people of all stripes. I have seen that in every person they want fairness. Oftentimes, it is about winning and losing, but in the end litigants want to have a fair shake or fair shot. They despise when things are stacked against them or they perceive that the judge did "not like them" or have some special relationship with opposing counsel. I have advocated for people in my profession as well as with certain charitable organization. I believe I have done well so far. Helping people was the main reason I became an attorney. It still remains so. I believe everyone should respect the rule of law, which I love and will defend. There should also be a feeling amongst our society of confidence in fairness, equity and that the courtroom is open, blind and unbiased for anyone with a legitimate dispute that can be resolved in the courtroom. A judge should promote those things and shun personal biases. She should apply the law and rules to the facts while not rewarding friends or punishing enemies. Our society depends on it. Now I would like to play a different role as a member of our great Bench. Judges should be prepared, kind, humorous, unbiased and take their jobs seriously. I have been that way in my career and life and would bring those same qualities if honored to be chosen to do so.

If you should have any questions please feel free to contact me.

Yours very truly,

BY: 
James Shadd, III
JSII

JUDICIAL MERIT SELECTION COMMISSION
PERSONAL DATA QUESTIONNAIRE

Court, Position, and Seat # for which you are applying:

Circuit Court, Fifth Judicial Circuit, Seat 1

1. NAME: James Shadd III
BUSINESS ADDRESS: 5000 Thurmond Mall, Suite 348
Columbia, S.C. 29201
E-MAIL ADDRESS: shaddlawfirmllc@bellsouth.net
TELEPHONE NUMBER: (office): 803-771-7460
2. Date of Birth: 1974
Place of Birth: Columbia, S.C.
3. Are you a citizen of South Carolina? Yes
Have you been a resident of this state for at least the immediate past five years? Yes
5. Family Status: Married on June 12, 1999, to Taminika Lashelle Shadd. Never divorced. Four children.
6. Have you served in the military? No
7. List each college and law school you attended, including the dates of your attendance, the degrees you received, and if you left an institution without receiving a degree, the reason for your departure.
 - (a) Winthrop University, August 1992-May 1996, B.A. Political Science
 - (b) University of S.C. Law School, August 1997-May 2000, J.D.
8. List the states in which you have been admitted to practice law and the year of each admission. Also list any states in which you took the bar exam but were never admitted to the practice of law. If you took the bar exam more than once in any of the states listed, please indicate the number of times you took the exam in each state.

South Carolina 2000
9. List the significant activities in which you took part during your attendance at college, graduate, and law school. Give the dates you were involved in these activities and list any leadership positions you held.
 - (a) USC School of Law-Black Law Student's Association-President-1999;
 - (b) USC Student Advisory Committee on Professionalism-1999-2000;
 - (c) USC Inns of Court-1999-2000.
10. Describe your continuing legal or judicial education during the past five years. Include **only** the title and date of any continuing legal or judicial education course completed.

<u>Conference/CLE Name</u>	<u>Date(s)</u>
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- (f) Hot Tips from Coolest Domestic Practitioners 09/22/06;
 - (g) Solo and Small Firm Conference 10/05/06;
 - (h) Hot Tips from the Coolest Domestic Practitioners 09/21/07;
 - (i) Federal Sentencing Guidelines 10/02/2007;
 - (j) Family Law Training 03/28/08;
 - (k) CJA Mini-Seminar 06/20/08;
 - (l) Federal Guideline Seminar 10/06/08;
 - (m) Federal Criminal Practice Seminar 10/16/08;
 - (n) Annual Summit and Retreat 10/30/08;
 - (o) CJA Mini-Seminar 05/01/09;
 - (p) Federal Sentencing Guidelines Seminar 10/15/09.
11. Have you taught law-related courses or lectured at bar association conferences, educational institutions, or continuing legal or judicial education programs? N/A
12. List all published books and articles you have written and give citations and the dates of publication for each. N/A
13. List all courts in which you have been admitted to practice and list the dates of your admission. Give the same information for administrative bodies that require a special admission to practice.
- (a) Admitted to practice before the State Courts of South Carolina in 2000;
 - (b) Also admitted to practice before the Federal District Court and Fourth Circuit Court of Appeals in 2002.
14. Describe chronologically your legal experience since graduation from law school and include a list of all law firms with which you have been associated. Describe the general character of your practice and divide it into periods with dates if its character has changed over the years.
- I began my legal career at Johnson, Toal & Battiste, PA as an associate from graduation until December 2006 specializing in criminal defense, plaintiff's personal injury and domestic and family law. I started the Shadd Law Firm, LLC in January 2007 specializing in the same areas of law. I am a solo practitioner.
- If you are a judge and are not seeking a different type of judgeship, the following questions are inapplicable:
- (b) If you are a candidate for Circuit Court, please provide a brief written description of your experience in criminal matters, including any cases handled over the past five years and include a brief description of the issues involved. Further, please provide a brief written description of your experience in civil matters, including any cases handled over the past five years and include a brief description of the types of matters handled, issues involved, and procedural history. Please include information such as the primary areas in civil court in which you practice, whether you represent plaintiffs or defendants, or both. You may go back further than five years if you feel it would assist the Commission with its assessment of your experience. If you lack

experience in an area, describe how your background has prepared you to preside over such matters as a Circuit Court Judge, or how you would compensate for your lack of experience in this area.

15. What is your rating in Martindale-Hubbell?

I am listed in Martindale-Hubbell, but it does not appear that I have any rating. If I am, I am not sure of the rating.

16. What was the frequency of your court appearances during the past five years?

- (a) federal: Monthly;
- (b) state: Weekly (almost daily).

17. What percentage of your practice involved civil, criminal, domestic, and other matters during the past five years?

- (a) civil: 25%;
- (b) criminal: 35%;
- (c) domestic: 35%;
- (d) other: 5%.

18. What percentage of your practice in trial court during the past five years involved matters that went to a jury, including those that settled prior to trial?

- (a) jury: 90%;
- (b) non-jury: 10%.

Did you most often serve as sole counsel, chief counsel, or associate counsel in these matters? Sole Counsel

19. List five of the most significant litigated matters you have personally handled in either trial or appellate court or before a state or federal agency. Give citations if the cases were reported and describe why these matters were significant.

- (a) State v. Ken Hall, 02-GS-40-4587, 02-GS-40-4589, 02-GS-40-4590, 03-GS-40-3787, 03-GS-40-3816, 03-GS-40-3817-Client, a high school special education teacher from my alma mater, was accused of molesting and having sex with his students-Trial ended in a guilty verdict on some charges, deadlocked on others and not guilty as to one victim. The Solicitor's office wrote my boss, I.S. Leevy Johnson, a letter of commendation regarding my performance in and outside of court and the trial judge shared his assumption that he thought I was a sole practitioner and had been practicing for several years.
- (b) State v. Derrick James, 03-GS-38-2237, Client, assistant principal, charged with attempted criminal sexual conduct with a minor, a teen-aged church member who babysat his children. Trial judge directed a verdict in the defendant's favor. The Department of Education subsequently attempted to revoke his educator's license which I handled in a full hearing. He ultimately was allowed to retain the license.
- (c) United States of America v. Terrence Daniels, CR-3:04-330, single defendant trial (cases rarely go to trial on the federal system) where multiple co-defendants testified. Client was found guilty but found not guilty on one-count (also rare). I was the third attorney appointed to the case given the prior difficulties with the defendant and his

attorneys. I filed a brave motion for recusal of the trial judge who appointed me. Despite own difficulties in representation and subsequent life sentence, client referred other potential clients to me.

- (d) Peter L. Proctor, Appellant v. Teresa Spires, Respondent, 673 S.E.2d 841(S.C.App. 2009); I successfully argued for a reversal of a termination of parental rights matter. The case was remanded for a new trial before the same judge who granted my client's visitation rights with his daughter.
 - (e) Vernon Sulton et al. v. Healthsouth Corporation et al., 09-CP-40-1477, co-counsel and initial attorney on a medical negligence case involving a decubitus sore. On July 30, 2010, after a weeklong trial, the jury a verdict in favor of the plaintiffs for a total amount of \$12.3 million. It was personally rewarding given the plaintiffs are my cousins and the primary plaintiff, who died prior to the trial, was tragically shot in an armed robbery, paralyzed from the chest down as a result and ultimately was treated by the Defendant and its staff. The case is in the post-trial motion phase.
20. List up to five civil appeals you have personally handled. Give the case name, the court, the date of decision, and the citation if the case was reported.
John and Jane Doe, as Parents, Natural Guardians and Next Friends of Anonymous Child, Appellants v. Cassius Rojas and Richland County School District #2, Respondents (Unpublished Opinion, S.C. Court of Appeals), I represented the individual defendant. The District's counsel won summary judgment which was appealed and affirmed.
21. List up to five criminal appeals that you have personally handled. Give the case name, the court, the date of decision and the citation if the case was reported. I
US v. Anthony R. Hutchinson, 04-5093-Unreported (4th Cir.)
22. Have you ever held judicial office? No
24. Have you ever held public office other than judicial office?
- (a) Commission on Appellate Defense-June 2003-June 2005-Appointed-Timely filed;
 - (b) Commission on Indigent Defense-August 2007-present-Appointed-Timely filed.
25. List all employment you had while serving as a judge (whether full-time or part-time, contractual or at will, consulting or otherwise) other than elected judicial office. Specify your dates of employment, employer, major job responsibilities, and supervisor. N/A
26. Have you ever been an unsuccessful candidate for elective, judicial, or other public office? Fifth Circuit Solicitor-lost in primary election 2010

27. Have you ever been engaged in any occupation, business, or profession other than the practice of law, teaching of law, or holding judicial or other public office?
28. Are you now an officer or director or involved in the management of any business enterprise? No
29. A complete, current financial net worth statement was provided to the Commission.
30. Describe any financial arrangements or business relationships you have, or have had in the past, that could constitute or result in a possible conflict of interest in the position you seek. Explain how you would resolve any potential conflict of interest.

Past employment with Johnson, Toal & Battiste, PA- I would assign the case to another judge if a case came before me where the firm represented a litigant.

31. Have you ever been arrested, charged, or held by federal, state, or other law enforcement authorities for violation or for suspicion of violation of any federal law or regulation, state law or regulation, or county or municipal law, regulation, or ordinance, or any other law, including another country's law? No
32. Have you, to your knowledge, ever been under federal, state, or local investigation for possible violation of a criminal statute? No
33. Has a tax lien or other collection procedure ever been instituted against you by federal, state, or local authorities? Have you ever defaulted on a student loan? Have you ever filed for bankruptcy? No
34. Have you ever been sued, either personally or professionally, that is, have you ever been named as defendant or respondent in any court of law? No
36. Have you ever been investigated by the Department of Social Services? If so, give the details and the resolution. Has your name ever been enrolled on the Central Registry of Child Abuse and Neglect? No
37. Are you now or have you ever been employed as a "lobbyist," as defined by S.C. Code § 2-17-10(13), or have you acted in the capacity of a "lobbyist's principal," as defined by S.C. Code § 2-17-10(14)? No
38. Since filing with the Commission your letter of intent to run for judicial office, have you accepted lodging, transportation, entertainment, food, meals, beverages, money, or any other thing of value as defined by S.C. Code § 2-17-10(1) from a lobbyist or lobbyist's principal? No
39. S.C. Code § 8-13-700 provides, in part, that "[n]o public official, public member, or public employee may knowingly use his official office, membership, or employment to obtain an economic interest for himself, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated." Please detail any knowledge you have of any formal charges or informal allegations against you or any other candidate for violations of these provisions. N/A
40. S.C. Code § 8-13-765 provides, in part, that "[n]o person may use government personnel, equipment, materials, or an office building in an election campaign."

Please detail any knowledge you have of any formal charges or informal allegations against you or any other candidate for violations of these provisions. N/A

41. Itemize (by amount, type, and date) all expenditures, other than those for travel and room and board, made by you, or on your behalf in furtherance of your candidacy for the position you seek. None
42. List the amount and recipient of all contributions made by you or on your behalf to members of the General Assembly since the announcement of your intent to seek election to a judgeship. None
43. Have you directly or indirectly requested the pledge of any member of the General Assembly as to your election for the position for which you are being screened? Have you received the assurance of any public official or public employee that they will seek the pledge of any member of the General Assembly as to your election for the position for which you are being screened? No
44. Have you requested a friend or colleague to contact members of the General Assembly on your behalf? Are you aware of any friends or colleagues contacting members of the General Assembly on your behalf? No
45. Have you or has anyone acting on your behalf solicited or collected funds to aid in the promotion of your candidacy? No
46. Have you or has anyone acting on your behalf contacted members of the Judicial Merit Selection Commission about your candidacy or intention to become a candidate? No
47. List all bar associations and professional organizations of which you are a member and give the titles and dates of any offices you have held in such groups.
 - (a) ABA;
 - (b) NBA;
 - (c) Federal Bar Association;
 - (d) S.C. Bar-Young Lawyers Division Hunger Project Chair (2003-04)
Annual Conventions Co-Chair (2006-07)
Standing Committee Member (2006-07)
Membership Publicity Chair (2008);
 - (e) National Football League Players Association-Contract Advisor (Agent).
48. List all civic, charitable, educational, social, and fraternal organizations of which you are or have been a member during the past five years and include any offices held in such a group, any professional honors, awards, or other forms of recognition received and not listed elsewhere.
 - (a) Omega Psi Phi Fraternity, Inc.;
 - (b) Boys and Girls Club of the Midlands Board of Directors
Board Chair 2007-09
2009 Distinguished Service Award recipient;
 - (c) S.C. Appleseed Board of Directors;
 - (d) Renaissance Foundation Board

- Board Chair 2007-09;
- (e) Bethel AME Singles and Singles Again Ministry Co-Leader; Class Leader Steward Board Appointee;
 - (f) YMCA Uptown Board of Directors-2010 Chairman's Roundtable Member.
49. Provide any other information that may reflect positively or negatively on your candidacy, or which you believe should be disclosed in connection with consideration of you for nomination for the position you seek.
50. References:
- (a) Stephen Roberts
Branch Banking and Trust
1901 Assembly Street
Columbia, S.C. 29201
803-251-1300
 - (b) Rev. Dr. Ronnie E. Brailsford, Sr.
Bethel AME Church
819 Woodrow St
Columbia, S.C. 29205
803-779-0138
 - (c) F. Xavier Starkes
Starkes Law Firm LLC
1817 Hampton St
Columbia, S.C. 29201
803-758-2282
 - (d) Luther J. Battiste, III
Johnson Toal & Battiste, PA
1615 Barnwell Street
Columbia, S.C. 29201
803-252-9700
 - (e) Carter Clark
Boys and Girls Club of the Midlands
500 Gracern Road
Columbia, S.C. 29210
803-231-3300

YOUR SIGNATURE WILL BE HELD TO CONSTITUTE A WAIVER OF THE CONFIDENTIALITY OF ANY PROCEEDING BEFORE A GRIEVANCE COMMITTEE OR ANY INFORMATION CONCERNING YOUR CREDIT.

I HEREBY CERTIFY THAT MY ANSWERS ARE TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

Signature: James Shadd, III

Date: August 12, 2010

<p style="text-align: center;">JUDICIAL MERIT SELECTION COMMISSION Sworn Statement to be included in Transcript of Public Hearings</p>
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Circuit Court
(New Candidate)

Full Name: James Shadd III
Business Address: 5000 Thurmond Mall, Suite 348
Columbia, SC 29201
Business Telephone: 803-771-7460

1. Why do you want to serve as a Circuit Court judge?

I would like to be a part of the justice system in a more significant way. I believe I can positively add to the process in the position of a circuit court judge. I believe in the awesome responsibilities a judge has and believe I am well-qualified to handle such matters given my life experiences, legal career and various leadership positions.

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 immediate plans, however, I am aware of the mandatory retirement provision which would most probably cause me to re-enter private practice.

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?

These communications should never be tolerated. I do not foresee where these communications would be appropriate.

6. What is your philosophy on recusal, especially in situations in which lawyer-legislators, former associates, or law partners are to appear before you?

I am a firm believer that there should not be an appearance of impropriety. Therefore, I would expect to recuse myself from cases involving my old firm. However, I do not see a problem with hearing cases from lawyer-legislators provided I conduct court with an even hand. Their clients are entitled to have their cases heard before a tribunal and given the process of electing judges, recusal in these instances would counterproductive.

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 strongly consider the motion but would research the issue for similar cases before making that decision. I am not in a position to state definitively that I would grant a motion in all such cases.

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

Recusal

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

Such things have no place in the justice system. I would make sure the potential donor is aware of my position. I would decline the gift.

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

I would be required to 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?

State Democratic Party Alternate, Democratic Precinct President, Commission on Indigent Defense (Bar recommended and appointed by the Governor; however there are sitting judges on the Commission). If elected, I would resign my party affiliations.

12. Do you have any business activities that you would envision remaining involved with if elected to the bench? None.

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

I would primarily handle my own orders but would look to rely on legal staff for legal research and some writing.

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

I would use technology such as a tickler system on my computer as well as on staff's computer to set deadlines prior to the actual deadline to ensure tasks are completed in a timely manner. Calendaring is key. I would also take advantage of the chambers weeks to efficiently fulfill my duties.

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

No judge should abuse his or her position to advocate their personal philosophy or interests. Public policy-setting dwells in the other two branches of government, not with the judicial branch.

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 can serve on any appropriate Bar committees or those ad-hoc committees the Chief Justice would appoint me on seeking to advance the administration of justice, i.e. technology, access to justice, drug court and other alternative sentencing reforms. I would hope to

continue on the Commission on Indigent Defense.

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 would adjust to the position of judge. I have no problem with the transition and feel that my closest family and friends would respect all that is involved with the job

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 have to look at them on a case-by-case basis. I would look at the facts presented and make a determination. Depending on the severity of the crime, I would sentence the offender accordingly. Generally, the sentence will be more lengthy given the length of the past criminal record.

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

I will consider the severity of the crime and will take into account the age and maturity level of the juvenile. They are in a special class that deserves considerable consideration.

- c. White collar criminals:

I will apply the appropriate sentence based on the evidence presented including the severity, length of misconduct, remorse, impact on victims.

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

I will consider the information presented; however, background will be just one more factor to consider that will not necessarily be a larger or smaller factor among others.

- e. Elderly defendants or those with some infirmity:

I will apply the appropriate sentence given all the facts presented. Elderly and infirm defendants should be considered the same as other similarly situated defendants.

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?

Most likely not so as to avoid an appearance of impropriety; although I would check current law on 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?

Even-tempered, calm, patient, courteous, direct and decisive.

- You have to have a sense of humor and not take yourself too seriously.
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?
- The rules should apply always and I would endeavor to act accordingly.
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
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
27. If you are a sitting judge, have you used judicial letterhead or the services of your staff while campaigning for this office?
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/James Shadd, III

Sworn to before me this 12th day of August, 2010.

Notary Public for S.C.

My Commission Expires: 6-27-2020_____

JEFFREY M. TZERMAN
ATTORNEY AT LAW

POST OFFICE BOX 1317
CAMDEN, SC 29021

304 Hampton Park
(803)432-8459

October 28, 2010

Bonnie G. Anzelmo, Esquire
Assistant Chief Counsel
House Judiciary Committee
Post Office Box 11867
Columbia, South Carolina 29211

RE: Jeffrey M. Tzerman
Judicial Merit Selection Commission
Personal Data Questionnaire

Dear Ms. Anzelmo:

I wish to amend my PDQ. Please amend questions 5 (b) to include the date of my divorce which was March 10, 2005.

Also, you indicated the SLED check indicated that in regard to Question 34, I had been a defendant in the lawsuit American Home Mortgage v Guertin, 2007-CP-28-00814. This is not the case. I would hope that the enclosed copy of the stipulation of dismissal would demonstrate that I was acting solely as attorney for the Defendant in the matter.

Also, I wish to amend Question 25 to make clear that I have remained a self-employed sole practitioner since becoming Master-in-Equity for Kershaw County in April 2000.

Lastly you further indicated the SLED check located an unsatisfied tax lien. I enclose a copy of the tax lien satisfaction of the lien you brought to my attention. Please note the satisfaction date of 11/22/02.

By copy of this letter, I am notifying Jane O. Shuler, Chief Counsel of the Judicial Merit Selection Commission of these amendments, together with the copies enclosed.

Please let me know if anything further is needed.

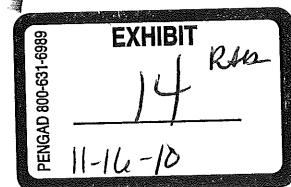
Yours truly,

Jeffrey M. Tzerman

JMT/jjm

Cc: Jane O. Shuler, Esquire
Chief Counsel
Judicial Merit Selection Commission

COPY



STATE OF SOUTH CAROLINA)
COUNTY OF KERSHAW)

IN THE COURT OF COMMON PLEAS
DOCKET NO. 2007-CP-28-814

American Home Mortgage Servicing, Inc.,
Plaintiff,

vs.

Timothy R. Guertin and Robin M. Guertin,
Defendants.

STIPULATION OF DISMISSAL

2009 APR -3 AM 11:50

TO: Clerk of Court of Common Pleas for Kershaw County, South Carolina:

The undersigned attorneys for the Plaintiff and for the Defendants, being all parties who have appeared in the above entitled action, hereby stipulate the above entitled foreclosure action is hereby dismissed without prejudice.

The Clerk of Court of Common Pleas for Kershaw County, South Carolina is hereby requested to enter this Stipulation of Dismissal of this action on the records of the Court.

The Clerk of Court is further requested to cancel the Lis Pendens filed in this matter on July 30, 2007, as Lis Pendens Number 2007-LP-28-275.

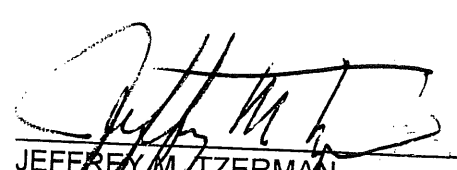
Dated this 26th day of March, 2009.

McDONALD, McKENZIE, RUBIN,
MILLER AND LYBRAND, L.L.P.

BY:


BEN N. MILLER III

Attorneys for the Plaintiff
Post Office Box 58
Columbia, South Carolina 29202
(803) 252-0500


JEFFREY M. TZERMAN

Attorney for the Defendants
Post Office Box 1317
Camden, South Carolina 29021
(803) 432-8459

TEST True, Correct & Certified
Copy of Original on File in this

Court


Ben N. Miller

Clerk of Court

Kershaw County

cc: Miller
4-3-09

1350



STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
TAX LIEN SATISFACTION

W-131-S
(Rev. 2/12/09)
2051

SID/Suffix: 1774523-000
Tax Type: EMPLOYER WITHHOLDING TAX

County: KERSHAW
Contact Number: (803)324-7641
Tax Lien Number: **3-50421924-4**
SSN: XXX-XX-1424
File Number: 25286923
Period Covered: 09/01 - 09/01

TZERMAN JEFFREY M
TZERMAN JEFFREY M ATTORNEY AT LAW
PO BOX 1317
CAMDEN SC 29020-1317

To: Any authorized representative of the SC Department of Revenue
The party named in this tax lien is liable for the assessed taxes set out below, along with the penalties and interest established by law for failure to pay such taxes when due. Such being established, you are directed by distraint powers to levy upon and sell as is allowed by law so much of the tangible or intangible personal property, rights to such property or choses in action of the party necessary to satisfy the tax, penalty and interest owed by the party, plus the fees, cost and expenses of the levy. If these found assets are not sufficient to satisfy the amount set out in this tax lien, you are directed to seize and sell so much of the real estate of the party as is necessary to satisfy the amount owed.
Dated and signed under the seal of the SC Department of Revenue 06/17/02.

Tax Type: EMPLOYER WITHHOLDING TAX

DIST CODE	PERIOD COVRD	RECEIVABLE NUMBER	DATE ASSESSED	TAX	PENALTY	INTEREST	TOTAL
0809	09/01	01746086-3	03-18-02	449.00	581.44	21.39	1,051.83

SUBTOTAL:

COURT COSTS: 1,051.83
TOTAL: 57.59
\$1,109.42

This tax lien has been SATISFIED by the SC Department of Revenue. Request is made for appropriate entries on your records. SATISFIED 11/22/02.

TXPRC019

3

20511028

JUDICIAL MERIT SELECTION COMMISSION
PERSONAL DATA QUESTIONNAIRE

Court, Position, and Seat # for which you are applying:

Circuit Court, Fifth Judicial Circuit, Seat 1

1. NAME: Jeffrey M. Tzerman
BUSINESS ADDRESS: 304 Hampton Park
P. O. Box 1317
Camden, S.C. 29020
E-MAIL ADDRESS: jeffreymtzerman@bellsouth.net
TELEPHONE NUMBER: (office): 803-432-8459
2. Date of Birth: 1955
Place of Birth: New York, NY
3. Are you a citizen of South Carolina? Yes
Have you been a resident of this state for at least the immediate past five years? Yes
5. Family Status: Married on May 28 2005, to Mitzi G. Rutland Tzerman. Divorced on March 10, 2005; Kershaw County Family Court. Mr. Tzerman was the moving party. One year's separation. One child.
6. Have you served in the military? No
7. List each college and law school you attended, including the dates of your attendance, the degrees you received, and if you left an institution without receiving a degree, the reason for your departure.
(a) University of S. C., 1973-78, B. A.
(b) USC Law School, 1978-81; J. D.
8. List the states in which you have been admitted to practice law and the year of each admission. Also list any states in which you took the bar exam but were never admitted to the practice of law. If you took the bar exam more than once in any of the states listed, please indicate the number of times you took the exam in each state.
South Carolina
9. List the significant activities in which you took part during your attendance at college, graduate, and law school. Give the dates you were involved in these activities and list any leadership positions you held. None
10. Describe your continuing legal or judicial education during the past five years. Include only the title and date of any continuing legal or judicial education course completed.

	<u>Conference/CLE Name</u>	<u>Date(s)</u>
(a)	Annual Judicial Conference	8/24/2005;
(b)	Master-in-Equity Bench/Bar	10/14/2005;
(c)	Annual Judicial Conference	8/23/2006;
(d)	Master-in-equity bench/bar	10/13/2006;
(e)	Annual Master-in-Equity meeting	2/23/2007;
(f)	Annual Judicial Conference	8/22/2007;

- (g) Master-in-Equity Bench/Bar 10/12/2007;
 - (h) Annual Judicial Conference 8/20/2008;
 - (i) Master-in-Equity Bench/Bar 10/10/2008;
 - (j) Annual Judicial Conference 8/19/2009;
 - (k) Master-in-Equity Bench/Bar 10/9/2009.
11. Have you taught law-related courses or lectured at bar association conferences, educational institutions, or continuing legal or judicial education programs? No
12. List all published books and articles you have written and give citations and the dates of publication for each. None
13. List all courts in which you have been admitted to practice and list the dates of your admission. Give the same information for administrative bodies that require a special admission to practice.
Admitted to practice before all South Carolina Courts in 1981.
14. Describe chronologically your legal experience since graduation from law school and include a list of all law firms with which you have been associated. Describe the general character of your practice and divide it into periods with dates if its character has changed over the years.
- (a) Associate; Oswald & Floyd (1981-84);
 - (b) Partner; Ehrenclou, Colvin & Tzerman (1984-87);
 - (c) Partner; deLoach & Tzerman (1987-92);
 - (d) Sole Practitioner (1992–Present)
 - (b) If you are a candidate for Circuit Court, please provide a brief written description of your experience in criminal matters, including any cases handled over the past five years and include a brief description of the issues involved. Further, please provide a brief written description of your experience in civil matters, including any cases handled over the past five years and include a brief description of the types of matters handled, issues involved, and procedural history. Please include information such as the primary areas in civil court in which you practice, whether you represent plaintiffs or defendants, or both. You may go back further than five years if you feel it would assist the Commission with its assessment of your experience. If you lack experience in an area, describe how your background has prepared you to preside over such matters as a Circuit Court Judge, or how you would compensate for your lack of experience in this area.

My experience in criminal matters in Circuit Court is more limited than my experience in civil matters. However, I have represented defendants in guilty pleas and have handled probation violations, including recently during a term of Court in Kershaw County the week of July 19, 2010. The last jury trial I handled in General Sessions was more than five (5) years ago. It was a DUI 2nd trial.

I have handled many civil matters since being admitted to practice in 1981. I have represented plaintiffs and defendants. I recently tried a

case in the Court of Common Pleas in Kershaw County the week of August 2, 2010. I represent two (2) defendants. Early in my career, I represented the plaintiff in the matter of Lever v Wilder Mobile Home Corp. which was a trespass/nuisance case in Richland County before retired Justice, then Judge James Moore. The verdict was affirmed on appeal and the case is often cited for the South Carolina definition of nuisance. Recent civil cases I have handled include Brown v Brazel and Russell and Jeffcoat, 08-CP-28-811, a fraud and conversion case in Kershaw County. The matter was settled through mediation in 2009. Another recent matter in Common Pleas was Rohrig v Durham, State Farm Insurance and Phoenix Life Insurance, 2008-CP-29-1082, a Lancaster County case involving securities fraud and unfair trade practices that was settled after discovery.

15. What is your rating in Martindale-Hubbell? BV
16. What was the frequency of your court appearances during the past five years?
 - (a) federal: 0%;
 - (b) state: 100%.
17. What percentage of your practice involved civil, criminal, domestic, and other matters during the past five years?
 - (a) civil: 10%;
 - (b) criminal: 10%;
 - (c) domestic: 40%;
 - (d) other: transactional 40%.
18. What percentage of your practice in trial court during the past five years involved matters that went to a jury, including those that settled prior to trial?
 - (a) jury: 25%;
 - (b) non-jury: 75%.

Did you most often serve as sole counsel, chief counsel, or associate counsel in these matters? Sole Counsel
19. List five of the most significant litigated matters you have personally handled in either trial or appellate court or before a state or federal agency. Give citations if the cases were reported and describe why these matters were significant.
 - (a) Vernon Lever v Wilder Mobile Homes Inc.; 82-CP-40-1720 - This matter was significant to me on a personal level as being my first successful jury trial in the Court of Common Pleas. It has significance as being cited in many appellate cases and in other matters (most recently I saw it cited in the written materials for a lecture at the annual bench/bar Master in Equity seminar) for the definition of what is a nuisance.
 - (b) CC Wilson v Camden Developers Inc.; 84-CP-28-20 & 96-CP-28-228 - This matter has personal significance to me as being my first successful jury trial in the Court of Common Pleas in Kershaw County (my new home). It was a trespass/nuisance case with a similar fact pattern as the previous case mentioned.

- (c) Charlie Branham, et al v Hardwicke Chemical; 87-CP-40-607 – This matter was the most substantial and complex case I ever handled. I represented approximately twenty (20) Plaintiffs in an action against the chemical company, again for trespass/nuisance. The trial lasted a week. There was a fair amount of media coverage. It was quite exciting.
 - (d) Jackson v Jackson; 92-CP-28-245 – This matter is significant to me as it was the first heir property case I handled. It was a Quiet Title and Partition in kind matter. I learned a lot of property law handling this case that was beneficial to my career.
 - (e) Plyler v Gentiles; 92-DR-28-778 – Though the only Family Court case on my list, this matter is significant to me as demonstrating the importance of equity and doing justice. My client, Mr. Gentiles, raised his daughter from birth primarily. Her mother had many problems during the child's life and Mr. Gentiles and she were often separated. On her deathbed she made a dying declaration that Mr. Gentiles was not the father of the child, who, by this time, was older. Paternity tests were done proving that he was not the biological father. The Plyers, maternal grandparents, sought custody. I amended my pleadings to seek an adoption, which the Plyers contested. There was insurance money involved as well. The Court granted the adoption and custody to my client, which was an appropriate conclusion. The path on this case had twists and turns, but I received much satisfaction that justice prevailed. As an aside, I prepared the annual accounting each year for the child's money she received from life insurance proceeds and there was no squandering of the funds as it claimed would happen in Court.
20. List up to five civil appeals you have personally handled. Give the case name, the court, the date of decision, and the citation if the case was reported. If you are a candidate for an appellate court judgeship (please attach one copy of briefs filed by you in each matter).
- Lever v Wilder Mobile Homes, Inc., decided 11/5/84 – 322SE2d692
21. List up to five criminal appeals that you have personally handled. Give the case name, the court, the date of decision and the citation if the case was reported. If you are a candidate for an appellate court judgeship (please attach one copy of briefs filed by you in each matter). None
22. Have you ever held judicial office? Yes
Kershaw County Master-in-Equity April 2000–Present (appointed)
23. If the answer to question 22 is yes, describe or list five of your most significant orders or opinions and give the citations if they were reported. Also list citations to any appellate review of these orders or opinions.
- (a) Wells Fargo Bank Minnesota v Peggy Luter, et al; 01-CP-28-0175
 - (b) Midfirst Bank v Pierce C. Newman & estate of Jessie W. Banks, et al 04-CP-28-143
 - (c) Imogene C. Grandon v Joanna Frances Parker Rowe; 04-CP-28-408
 - (d) L. Brownell Combs II v Wilhelmina Combs; 03-CP-28-238

(e) Estate of Clifton G. Aycock v T. Rowe Price Trust Co. & Roberta Aycock; 00-CP-28-571

24. Have you ever held public office other than judicial office? No
25. List all employment you had while serving as a judge (whether full-time or part-time, contractual or at will, consulting or otherwise) other than elected judicial office. Specify your dates of employment, employer, major job responsibilities, and supervisor. None
26. Have you ever been an unsuccessful candidate for elective, judicial, or other public office?
Yes, I ran unsuccessfully for Family Court Judge in 2008.
27. Have you ever been engaged in any occupation, business, or profession other than the practice of law, teaching of law, or holding judicial or other public office? No
28. Are you now an officer or director or involved in the management of any business enterprise? No
29. A complete, current financial net worth statement was provided to the Commission.
30. Describe any financial arrangements or business relationships you have, or have had in the past, that could constitute or result in a possible conflict of interest in the position you seek. None
31. Have you ever been arrested, charged, or held by federal, state, or other law enforcement authorities for violation or for suspicion of violation of any federal law or regulation, state law or regulation, or county or municipal law, regulation, or ordinance, or any other law, including another country's law? No
32. Have you, to your knowledge, ever been under federal, state, or local investigation for possible violation of a criminal statute? No
33. Has a tax lien or other collection procedure ever been instituted against you by federal, state, or local authorities? Yes, I have had tax liens in the past which were promptly paid. Liens were connected with payroll matters in my law practice handled by a subordinate. I took over the handling of payroll and no tax liens have occurred since I have handled payroll. Have you ever defaulted on a student loan? No Have you ever filed for bankruptcy? No
34. Have you ever been sued, either personally or professionally, that is, have you ever been named as defendant or respondent in any court of law? No
36. Have you ever been investigated by the Department of Social Services? No If so, give the details and the resolution. Has your name ever been enrolled on the Central Registry of Child Abuse and Neglect? No
37. Are you now or have you ever been employed as a "lobbyist," as defined by S.C. Code § 2-17-10(13), or have you acted in the capacity of a "lobbyist's principal," as defined by S.C. Code § 2-17-10(14)? No
38. Since filing with the Commission your letter of intent to run for judicial office, have you accepted lodging, transportation, entertainment, food, meals, beverages, money, or any other thing of value as defined by S.C. Code § 2-17-10(1) from a lobbyist or lobbyist's principal? No

39. S.C. Code § 8-13-700 provides, in part, that "[n]o public official, public member, or public employee may knowingly use his official office, membership, or employment to obtain an economic interest for himself, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated." Please detail any knowledge you have of any formal charges or informal allegations against you or any other candidate for violations of these provisions. None
40. S.C. Code § 8-13-765 provides, in part, that "[n]o person may use government personnel, equipment, materials, or an office building in an election campaign." Please detail any knowledge you have of any formal charges or informal allegations against you or any other candidate for violations of these provisions. None
41. Itemize (by amount, type, and date) all expenditures, other than those for travel and room and board, made by you, or on your behalf in furtherance of your candidacy for the position you seek. None
42. List the amount and recipient of all contributions made by you or on your behalf to members of the General Assembly since the announcement of your intent to seek election to a judgeship. None
43. Have you directly or indirectly requested the pledge of any member of the General Assembly as to your election for the position for which you are being screened? Have you received the assurance of any public official or public employee that they will seek the pledge of any member of the General Assembly as to your election for the position for which you are being screened? No
44. Have you requested a friend or colleague to contact members of the General Assembly on your behalf? No. Are you aware of any friends or colleagues contacting members of the General Assembly on your behalf?
45. Have you or has anyone acting on your behalf solicited or collected funds to aid in the promotion of your candidacy? No
46. Have you or has anyone acting on your behalf contacted members of the Judicial Merit Selection Commission about your candidacy or intention to become a candidate? No
47. List all bar associations and professional organizations of which you are a member and give the titles and dates of any offices you have held in such groups.
- (a) Kershaw County Bar Association;
 - (b) S.C. Bar Association.
48. List all civic, charitable, educational, social, and fraternal organizations of which you are or have been a member during the past five years and include any offices held in such a group, any professional honors, awards, or other forms of recognition received and not listed elsewhere. None
49. Provide any other information that may reflect positively or negatively on your candidacy, or which you believe should be disclosed in connection with consideration of you for nomination for the position you seek.

50. References:

- (a) Mitzi Dorton
NBSC
Post Office Box 1565
Camden, S.C. 29021
- (b) John Tompkins
Post Office Box 697
Camden, S.C. 29021
- (c) Ray Hazelwood
P.O. Box 206
Camden, S.C. 29021
- (d) Joyce J. Mickle
714 Bishopville Hwy
Camden, S.C. 29020
- (e) Paul T. Joseph
DDS
1819 Fair St.
Camden, S.C. 29020

YOUR SIGNATURE WILL BE HELD TO CONSTITUTE A WAIVER OF THE CONFIDENTIALITY OF ANY PROCEEDING BEFORE A GRIEVANCE COMMITTEE OR ANY INFORMATION CONCERNING YOUR CREDIT.

I HEREBY CERTIFY THAT MY ANSWERS ARE TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

Signature: Jeffrey M. Tzerman

Date: August 5, 2010

<p style="text-align: center;">JUDICIAL MERIT SELECTION COMMISSION Sworn Statement to be included in Transcript of Public Hearings</p>
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Circuit Court
(New Candidate)

Full Name: Jeffrey M. Tzerman
Business Address: 304 Hampton Park
P. O. Box 1317
Camden, S. C. 29020
Business Telephone: 803-432-8459

1. Why do you want to serve as a Circuit Court judge?
I serve already as a part-time judge. I wish to conclude my legal career as a full time member of the judiciary.
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?
Not if elected
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 do not allow *ex parte* communications or substantive issues and will continue to educate my secretary or other staff on preventing such communications. I will continue to stop any person from attempting to discuss any matter that might come before me.
6. What is your philosophy on recusal, especially in situations in which lawyer-legislators, former associates, or law partners are to appear before you?
I have been a sole practitioner for 20 years. I will continue to recuse myself in any case where I have a direct conflict of interest or appearance of impropriety. I will continue making a disclosure of any matter that could give rise to the appearance of impropriety.
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?
Disclosure is always appropriate. Every motion stands upon the particular facts of the situation, but absent a financial or direct personal interest, I would not recuse if I believed I could hear a matter without giving deference or rewarding or punishing any party before me.
8. How would you handle the appearance of impropriety because of the financial or social involvement of your spouse or a close relative?

Recusal is in order.

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

I would not accept gifts or social hospitality unless offered to the entire judiciary.

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

I would report the matter

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?

In most instances, I would require the prevailing party to draft the proposed order and submit it to opposing counsel and myself for consideration.

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

I would calendar all matters having a deadline.

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

I am not a judicial activist. My decisions are based on settled law. Were a novel issue to come before me, I would base my decision on my common sense.

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 would serve the judiciary at the pleasure of the Chief Justice and would not refuse any committee appointment she might request of me.

17. Do you feel that the pressure of serving as a judge would strain personal relationships (i.e. spouse, children, friends, or relatives)? No How would you address this?

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:

recidivism should be the subject of enhanced punishment within the bounds provided by the criminal code.

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

They are to be treated as adults without losing sight of their young age, the possibility for rehabilitation, and the need for retribution.

- c. White collar criminals:

I would consider the severity of the crime, the prior record of the person as against the person's prior personal history and balance this

against the need for public example

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

I would not consider poverty alone as a mitigating circumstance and this would only temper my sentence in the presence of other mitigating circumstances.

e. Elderly defendants or those with some infirmity:

Depending on the severity of the crime, I likely would consider the risk to the public more so in this class than in the above four.

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?

It depends on the facts of the case. After disclosure, I would make a decision, if necessary, based upon whether I could decide the matter without reward or punishment to either party.

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 judge should be in control of his anger at all times, both on and off the bench. Courtesy is the touchstone of the judge's behavior.

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? 24/7

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 never appropriate. However, the judge is entitled to be in control of his courtroom.

26. How much money have you spent on your campaign?

None. If it is over \$100, has that amount been reported to the House and Senate Ethics Committees?

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? No 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/Jeffrey M. Tzerman

Sworn to before me this 6th day of August, 2010. _____

Notary Public for S.C.

My Commission Expires: 10-17-2012 _____

JUDICIAL MERIT SELECTION COMMISSION
PERSONAL DATA QUESTIONNAIRE

Court, Position, and Seat # for which you are applying:

Circuit Court, Thirteenth Judicial Circuit, Seat 2

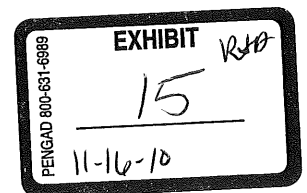
1. NAME: Eric K. Englebardt
BUSINESS ADDRESS: 200 E. Broad Street, Ste 250
Greenville, S.C. 29601
E-MAIL ADDRESS: eenglebardt@turnerpadget.com
TELEPHONE NUMBER: (office): 864 552-4600
2. Date of Birth: 1964
Place of Birth: New York, NY
3. Are you a citizen of South Carolina? Yes
Have you been a resident of this state for at least the immediate past five years? Yes
5. Family Status: Married on November 10, 1990, to Helen Elizabeth Burris.
Never divorced. Three children.
6. Have you served in the military? No
7. List each college and law school you attended, including the dates of your attendance, the degrees you received, and if you left an institution without receiving a degree, the reason for your departure.
(a) University of North Carolina, B.A., 1986
(b) University of North Carolina School of Law, J.D., 1989.
8. List the states in which you have been admitted to practice law and the year of each admission. Also list any states in which you took the bar exam, but were never admitted to the practice of law. If you took the bar exam more than once in any of the states listed, please indicate the number of times you took the exam in each state. South Carolina, 1989, and North Carolina, 1990.
9. List the significant activities in which you took part during your attendance at college, graduate, and law school. Give the dates you were involved in these activities and list any leadership positions you held.

College:

- (a) Sigma Chi Fraternity (Rush Chairman), 1984-86;
- (b) WXYC-FM Radio, 1982-86 (Sports Director 1983-86);
- (c) Resident Assistant, 1984-86;
- (d) Youth Coach, Chapel Hill Parks and Recreation, 1983-89;
- (e) Umpire/Referee, 1982-86.

Law School:

- (a) Board of Governors, Student Bar Association, 1986-89;
- (b) Member, Holderness Moot Court, 1988-89;
- (c) Chairman, J. Braxton Craven Moot Court Competition, 1988-89;
- (d) Phi Delta Phi, 1986-89;



(e) Order of Banisters (honorary) 1989.

10. Describe your continuing legal or judicial education during the past five years. Include only the title and date of any continuing legal or judicial education course completed.

<u>CLE/Conference Name</u>	<u>Date(s)</u>
(a) SCDTAA Joint Meeting	7/28/2005;
(b) SCDTAA Annual Meeting	11/3/2005;
(c) Changes to South Carolina	2/25/2006;
(d) SCDTAA Joint Meeting	7/27/2006;
(e) Changing the Rules, a Review	11/8/2006;
(f) SCDTAA Annual Meeting	11/9/2006;
(g) Uni-State Lawyers	3/3/2007;
(h) NBI The Art of Settlement	4/24/2007;
(i) SCDTAA Trial Academy	6/6/2007;
(j) NBI Mediation A Valuable Tool	7/24/2007;
(k) SCDTAA Annual Meeting	11/1/2007;
(l) Ounce of Prevention is Worth a Pound of Cure	2/27/2008;
(m) SCDTAA Joint Meeting	7/24/2008;
(n) SCDTAA Annual Meeting	11/13/2008;
(o) TPGL Mandatory Insurer Reporting to Medicare	3/21/2009;
(p) SCDTAA Trial Academy	6/3/2009;
(q) SCDTAA Annual Meeting	11/05/2009;
(r) SCDTAA Corporate Counsel Seminar	04/21/2010;
(s) SCDTAA Joint Meeting	07/22/2010.

11. Have you taught law-related courses or lectured at bar association conferences, educational institutions, or continuing legal or judicial education programs?

I have taught sections on opening and closing arguments, expert cross-examination as a group leader at the SCDTAA Trial Academy. I have also served as an instructor at NBI CLEs including "Mediation A Valuable Tool," "How to Litigate Your First Civil Trial" and "The Art of Settlement." I served as a judge at the 2009 SCDTAA Trial Academy, presiding over a civil case tried by young attorneys, and critiquing them during jury deliberations. I also spoke at the Greenville Bar year end CLE and at the recent SCDTAA Joint Meeting, both on the topic of effective communication at mediation.

12. List all published books and articles you have written and give citations and the dates of publication for each.

I have authored course materials for NBI Seminars "What to Expect in Your First Civil Trial in South Carolina," December 2004 and "How a Mediator Can Help You," a chapter in course materials for NBI Course "Mediation, A Valuable Tool for Litigation," July 2007. I also wrote course materials on the February 2010, Greenville Bar CLE.

13. List all courts in which you have been admitted to practice and list the dates of your admission. Give the same information for administrative bodies that require a special admission to practice.

I was admitted to the S.C. Bar in November 1989 and North Carolina Bar in February of 1990 and I have also had been admitted to the United States District Court in South Carolina and all three Federal districts in North Carolina.

14. Describe chronologically your legal experience since graduation from law school and include a list of all law firms with which you have been associated. Describe the general character of your practice and divide it into periods with dates if its character has changed over the years.

- (b) If you are a candidate for Circuit Court, please provide a brief written description of your experience in criminal matters, including any cases handled over the past five years and include a brief description of the issues involved. Further, please provide a brief written description of your experience in civil matters, including any cases handled over the past five years and include a brief description of the types of matters handled, issues involved, and procedural history. Please include information such as the primary areas in civil court in which you practice, whether you represent plaintiffs or defendants, or both. You may go back farther than five years if you feel it would assist the Commission with its assessment of your experience. If you lack experience in an area, describe how your background has prepared you to preside over such matters as a Circuit Court Judge, or how you would compensate for your lack of experience in this area.

Since I graduated from law school my legal practice has been with three law firms. I began as an associate at Haynsworth, Marion, McKay & Guerard where I had served as a law clerk between my second and third year of law school. I started work in August 1989 and was admitted to the Bar in November of that year. I then was admitted to the North Carolina Bar after the February Bar Exam in 1990 and have been admitted to the United States District Court in South Carolina and all three districts in North Carolina. As a result of having spent some time working in the defense of the asbestos cases I have practiced in all three federal districts in North Carolina as well as the district of South Carolina on a variety of other cases as well. Additionally, I have tried cases in State Court of North Carolina as well as many cases in South Carolina. In January of 1998 I became a shareholder at Haynsworth, Marion, McKay & Guerard where I continued until January of 2001, shortly after the merger where that firm became known as Haynsworth Sinkler Boyd. In January of 2001 I became a partner at Clarkson, Walsh, Rheney & Turner, P.A. I served as managing shareholder at that

firm from July 1, 2004 through December 31, 2004. In September 2005 I became a shareholder at Turner, Padgett, Graham & Laney, P.A. My practice has focused generally on the areas of insurance defense litigation, though I have handled a variety of plaintiff's cases as well as a small number of criminal/domestic matters. In 2000 I became certified as a mediator and have practiced as a mediator, mediating over 500 cases pending in both State and Federal Court. I am proud to have been listed in "Best Lawyers in America" since 2007 for my ADR practice. Also, I am now serving with regularity as an arbitrator, requiring me to make rulings and decisions as a nonjury judge. I was recently honored by my selection as a South Carolina "Super Lawyer" in the General Litigation category.

Question 14 b) asked regarding my experience in criminal matters. My experience in criminal matters is admittedly limited. I have appeared in traffic court on a couple of occasions in the past for clients, but have never fully handled a significant criminal matter. I have also participated in Youth Court, presiding over misdemeanor criminal matters arising in the schools. This has given me some additional exposure to the criminal process in terms of the procedures and penalties, as well as interaction with members of law enforcement and members of the Criminal Defense Bar who oversee the program.

Additionally, several times in the past few months I have attended General Sessions Court as an observer, trying to get a feel for the ebb and flow of criminal procedure.

Obviously, I will need to overcome my lack of experience in criminal matters were I to be elected as a circuit judge, however, I have always prided myself as being a quick learner and, despite not having had a true criminal practice, I have always kept abreast of the case law involving criminal cases by reading the advanced sheets regularly. Obviously, it will take some study as well as listening to become familiar with criminal procedure, however, I believe I have a good handle of the Rules of Evidence and would be able to overcome my lack of experience in criminal matters to be an effective circuit judge.

15. What is your rating in Martindale-Hubbell? BV
16. What was the frequency of your court appearances during the past five years?
 - (a) Federal: 4-5 times.
 - (b) State: I have had 5 or so jury trials and many court appearances in State Court in this time period. As the practice has shifted toward more mediation, fewer cases have gone to trial in the Upstate. I would estimate that I have tried 70 trials before a jury in my career.
17. What percentage of your practice involved civil, criminal, and domestic matters during the past five years?

- (a) civil: 96%;
 - (b) criminal: 2%;
 - (c) domestic: 2%.
18. What percentage of your practice in trial court during the past five years involved matters that went to a jury?
- (a) jury: 85%;
 - (b) non-jury: 15% - Motion Hearings. I have not had any non-jury trials in that time period.
- Did you most often serve as sole counsel, chief counsel, or associate counsel in these matters? Sole counsel.
19. List five of the most significant litigated matters that you have personally handled in either trial or appellate court or before a state or federal agency. Give citations if the cases were reported and describe why these matters were significant.
- (a) South Carolina Distributors and Livingston v. Livingston, et.al. This was a multimillion dollar case involving a breach of contract and probate dispute over a family business tried in Cherokee County.
 - (b) _____ v. CSX. This was a wrongful death and personal injury case involving two occupants of a car hit by a CSX train at a crossing in Joanna, S.C. This was a jury trial in front of The Honorable G. Ross Anderson in Federal Court in Anderson, S.C. After a week of trial, the jury granted us a defense verdict.
 - (c) Davis v. King Chris d/b/a McDonalds. This was a lawsuit against McDonalds Corporation over an injury which occurred in one of its parking lots. This case received much media exposure as at issue was the safety of the McDonalds playlands for children outside many of their restaurants. The case involved many complicated engineering and design issues.
 - (d) Register v. US Steel Corporation. This was a premises liability case involving a severe injury. It was tried to a verdict in Anderson County.
 - (e) Martha Knecht v. Linda Long, Melvin Dennis Long, Sherlon Tench, Dennis Tench, Cynthia Masters and David Masters. This was a lawsuit involving 8 separate causes of action for malicious prosecution, civil and criminal assault allegations, abuse of process, conversion, breach of fiduciary duties, financial exploitation, etc. It lasted for more than 3 years, and involved several criminal hearings, motion hearings and eventually a 3-day jury trial resulting in dismissal of all causes of action against 5 of my clients prior to trial and defense verdicts for my remaining client.
20. List up to five civil appeals that you have personally handled. Give the case name, the court, the date of decision, and the citation if the case was reported. If you are a new applicant for family court, answer this question

using domestic appeals. If you are a candidate for an appellate court judgeship, please attach one copy of briefs filed by you in each matter.

- (a) Bear Enterprises v. County of Greenville, 319 SC 137, 459 S.E.2d 883 (Ct. App. 1995).
 - (b) Camlin v. Bilo, 311 SC 197, 428 S.E. 2d 6(Ct. App. 1993).
 - (c) Threatt Michael Construction Company v. C&G Electric, 305 SC 147, 406 S.E.2d 374 (Ct. App. 1991).
 - (d) Preckler v. Owens- Corning, 60 F.3d 824, 1995 WL 417731 (4th Cir. 1995).
 - (e) Lindsey v. Vann, 2004-UP-442 (Ct. App).
21. List up to five criminal appeals that you have personally handled. Give the case name, the court, the date of decision and the citation if the case was reported. Please attach one copy of briefs filed by you in each matter. N/A
22. Have you ever held judicial office? No
24. Have you ever held public office other than judicial office? No
25. List all employment you have had while serving as a judge (whether full-time or part-time, contractual or at will, consulting or otherwise) other than elected judicial office. Specify your dates of employment, employer, major job responsibilities, and supervisor. I have served as an arbitrator in several cases, and as a judge in Mauldin, South Carolina's Youth Court.
26. Have you ever been an unsuccessful candidate for elective, judicial, or other public office?
- (a) Thirteenth Judicial Circuit in 2003. I was a candidate for Circuit Court Seat #4. There were 7 candidates in that race, and I was found qualified and nominated by the Judicial Merit Screening Commission. I withdrew prior to the election in the General Assembly.
 - (b) Thirteenth Judicial Circuit, Seat 3 in 2009, I was once again honored to have been found qualified and nominated, and withdrew prior to election.
 - (c) At Large, Seat 8 in 2009, I was once again honored to have been found qualified, however, I was not nominated.
27. Have you ever been engaged in any occupation, business, or profession other than the practice of law, teaching of law, or holding judicial or other public office? No
28. Are you now an officer or director or involved in the management of any business enterprise? No
29. A complete, current financial net worth statement was provided to the Commission.
30. Describe any financial arrangements or business relationships that you have, or have had in the past, that could constitute or result in a possible conflict of interest in the position you seek. Explain how you would resolve any potential conflict of interest.

I would not hear any cases which were pending in my firm while I was still a member, nor do I believe I would preside over any case, for which I served as a mediator.

31. Have you ever been arrested, charged, or held by federal, state, or other law enforcement authorities for violation or for suspicion of violation of any federal law or regulation; state law or regulation; or county or municipal law, regulation, or ordinance? No
32. Have you, to your knowledge, ever been under federal, state, or local investigation for possible violation of a criminal statute? No
33. Has a tax lien or other collection procedure ever been instituted against you by federal, state, or local authorities? Have you ever defaulted on a student loan? Have you ever filed for bankruptcy? No
34. Have you ever been sued, either personally or professionally? No
36. Have you ever been investigated by the Department of Social Services? Has your name ever been enrolled on the Central Registry of Child Abuse and Neglect?
37. Are you now or have you ever been employed as a "lobbyist," as defined by S.C. Code § 2-17-10(13), or have you acted in the capacity of a "lobbyist's principal," as defined by S.C. Code § 2-17-10(14)? No
38. Since filing with the Commission your letter of intent to run for judicial office, have you accepted lodging, transportation, entertainment, food, meals, beverages, money, or any other thing of value as defined by S.C. Code § 2-17-10(1) from a lobbyist or lobbyist's principal? No
39. S.C. Code § 8-13-700 provides, in part, that "[n]o public official, public member, or public employee may knowingly use his official office, membership, or employment to obtain an economic interest for himself, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated." Please detail any knowledge you have of any formal charges or informal allegations against you or any other candidate for violations of these provisions. None
40. S.C. Code § 8-13-765 provides, in part, that "[n]o person may use government personnel, equipment, materials, or an office building in an election campaign." Please detail any knowledge you have of any formal charges or informal allegations against you or any other candidate for violations of these provisions. None
41. Itemize (by amount, type, and date) all expenditures, other than those for travel and room and board, made by you, or on your behalf, in furtherance of your candidacy for the position you seek. None
42. List the amount and recipient of all contributions made by you or on your behalf to members of the General Assembly since the announcement of your intent to seek election to a judgeship. None
43. Have you directly or indirectly requested the pledge of any member of the

General Assembly as to your election for the position for which you are being screened? Have you received the assurance of any public official or public employee that they will seek the pledge of any member of the General Assembly as to your election for the position for which you are being screened? No

44. Have you requested a friend or colleague to contact members of the General Assembly on your behalf? Are you aware of any friends or colleagues contacting members of the General Assembly on your behalf? No
45. Have you or has anyone acting on your behalf solicited or collected funds to aid in the promotion of your candidacy? No
46. Have you or has anyone acting on your behalf contacted members of the Judicial Merit Selection Commission about your candidacy or intention to become a candidate? Not to my knowledge
47. List all bar associations and professional organizations of which you are a member and give the titles and dates of any offices you have held in such groups.
 - (a) N.C. Bar;
 - (b) S.C. Bar;
 - (c) Greenville County Bar;
 - (d) SCDTAA (Executive Committee Member since 2000);
 - (e) N.C. Bar Association;
 - (f) Upstate Mediation Network (Vice President 1999-2001);
 - (g) S.C. Bar Resolution of Fee Disputes Board (2008 – present).
48. List all civic, charitable, educational, social, and fraternal organizations of which you are or have been a member during the past five years and include any offices held in such a group, any professional honors, awards, or other forms of recognition received and not listed elsewhere.
 - (a) The Family Effect (Board Member);
 - (b) Temple of Israel Board of Directors (2nd VP 2005-07);
 - (c) Greenville Little League (Coach);
 - (d) PTAs of Stone Academy, League, Academy and Greenville High School;
 - (e) Greenville High All-Star Booster Club;
 - (f) Educational Foundation of the University of North Carolina (Upcountry Chapter Development Committee);
 - (g) UNC and UNC School of Law Alumni Association;
 - (h) Best Lawyer's in America (included from 2007 to the present); and
 - (i) S.C. "Super Lawyers" for General Litigation (2010).
49. Provide any other information which may reflect positively or negatively on your candidacy, or which you believe should be disclosed in connection with consideration of you for nomination for the position you seek. This information may include how your life experiences have affected or influenced the kind or type of judge you have been or plan to be.

When I ran for a Circuit Court seat in 2003, I wrote about watching my parents work as volunteers as drug counselors while I was a child and how their experiences affected my views on equal justice under the law. While I still have those feelings, obviously a great deal has happened in my life since that time.

In 2005 my wife, sons and I made the decision to add the 13 year old daughter of a family friend who had passed away to our family. This child had been adopted by her grandmother (the family friend who died) at a young age after her birth parents lost their parental rights. This forced me to quickly learn to have a great deal of patience and to be firm with my judgments in dealing with not only the normal issues of a larger family but also with raising a teenager (now two teenagers).

Additionally, obviously there are some special issues that arise in raising someone who has been through what my daughter has been through. Not only did her birth parents lose custody of her and both eventually ended up in prison, but also she had to deal with losing the only parent she ever really knew to cancer. As a result I think I have had to develop a sensitivity and at the same time a toughness that I am not sure I had previously.

Moreover, I have been exposed to a different side of our legal system as I watched her birth parents work in and out of the criminal justice and prison systems. While I have only been an interested observer as to these machinations, I have found the actions of the solicitor's office, the appointed defense counsel, the parole officers, and even the sentencing judges to be quite educational, especially since that area of the law is the one I have had the least exposure to in my career.

As a result of all this, I believe I am better suited to sit on the circuit court bench than I was at the time of my first campaign. I also believe that the patience and friendships I have made during my previous runs for a seat on the Circuit Judge bench will serve me well if elected.

50. References:

- (a) Wallace K. Lightsey
Wyche Burgess Freeman & Parham, P.A.
P. O. Box 728
Greenville, S.C. 29602
(864) 242-8200
- (b) Scott Dishman
Director of Community Engagement
1400 Cleveland Street
Greenville, S.C. 29607
(864) 467-3944
- (c) T. David Rheney
Gallivan, White & Boyd P.A.

P. O. Box 10589
Greenville, S.C. 29603
(864) 271-9580

- (d) Lawrence M. Hunter, Jr.
Hunter & Foster, PA
P.O. Box 10309
Greenville S.C. 29603
(864) 242-2111
- (e) Shields Cochran
S.C. Bank and Trust
200 E. Broad Street, Ste 100
Greenville, S.C. 29601
(864) 250-1503

YOUR SIGNATURE WILL BE HELD TO CONSTITUTE A WAIVER OF THE
CONFIDENTIALITY OF ANY PROCEEDING BEFORE A GRIEVANCE COMMITTEE OR
ANY INFORMATION CONCERNING YOUR CREDIT.

I HEREBY CERTIFY THAT MY ANSWERS ARE TRUE AND COMPLETE TO THE BEST
OF MY KNOWLEDGE.

Signature: Eric K. Englehardt

Date: August 11, 2010

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

Circuit Court Judge
(New Candidate)

Full Name: Eric K. Englebardt
Address: 326 Hampton Avenue
Greenville, South Carolina 29601
Work Telephone: (864) 552-4600

1. Why do you want to serve as a Circuit Court Judge?

In my previous efforts at obtaining a seat on the Circuit Court bench I have focused my answer to the question on my experience in the various Circuit Courts around the State of South Carolina. I discussed that time in the courtroom has been the most enjoyable part of my practice. While this is certainly still true, in the last few years I have spent much less time in the courtroom and more time working as an arbitrator and mediator as the rise ADR has decreased the amount of time civil litigators spend trying cases. I have found that helping people resolve disputes as a mediator or making the ultimate determination of the facts and applying the law to those facts suits my temperament and abilities well. I have also always felt the desire to be involved in public service, and becoming a Circuit Court judge is the way to do that which I have always strived to do: unite my avocation and my vocation. I have served as a judge in the Youth Court program in Greenville County, in various moot court programs, and also recently during a trial academy for young lawyers. All these experiences have led me to believe that seeking a seat on the bench is the way for me to accomplish these goals by serving the people of this state in a way that challenges me yet allows me to use the best of my skills for public good.

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?

It is my expectation to serve as a judge as long as the State will have me.

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 do not believe *ex parte* communications should be tolerated in litigation. There is nothing more infuriating as a litigant than even the thought that the other side has gained the ear of the Court without

the opportunity to respond. The one or two times I have been involved in situations where a party received or attempted to receive a temporary injunction against my client were some of the most frustrating times of my practice. While I certainly understand that limited *ex parte* communication is allowed in those infrequent occurrences, they are the only exceptions that come to mind.

6. What is your philosophy on recusal, especially in situations in which lawyer-legislators, former associates, or law partners are to appear before you?

I am firmly of the belief that someone elected to the Circuit Court Bench through the process we use in South Carolina is someone who would have the integrity and personal ethical responsibility to recuse himself in a situation where there was any question as to whether or not they could be fair. I certainly know that this would be the "bright line test" I would want to use myself regarding recusal. However, I cannot imagine a situation where I feel my integrity could be compromised simply because a lawyer-legislator, former associate, law partner, or even close friend appeared before me. Part of my rationale for running for Circuit Court Judge is my deep-seeded sense of justice which puts the litigants and their need for fairness in the system first and foremost. As a result, I believe I could look past the identity of the counsel involved in a matter and focus solely on the ends of justice.

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?

Judges have to be particularly careful with statements regarding litigation and their thoughts on issues as well as on litigants. I hope that if I am elected I will be able to avoid any such appearance. However, as stated in my answer to question 6 above, because of my strong feelings that justice is required for all litigants, I believe it is likely that I would have a difficult time granting a motion for recusal if I truly did not believe that my statement actually was evidence of impartiality. Regardless, I would have to take this on a matter-by-matter basis and if I felt that the statement I made was based on some preconceived notion that could affect my impartiality I would not hesitate to grant the motion. The said, parties need to have a judicial system that disposes of judicial matters promptly and efficiently, and unnecessary recusals in themselves cause a delay in justice.

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

If there was a matter in front of me that had an inkling of financial or social involvement of my spouse or a close relative I

believe it would be my duty to recuse myself from such a matter if a reasonable mind would perceive an impropriety.

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

I would follow the Code of Judicial Conduct's requirements regarding the acceptance of gifts or social hospitality. It is my belief that judges should be regular members of society outside of the courtroom and, obviously, able to accept social invitations as long as their integrity and honesty is not compromised. However, the acceptance of gifts would seem to go "over the line" in this regard and I would not accept them from anyone who would not be someone with whom I exchanged gifts prior to becoming a judge.

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

If I became aware of misconduct of a lawyer or fellow judge I would be governed by Rule 8.3 of the Rules of Professional Conduct and would respond accordingly. Thankfully, I have not had to deal with this situation in my legal career to date and would hope I never had to deal with it as a judge.

11. Are you affiliated with any political parties, boards or commissions which, 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 would be my hope that I would be able to draft most orders myself with the help of my law clerk. Applying facts and analyzing the law is to me one of the most interesting and exciting parts of becoming a judge. However, having watched judges deal with full calendars during weeks of nonjury hearings, I understand that that might be impractical. In cases where I felt it necessary to have an attorney draft a proposed order for me, I would certainly follow the required practice of all attorneys in the case having an opportunity to review and comments upon proposed orders before their submission to me and allow comments from both sides before finalizing the order myself.

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

As a practicing attorney deadlines are extremely important to me and my staff. As a judge this will be even of more paramount importance because it is my belief that judges need to set an example for practicing attorneys. Thanks to the advent of computer technology tickler systems are very easy to set up and it would be my expectation that my secretary, my law clerk, and myself would all

understand how the tickler systems were used and would work as a team to ensure that all deadlines were met.

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

I am not at all in favor of judicial activism. It is my belief that statutory laws should be set up by the Legislature as representatives of the public, with the appellate courts the overseers of the Constitution and the protectors of current law. As a circuit court judge it would be my belief that it was my job to enforce the law, regardless of my personal feelings about it. While there are certainly occasions where appellate courts need to step in and say that an individual act is contrary to public policy, it is my belief that these circumstances are few and far between and that elective government is better suited to set public policy, with the checks and balances of appellate courts to make sure that such decisions follow the constitution.

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?

As a judge I would be more than happy to be involved with activities to improve the law, legal system and administrations of justice. I was very active in the development of the Alternative Dispute Resolution program here in Greenville, and spent two years as the Vice President of the Upstate Mediation Network. Due to my experience as an arbitrator and mediator, it would be my hope that I could use that experience to help areas of the State which have not fully embraced ADR to do so as it is my belief that this is an important cog in the wheel of justice that gets ignored in most parts of our State. Strong mediation and arbitration programs speed up the dockets by removing cases and, accordingly, allowing all parties a more speedy route to the courtroom and finality to their claims. Also, having been involved in the Youth Court program in Greenville, I would like to stay involved in that program and help expand it elsewhere.

17. Do you feel that the pressure of serving as a judge strains personal relationships (i.e. spouse, children, friends, or relatives)? How would you address this?

All professions have their stressors, and the legal profession is no exception, regardless of which side of the bench a lawyer is on. However, I have certainly never faced the pressure of presiding over a death penalty case for example, and I can imagine the stress from that must be unbelievable. I have always believed in exercise as a means of helping to relieve stress and I run and bicycle frequently to assist with this. Also, as my wife is an US Bankruptcy Court judge, I think

the ability to have the person closest to me going through similar experiences and stresses will be quite helpful.

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 believe in all cases of sentencing case-by-case analysis will be necessary. However, with regard to repeat offenders I would probably err on the side of harsher penalties as part of my philosophy with criminal sentencing is hoping that being caught and sentenced once would be a deterrent to future criminal acts. Once someone has become a repeat offender it would be my belief that harsher sentence would be necessary because they are less likely to reform and the need to protect society from them would be greater.

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

Again, this would need to be dealt with on a case-by-case basis, particularly looking at the circumstances and charges involved. However, I would probably err on the side of a more lenient sentences for nonviolent juveniles in the hopes that they would have a better opportunity to reform.

c. White collar criminals:

I do not believe I would view white collar crime and sentencing very differently than any other kind of crime. Again, I hesitate to give any kind of concrete answer to this question as I hope I would view each case individually instead of painting with a broad brush as to how we would handle each of these kinds of cases. Note that my "philosophy" would probably lead me toward lesser sentences for nonviolent crimes as opposed to violent crimes with other factors being considered.

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

My answer to 18(d) is very similar to my answer to 18(c). The backgrounds of the Defendants would not nearly be as important to me as the type of crime they committed and somewhat circuitously whether they are repeat offenders. Obviously, if there was some alternative programming such as the Drug Courts that I felt could help someone, if I had the latitude to do so, I would be willing to consider that.

e. Elderly defendants or those with some infirmity:

It is my belief that the penal system should take care of inmates with infirmities or age problems. However, I am a firm believer that criminals should be treated as criminals despite their age or experience. Again, and I know I am repeating myself, more important

to me than the makeup of the individual would be the crime they have been convicted of committing.

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?

I would follow the Canons of the Code of Judicial Conduct as a guideline for handling a situation with *de minimis* financial interest, such that it would not disqualify me by definition. However, I would be careful to ensure that the interest was truly *de minimis*, since this is an area in which what is not really a conflict can look like one.

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?

It is my belief that a judge's demeanor is almost as important as his knowledge of the law. As the person in charge of the courtroom, it is the judge that sets the tone and is the conduit between the general public, whether they be jurors or litigants, and the judicial system. Judges need to listen with patience and respect to the arguments of counsel, stay concerned with the comfort of the jury, be willing to work hard and, perhaps most important, be fair to all sides. Additionally, a judge must hold himself out to be respected by not taking actions that would portray him in a bad light. I believe this is very important as judges are the symbols of our judicial system to the general public and confidence in the caliber of the judge leads to confidence in the system.

24. Do the rules that you expressed in your previous answer apply only while you are on the bench or in chambers, or do these rules apply seven days a week, twenty-four hours a day?

While I believe judges certainly have a right to have a normal life outside the courtroom, it is my belief that a judge is always a representative of the court and, as a result, his judicial demeanor should be constant in and out of the courtroom. The demeanor of a judge should be his true demeanor, not an act he puts on in the courtroom.

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 believe controlling anger may be one of the hardest things a judge can do. I can think of many examples of cases, especially in the criminal context, where the actions of the criminal were so egregious

that losing one's temper would be a natural act. However, as discussed in the above response regarding judicial demeanor, I do not believe anger is appropriate coming from the bench. Much as I try to hold my temper when dealing with my children, it would be my goal to hold my temper with members of the public and criminal defendants as well. In regard to the second part of this question, I do not think anger per say is ever truly appropriate. However, that is not to say that a judge expressing unhappiness with the actions of a litigant or an attorney is inappropriate. There are cases where contempt is warranted and in those situations an oral rebuke may be necessary. But, again, much as when disciplining your children it is better when not coming at it from anger, it would be my hope that I could approach difficult situations from the bench in the same way.

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 not spent any money.

27. If you are a sitting judge, have you used judicial letterhead or the services of your staff while campaigning for this office. N/A.
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/Eric K. Englebardt

Sworn to before me this 11th day of August, 2010.

Notary Public for S.C.

My Commission Expires: 1-12-2019

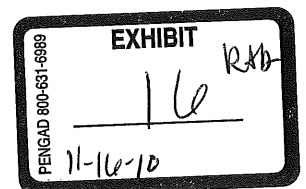
Judicial Screening Committee,

October 21, 2010

This letter is to amend the PDQ # 26. It should read, "I ran for judge in 1998, but withdrew before public hearings." Amendment # 41 in regards to expenses should reflect \$91.62.

Thank You,

Anthony Mabry



JUDICIAL MERIT SELECTION COMMISSION
PERSONAL DATA QUESTIONNAIRE

Court, Position, and Seat # for which you are applying:

Circuit Court, Thirteenth Judicial Circuit, Seat 2

1. NAME: James Anthony Mabry
BUSINESS ADDRESS: Office of the Attorney General
State of South Carolina
P.O. Box 11549
Columbia, S.C. 29211-1549
E-MAIL ADDRESS: amabry@ag.state.sc.us
TELEPHONE NUMBER: (office): 803-734-3665
2. Date of Birth: 1963
Place of Birth: Greenville, S.C.
3. Are you a citizen of South Carolina? Yes
Have you been a resident of this state for at least the immediate past five years? Yes
5. Family Status: Married on January 16, 1988 to Mary Yvonne Knabe Mabry.
Never divorced. Three children.
6. Have you served in the military? N/A
7. List each college and law school you attended, including the dates of your attendance, the degrees you received, and if you left an institution without receiving a degree, the reason for your departure.
 - (a) University of South Carolina (1981-85) B.A./Political Science
 - (b) University of South Carolina Law School (1985-88) J.D.
8. List the states in which you have been admitted to practice law and the year of each admission. Also list any states in which you took the bar exam but were never admitted to the practice of law. If you took the bar exam more than once in any of the states listed, please indicate the number of times you took the exam in each state.
South Carolina 1988
9. List the significant activities in which you took part during your attendance at college, graduate, and law school. Give the dates you were involved in these activities and list any leadership positions you held.
Law School:
 - (a) Law Clerk, United States Attorney's Office 1987-88
 - (b) Law Clerk, Haynsworth, Sinkler, Boyd P.A. 1986College:
 - (a) U.S.C. Rugby 1981-85
 - (b) Captain, U.S.C. Rugby 1985
10. Describe your continuing legal or judicial education during the past five years. Include only the title and date of any continuing legal or judicial education course completed.

	<u>Conference/CLE Name</u>	<u>Date(s)</u>
(a)	Capital Litigation Conference	Spring/10;
(b)	Pee Wee Gaskins:A Big Trial for a Little Man	2/18/10;
(c)	Annual Ethics and Professional	11/20/09;
(d)	Capital Litigation Practice Tips	7/17/09;
(e)	Capital Litigation	6/26/09;
(f)	Ethical Considerations and Pitfalls for the Crim. Lawyer	2/20/09;
(g)	Capital Litigation Prosecution	8/14/08;
(h)	NAAG/Conf. on Appellate Practice	3/05/08;
(i)	Legal Writing	10/18/07;
(j)	2007 Annual Conference (Solicitor's Conf.)	9/23/07;
(k)	Assoc. of Govt. Attys. in Cap. Litigation Ann. Conf (not approved)	7/25/07;
(l)	Will Our Past Sustain Us?	2/27/07;
(m)	Rules, Rules, Rules	2/16/07;
(n)	Nonprofit Corp. from A to Z	2/9/07;
(o)	Sidebar S.C. Torts/Paul Reeves	12/21/05;
(p)	Conducting Depositions in S.C./Strategies that Win	12/14/05;
(q)	Ethics 2000	12/13/05;
(r)	Legal Ethics in S.C.	2/21/05;
(s)	Updating Your Advocacy Skills	12/10/04;
(t)	What it was, what it is, what it shall be?	12/17/04;
(u)	New Lawyer's Oath/Civility	12/29/04.

11. Have you taught law-related courses or lectured at bar association conferences, educational institutions, or continuing legal or judicial education programs? Yes.
 - (a) I lectured at the Capital Litigation Seminar in Columbia;
 - (b) I lectured at the Capital Litigation Seminar in Greer/Taylors;
 - (c) I lectured at the Capital Litigation Seminar in Charleston.
12. List all published books and articles you have written and give citations and the dates of publication for each. N/A
13. List all courts in which you have been admitted to practice and list the dates of your admission. Give the same information for administrative bodies that require a special admission to practice.
 - (a) Admitted to practice before the State Courts of South Carolina in November 1988;
 - (b) Also admitted to practice before the United States District Court in May 1989;
 - (c) Also admitted to practice before the United States Court of Appeals (4thCircuit) in September of 2009.
14. Describe chronologically your legal experience since graduation from law school and include a list of all law firms with which you have been associated.

Describe the general character of your practice and divide it into periods with dates if its character has changed over the years.

- (a) Assistant Attorney General 2007-10
South Carolina Attorney General's Office, (Capital Litigation Section),
Capital appeals/Capital post-conviction relief/Federal habeas corpus.
- (b) Haynesworth, Sinkler, Boyd, P.A. 2001-06
Civil Litigation/Primarily insurance defense/Some Plaintiff's work
- (c) Deputy Solicitor/7th Judicial Circuit 1994-2001
Office Management /Criminal prosecution/Docket Administration
- (d) Assistant Solicitor/7th Judicial Circuit 1989-94
Criminal prosecution
- (e) J. Anthony Mabry, Attorney at Law 1988-89 (General Practice)
Civil litigation (Plaintiff), Criminal defense, Real Estate, Preparation of
Wills/Powers of Attorneys/Etc.
- (f) Duggan, Reese, & McKinney 1988
Law Clerk (Awaiting Bar Results), After passing the Bar Exam did some
limited Plaintiff's and Criminal Defense work.

If you are a judge and are not seeking a different type of judgeship, the following questions are inapplicable:

- (b) If you are a candidate for Circuit Court, please provide a brief written description of your experience in criminal matters, including any cases handled over the past five years and include a brief description of the issues involved. Further, please provide a brief written description of your experience in civil matters, including any cases handled over the past five years and include a brief description of the types of matters handled, issues involved, and procedural history. Please include information such as the primary areas in civil court in which you practice, whether you represent plaintiffs or defendants, or both. You may go back further than five years if you feel it would assist the Commission with its assessment of your experience. If you lack experience in an area, describe how your background has prepared you to preside over such matters as a Circuit Court Judge, or how you would compensate for your lack of experience in this area.

Criminal matters:

I have almost fifteen (15) years' experience handling criminal matters in the circuit and appellate courts of this state. From 1989 to 2001, I tried criminal cases in the circuit courts of Spartanburg and Cherokee Counties and one case in Greenville County. During those years, I tried approximately 100 jury trials.

For the past three years, as an Assistant Attorney General, I have represented the State of South Carolina in handling capital and non-capital murder appeals. During that time period, I represented the State in three capital murder appeals that were argued before the South Carolina Supreme Court: State v. Freddie Eugene Owens, State v.

Stephen Stanko, and State v. Mikal Mahdi. All three convictions and corresponding death sentences were affirmed by the South Carolina Supreme Court in published opinions. In addition to those appeals, I have briefed numerous non-capital murder appeals to the South Carolina Court of Appeals. All of these convictions have been affirmed. I am currently preparing the briefs to be filed before the South Carolina Supreme Court in State v. Harry Justus (Capital Appeal), and State v. Jeffrey Motts (Capital Waiver of Appeals).

As Deputy Solicitor (1994-2001), I prosecuted five (5) capital murder cases. All five defendants were convicted of murder, four (4) were sentenced to death. The only defendant who was not sentenced to death, the jury deadlocked on what sentence to impose. That defendant was later sentenced to death after he murdered his cell-mate at Perry Correctional Institution. While Deputy Solicitor, I also prosecuted and tried other major high profile felony cases such as non-capital murders and a felony DUI death case.

As an assistant solicitor for the 7th Judicial Circuit (1989-94), I prosecuted murder, armed robbery, burglary, DUI, rape, and drug cases for the 7th Circuit Solicitor's Office. The largest drug case I tried involved the seizure of over 700 pounds of marijuana.

My criminal practice has not been limited to criminal prosecution. I also defended a young man charged with Reckless Homicide in Greenville County. The case was tried to a jury verdict, and the defendant was acquitted.

Additionally, as both an Assistant Solicitor and a Deputy Solicitor, I have handled hundreds of guilty pleas before the circuit courts of Spartanburg and Cherokee Counties. These involved guilty pleas to Murder, Felony DUI, Trafficking in Drugs, Kidnapping, Rape, and other felony and non-felony offenses.

Additionally, as Deputy Solicitor, I administered the criminal docket for Spartanburg County for several years. As part of my responsibilities as Deputy Solicitor, I set goals and deadlines for the Assistant Solicitor's in the office to dispose of old cases. As a result of the setting of these goals and the accomplishment of them by the Assistant Solicitor's, the 7th Circuit had the lowest percentage of cases over one (1) year old among the sixteen (16) judicial circuits. The 7th Circuit also led all circuits in the swift disposition of criminal cases. These accomplishments were confirmed by South Carolina Court Administration records at the time and by a published newspaper article in the Greenville News in approximately 1996-97. (I do not remember the exact date of the article)

Civil matters:

For the past three years, as an Assistant Attorney General, I have represented the State in several capital post-conviction relief (PCR

matters). Under South Carolina law, these matters are considered civil matters and are subject to the Civil Rules of Procedure. I have been involved in the trial of four (4) capital PCR matters. I am currently drafting a proposed order for circuit judge Casey Manning in the capital PCR matter of Charles Shuler v. State. I just finished handling a Capital PCR trial before the Honorable "Ned" Miller in Greenville County. I am currently handling three (3) pending capital PCR matters throughout the State: Mahdi v. State (Calhoun County), Stanko v. State (Georgetown County), and Evins v. State (Spartanburg County).

From 2001-06, as an associate with the law firm of Haynsworth, Sinkler, Boyd, P.A., in Greenville S.C., I was a civil litigator. My practice was predominantly defending personal injury lawsuits, including wrongful death, catastrophic injury, and minor injury. While an associate at the Haynsworth Law Firm, I tried jury trials in in Circuit Court of Common Pleas and one case in United States District Court. I also tried cases in the magistrate's court of Spartanburg and Greenwood County. My civil practice has not been limited to defense work. I have acted as a plaintiff's attorney in two civil cases, obtaining jury verdicts on behalf of my clients in both cases in the Court of Common Pleas of Greenville County.

One major case I successfully defended while at the Haynsworth Law Firm was recently affirmed by the South Carolina Court of Appeals. The case dealt with whether a local oil jobber and Motiva (a Texaco oil distributor), had control over the driver of a wrecker for an independent operator of a Texaco branded filling station, so as to impose agency liability.

Additionally, I handled numerous civil lawsuits that were resolved prior to trial. Most of these cases were resolved through the mandatory mediation program imposed in Greenville County. Some of these cases involved negotiation after the mediation in order to successfully resolve these cases in the best interests of both clients.

15. What is your rating in Martindale-Hubbell?

I am not rated in Martindale-Hubbell. I have never sought a rating in Martindale-Hubbell nor has anyone recommended me for a rating.

16. What was the frequency of your court appearances during the last five years?

- (a) federal: 50% (Pleadings only)(federal habeas corpus);
- (b) state: 50% (Pleadings and Appellate Briefs).

Physical appearances: trials/motions/appellate arguments, 100% of my practice has been in state court.

17. What percentage of your practice involved civil, criminal, domestic, and other matters during the last five years?

- (a) civil: 50%;
- (b) criminal: 50%;
- (c) domestic: 0%;

(d) other: 0%.

18. What percentage of your practice in trial court during the last five years involved matters that went to a jury, including those that settled prior to trial?

(a) jury: 25%;

(b) non-jury: 75%.

Did you most often serve as sole counsel, chief counsel, or associate counsel in these matters?

I served as sole counsel, chief counsel, and associate counsel in these matters over the past five years.

19. List five of the most significant litigated matters you have personally handled in either trial or appellate court or before a state or federal agency. Give citations if the cases were reported and describe why these matters were significant.

(a) State v. Owens, 378 S.C. 636, 664 S.E.2d 80 (2008).

Owens was sentenced to death twice for the murder of Irene Graves. During his first trial, Owens murdered his cell-mate Christopher Lee. Both of Owens' first two death sentences were overturned by the S.C. Supreme Court. In Owens third sentencing proceeding, he was sentenced to death a third time. The above cited decision finally affirmed Owens' death sentence for the murder of Irene Graves. I handled the appeal from Owens' third sentencing proceeding for the State.

(b) State v. Locklair, 341 S.C.352, 535 S.E.2d 420 (2000)

Locklair murdered Tammy Bridges in Spartanburg County while out on bond for the murder of Chris Jones in Laurens County. Locklair was convicted of Bridges murder and sentenced to death. The South Carolina Supreme Court affirmed the death sentence. As far as I am aware, it was the first decision by our Supreme Court recognizing that the aggravating circumstance of "the use of a dangerous instrumentality" can be applied to the use of a firearm. The Supreme Court also held that it was proper for the trial judge to order the defendant to undergo a psychiatric examination by the State's expert where the defendant was going to assert mental illness as a defense or as a mitigating circumstance, equaling the playing field for both sides in cases where psychiatric testimony will be offered. I prosecuted this case at the trial level.

(c) Richitelli v. Motiva Enterprises, LLC d/b/a Texaco & H.D. Payne Oil Co., Opinion No. 4707 (Ct. App. filed July 12, 2010)

The Court of Appeals affirmed the trial judge's grant of summary judgment to Motiva (a Texaco oil distributor) and a local "jobber", finding there was no evidence of actual agency regarding the operation of a wrecker belonging to a local independently owned and operated but Texaco branded filling station. I argued and won the summary judgment motion below.

(d) Mahdi v. State, 383 S.C. 135, 678 S.E.2d 807 (2009).

Mikal Mahdi murdered Captain James Myers, an off duty police officer on his own farm in Calhoun County. Mahdi had already murdered a convenience store clerk in North Carolina prior to murdering Captain Myers. The South Carolina Supreme Court affirmed Mahdi's death sentence in the above opinion. I handled the appeal for the State.

- (e) State v. Stanko, 376 S.C. 571, 658 S.E.2d 94 (2008)

Stephen Stanko murdered his girlfriend and sexually assaulted and attempted to murder his girlfriend's teenage daughter in Georgetown County. Stanko then withdrew money from his girlfriend's bank account and drove to Conway in his girlfriend's car. Stanko then murdered a friend, stole his friend's truck and drove to Columbia, S.C. Stanko then drove to Augusta, Georgia, where he was apprehended a few days later by U.S. Marshalls. Stanko was convicted of his girlfriend's murder and the assault on the daughter and sentenced to death. The Supreme Court affirmed Stanko's convictions and death sentence in the above opinion. I handled the appeal for the State. Stanko has subsequently been sentenced to death for the Conway murder as well.

20. List up to five civil appeals you have personally handled. Give the case name, the court, the date of decision, and the citation if the case was reported. N/A.
21. List up to five criminal appeals that you have personally handled. Give the case name, the court, the date of decision and the citation if the case was reported.
- (a) State v. Owens, 378 S.C. 636, 664 S.E.2d 80 (2008);
 - (b) State v. Stanko, 376 S.C. 571, 658 S.E.2d 94 (2008);
 - (c) Mahdi v. State, 383 S.C. 135, 678 S.E.2d 807 (2009);
 - (d) State v. Harris, 382 S.C. 107, 674 S.E.2d 532 (Ct. App. 2009);
 - (e) In the Interest of Walter M., 386 S.C. 387, 688 S.E.2d 133 (Ct. App. 2009).
22. Have you ever held judicial office? No
24. Have you ever held public office other than judicial office?
- (a) Assistant Attorney General, 2007-10
 - (b) Deputy Solicitor/7th Judicial Circuit, 1994-2001
 - (c) Assistant Solicitor, 1989-94
 - (d) Law Clerk/United States Attorney's Office, 1988-89
- I believe I did timely file a report with the State Ethics Commission when I served as Deputy Solicitor/7th Judicial Circuit.
25. List all employment you had while serving as a judge (whether full-time or part-time, contractual or at will, consulting or otherwise) other than elected judicial office. Specify your dates of employment, employer, major job responsibilities, and supervisor. N/A
26. Have you ever been an unsuccessful candidate for elective, judicial, or other public office?

I ran for at-large seat 11 (currently held by the Honorable Alison Renee Lee) in 1999 or 2000. I withdrew early in the race.

27. Have you ever been engaged in any occupation, business, or profession other than the practice of law, teaching of law, or holding judicial or other public office?

After voluntarily leaving the Haynsworth firm to seek more rewarding work in the legal field, I was employed briefly by Pinckney Renovations, as a carpenter's helper, from January-March, 2007. I was appointed Assistant Attorney General on April 2, 2007.

I was employed in various summer employment jobs from 1981 until 1985 while in college.

28. Are you now an officer or director or involved in the management of any business enterprise? No
29. A complete, current financial net worth statement was provided to the Commission.
30. Describe any financial arrangements or business relationships you have, or have had in the past, that could constitute or result in a possible conflict of interest in the position you seek. Explain how you would resolve any potential conflict of interest. None

I would make the Committee aware that I do still retain my 401K with the law firm Haynsworth, Sinkler, Boyd, P.A., however, I could not hear any case in which that law firm is involved because my brother, H. Sam Mabry, III is a senior partner/shareholder in that firm.

The only instance I can foresee possibly hearing a matter in which that firm is involved is if the matter was relatively small or insignificant, full disclosure of the disqualification was made, and after both parties discussed the conflict privately they agreed to release (remittal) or waive the conflict on the record. The only reason I would hear such a matter is to further the efficient administration of justice for the parties and not overburden other judges. Even with a release or waiver, I still would not hear any matter involving the Haynsworth firm that could have a substantial economic impact on the firm. If elected Circuit Judge, I would certainly roll my 401K over into some 401K unrelated to the firm or into my state retirement account.

31. Have you ever been arrested, charged, or held by federal, state, or other law enforcement authorities for violation or for suspicion of violation of any federal law or regulation, state law or regulation, or county or municipal law, regulation, or ordinance, or any other law, including another country's law?

Contempt of court while acting as Deputy Solicitor in October of 2000. The contempt citation did not involve the prosecution of any case. The matter was appealed and vacated by the S.C. Supreme Court. (See Order of Chief Justice Toal/In re James Anthony Mabry) After the contempt citation was vacated, my record was expunged. I was represented in the matter by the Attorney General's Office and Samuel Mitch Slade, Esq.

32. Have you, to your knowledge, ever been under federal, state, or local investigation for possible violation of a criminal statute?
- I was involved in a hunting accident in 1991. I accidentally shot a friend with rabbit shot while rabbit hunting. There were no resulting life-threatening injuries. I drove my friend to the hospital. The matter was investigated by the Dept. of Wildlife. I cooperated fully. No charges were filed.
33. Has a tax lien or other collection procedure ever been instituted against you by federal, state, or local authorities? Have you ever defaulted on a student loan? Have you ever filed for bankruptcy? No
34. Have you ever been sued, either personally or professionally, that is, have you ever been named as defendant or respondent in any court of law? No
36. Have you ever been investigated by the Department of Social Services? If so, give the details and the resolution. Has your name ever been enrolled on the Central Registry of Child Abuse and Neglect? No. N/A
37. Are you now or have you ever been employed as a "lobbyist," as defined by S.C. Code § 2-17-10(13), or have you acted in the capacity of a "lobbyist's principal," as defined by S.C. Code § 2-17-10(14)? No. N/A
38. Since filing with the Commission your letter of intent to run for judicial office, have you accepted lodging, transportation, entertainment, food, meals, beverages, money, or any other thing of value as defined by S.C. Code § 2-17-10(1) from a lobbyist or lobbyist's principal? No; N/A.
39. S.C. Code § 8-13-700 provides, in part, that "[n]o public official, public member, or public employee may knowingly use his official office, membership, or employment to obtain an economic interest for himself, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated." Please detail any knowledge you have of any formal charges or informal allegations against you or any other candidate for violations of these provisions. None
40. S.C. Code § 8-13-765 provides, in part, that "[n]o person may use government personnel, equipment, materials, or an office building in an election campaign." Please detail any knowledge you have of any formal charges or informal allegations against you or any other candidate for violations of these provisions. None
41. Itemize (by amount, type, and date) all expenditures, other than those for travel and room and board, made by you, or on your behalf in furtherance of your candidacy for the position you seek. None
42. List the amount and recipient of all contributions made by you or on your behalf to members of the General Assembly since the announcement of your intent to seek election to a judgeship. None
43. Have you directly or indirectly requested the pledge of any member of the General Assembly as to your election for the position for which you are being screened? Have you received the assurance of any public official or public employee that they will seek the pledge of any member of the General

Assembly as to your election for the position for which you are being screened? No

44. Have you requested a friend or colleague to contact members of the General Assembly on your behalf? No

Are you aware of any friends or colleagues contacting members of the General Assembly on your behalf? Yes

I am aware that some friends have spoken with members of the General Assembly recommending me for this position.

45. Have you or has anyone acting on your behalf solicited or collected funds to aid in the promotion of your candidacy? No; N/A

46. Have you or has anyone acting on your behalf contacted members of the Judicial Merit Selection Commission about your candidacy or intention to become a candidate? No

I would make the Commission aware that my brother, H. Sam Mabry, III. is a law partner with Don Sellars, who is on the Commission. My brother has informed me that he did tell Mr. Sellars I was going to be a candidate for this judicial position so that Mr. Sellars could decide if he wanted to recuse himself with regard to my screening.

47. List all bar associations and professional organizations of which you are a member and give the titles and dates of any offices you have held in such groups.

S.C. Bar Association

48. List all civic, charitable, educational, social, and fraternal organizations of which you are or have been a member during the past five years and include any offices held in such a group, any professional honors, awards, or other forms of recognition received and not listed elsewhere.

Fountain Inn First Baptist Church (Deacon, but not in the past 5 years)

49. Provide any other information that may reflect positively or negatively on your candidacy, or which you believe should be disclosed in connection with consideration of you for nomination for the position you seek.

My 21 years' of experience as a practicing trial attorney will be invaluable in serving as a Circuit Court Judge. Over the past 21 years, I have observed Circuit Court Judges in our state and what does work and does not work in the administration of justice. I have observed this while acting as a prosecutor, a criminal defense attorney, a plaintiff's attorney, and a civil defendant's attorney.

I have learned that a Circuit Judge must be calm, patient, courteous, understanding, and possess a sense of humor. A Circuit Judge should never abuse a party, witness, juror, clerk, court reporter or an attorney. It has been my experience that more work gets done, when everyone involved in the judicial system is relaxed, not anxious and fearful. While a Circuit Judge must be firm, productive, and focused, he must also remember that he is working with fallible human beings, like himself. These are only a few of the things I

have learned in 21 years of interacting with judges, juries, attorneys, and court personnel.

I also believe my prior work experience uniquely qualifies me to be elected as a Circuit Court Judge. As Deputy Solicitor for the 7th Judicial Circuit, I routinely reviewed all SLED investigations of misconduct by law enforcement or public officials in Spartanburg County. As part of this responsibility, in several of these cases, the elected Solicitor required me to write legal or formal memoranda regarding whether criminal charges should be brought or not brought against a particular individual. Solicitor Gossett routinely relied on my opinion letters or memoranda in making charging decisions. While Deputy Solicitor, I also routinely reviewed criminal investigations being conducted by the Spartanburg County Sheriff's Office and other law enforcement agencies and gave legal advice during those investigations, such as whether police had sufficient evidence to obtain a search warrant or issue an arrest warrant.

While Deputy Solicitor, and acting as docket administrator, I interacted extensively with resident Circuit Judges and those judges rotating through our circuit. As an Assistant Attorney General, I still interact with Circuit Judges throughout this state in scheduling and trying Capital PCR matters. While an Assistant Solicitor and Deputy Solicitor, I also dealt extensively with victims of crime and their families.

As a civil litigant's attorney, I came to learn what civil litigant's expect from the judicial system, and how resolution of matters prior to a jury verdict is often in the best interests of all parties and the judicial system. In representing a criminal defendant through trial, I learned the stress and anxiety that a charged individual goes through. All of these experiences, I believe, uniquely qualify me to serve as the resident Circuit Judge for the 13th Judicial Circuit.

50. References:

- (a) Donald J. Zelenka
S.C. Attorney General's Office
P.O. Box 11549
Columbia, S.C. 29211-1549
803-734-3665
- (b) Michael W. Bearden
Ft. Inn First Baptist Church
N. Weston Street, Ft. Inn., S.C. 29644
864-862-3350
- (c) Holman C. Gossett
218-A East Henry Street
Spartanburg, S.C.
864-583-1977
- (d) W. Francis Marion
Haynsworth, Sinkler, Boyd, P.A.
Greenville, S.C. 29306

864-240-3200
(d) Panessa M. Dean,
Palmetto Bank,
106 W. College Street,
P. O. Box 728
Simpsonville, S.C. 29681
864-963-3671

YOUR SIGNATURE WILL BE HELD TO CONSTITUTE A WAIVER OF THE
CONFIDENTIALITY OF ANY PROCEEDING BEFORE A GRIEVANCE COMMITTEE OR
ANY INFORMATION CONCERNING YOUR CREDIT.

I HEREBY CERTIFY THAT MY ANSWERS ARE TRUE AND COMPLETE TO THE BEST
OF MY KNOWLEDGE.

Signature: Anthony Mabry

Date: August 11, 2010

<p style="text-align: center;">JUDICIAL MERIT SELECTION COMMISSION Sworn Statement to be included in Transcript of Public Hearings</p>
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Circuit Court
(New Candidate)

Full Name: James Anthony Mabry
Business Address: Anthony Mabry, Assistant Attorney General
S.C. Attorney General's Office
P.O. Box 11549
Columbia, SC 29210-1549
Business Telephone: (803) 734-3665

1. Why do you want to serve as a Circuit Court judge?
I believe that I am the most qualified person for this job. I also believe serving as a Circuit Court judge would be a natural progression in my legal career. I firmly believe that my 21 years of experience as a practicing attorney would bring something unique to the South Carolina Circuit Court bench and our judicial system. I have been both a prosecutor and a criminal defense attorney. I have also been a civil plaintiff's and defendant's attorney. I have handled appeals now for the past 3 years, so I am thoroughly familiar with how issues are preserved below and decided by the appellate courts. As a Circuit Judge, I believe my extensive experience in criminal trials, criminal appeals, and civil trials would be beneficial to the public and the administration of justice.
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?
Possibly, but that is not my plan. I thoroughly enjoy public service.
4. Have you met the Constitutional requirements for this position regarding age, residence, and years of practice?
Yes. I am 46 years old, and have been a practicing attorney for 21 years. I have resided in Greenville County for the past 22 years. I was born in Greenville and have resided in Greenville County all of my life, except for 1 year while in law school.
5. What is your philosophy regarding *ex parte* communications? Are there circumstances under which you could envision *ex parte* communications being tolerated?
I personally believe that engaging in *ex parte* communications, except those allowed by law, impugns the fairness and quality of justice in South Carolina. I will follow the law and the Code of Judicial Conduct in regard to the prohibition against *ex parte* communications. Generally, *ex parte* communications are not allowed, however, the law

does allow for ex parte communications in certain necessary situations such as capital funding requests by the defense team when the State is seeking the death penalty. If elected to this position, I will not engage in ex parte communications except for those specifically allowed 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?

Recusal is not required because a lawyer-legislator appears before a circuit court judge. If this were the case, then no Circuit Judge in this state could hear a matter in which a party was represented by a lawyer-legislator. In 21 years of practicing law, I am not aware of one case where a judge recused himself because a lawyer-legislator represented one of the parties involved. I would not recuse myself simply because a lawyer-legislator was involved in the case, but I would not show them any favoritism. If I am elected to this position, it should be because the legislators believe I would be fair and just to all parties and not because they believe I would show them favoritism. I would recuse myself from any case in which my former employer, the law firm of Haynsworth, Sinkler, Boyd, P.A. was involved, not because I formerly worked there, but because my brother is a senior partner and shareholder in the firm. I am aware that the Code of Judicial Conduct allows some leeway with regard to hearing cases involving a former law partners or associates; however, given my close relationship with my brother, and his status with the Haynsworth firm, I would recuse myself from any cases involving his firm. The only instance where I could foresee hearing a matter involving the Haynsworth firm would be if the relationship were disclosed on the record to all parties, and the parties were allowed to meet privately, and both parties separately released any conflict on the record. I would still be hesitant to hear the matter but would only do so to further the quick and efficient administration of justice and to avoid unnecessary delay to the parties and the court system. I would still not hear any matter, regardless of a release, that could have a substantial or serious economic impact to the Haynsworth firm. I would not recuse myself from a case simply because I formerly worked with someone in state government or county government. I do not believe this is required under the Judicial Code of Conduct. However, I would disqualify myself if my impartiality might reasonably be questioned because of such prior association. I would recuse myself from any case I worked on while in government, and if someone I worked with closely in government was handling a case while I was there, and came before me on the same case, I would recuse myself in such situation. My job as a Circuit Judge would be to see that I was fair and impartial to all sides and that justice was done in the case before me. The fact that I would have worked with someone in the past, would not be a consideration in how I handled the matter before me. I would decide the case, or rule on any

issues, based on the statutory and case law, and the rules of evidence.

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 grant deference to the party requesting my recusal. The Judicial Code of Conduct requires that judges avoid the appearance of impropriety because it erodes confidence in the judiciary. If my impartiality may reasonably be questioned, I would grant such motion.

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 recuse myself from handling any matter in which there was an appearance of impropriety because of the financial or social involvement of my spouse or a close relative. (See also my response under Question 6).

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

I would not accept any gifts or social hospitality from attorneys. I believe this is a slippery slope that one cannot start down. Not only is there the danger of real impartiality developing, but also the danger of the appearance of impartiality, which cannot be allowed under the Judicial Code of Conduct. I would speak at Bar sponsored or C.L.E. approved functions to further the administration of justice or improve the legal system. In this regard, I would only accept reimbursement for expenses allowed by the Judicial Code of Conduct, and not picked up by the State.

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

I believe I would first try to address the misconduct one on one with the attorney or judge. If the matter were serious enough, I would report the lawyer misconduct to disciplinary counsel or the judicial misconduct to the South Carolina Supreme Court or other 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? No.

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

Given the United States Supreme Court's recent decision on this issue, I would prepare my own orders in PCR and Capital PCR cases. I would allow both sides to submit briefs or proposed orders, however, I would not adopt a party's proposed order but would draft my own order based on the record before the court and the law. I would also allow each party access to the opposing parties proposed order or brief, with the appropriate time to object or point out inaccuracies in either party's

proposed order or brief. In the civil setting, I think it is appropriate to have both parties submit proposed orders. In fact, I believe it is necessary to the efficient administration of justice in the civil setting. In minor matters, I believe it would be permissible to resolve issues by adopting a proposed order, however, in more weighty matters a Circuit Judge should prepare his own orders even though he may rely in part on portions of the proposed orders of either or both parties.

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

Based on my years of practice, civil or criminal matters are not completed or resolved unless some appropriate deadline is set. If elected, I would set up with my administrative assistant and my law clerk the calendaring of matters so that they are resolved in a timely and efficient manner.

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

I do not approve of judicial activism. A circuit judge should follow the law as written by the legislature, the case law handed down from the United States Supreme Court, the South Carolina Supreme Court, and the South Carolina Court of Appeals, and the Rules of Evidence and Procedure promulgated by the South Carolina Supreme Court. It is not the job of a circuit judge to set public policy but to see that the law is carried out. However, it is the responsibility of a circuit judge to follow those precedential decisions that set forth clearly what the public policy behind a statute, regulation, or law is.

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 would lecture at South Carolina Bar approved continuing legal education courses or at either of our two law schools when my schedule allowed.

17. Do you feel that the pressure of serving as a judge would strain personal relationships (i.e. spouse, children, friends, or relatives)?

No. My oldest son is grown. My younger son is a senior in high school. My wife is used to me having to travel and work late. How would you address this?

If this occurred, I would work through it with my family, as I and my family have worked through other issues over the years, without compromising my role or ability to serve as a Circuit 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.

I do not believe you can make a categorical statement regarding how you would sentence any particular class of defendant. According to our law, a defendant should be sentenced based on the crime

committed, the circumstances of the crime, including the harm caused to the victim or society, and the characteristics of the defendant, including his prior record and any facts or evidence that aggravate or mitigate the offense. As to each of these classes, I would consider the factors I have listed above in handing down a sentence within the appropriate statutory or common law parameters. A judge can only fashion a just or correct sentence by considering each of these factors.

a. Repeat offenders:

As stated above, in sentencing a repeat offender, I would consider the nature of the crime he was convicted of, the circumstances of the crime, including the harm caused to the victim or society, the character of the defendant, including any prior record, and any other evidence in aggravation or mitigation of punishment.

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

While I would certainly remain mindful of the age of the offender, including the fact that he or she was a juvenile at the time the crime was committed, I would sentence juvenile offenders waived to adult court based on the nature of the crime, the circumstances of the crime, including the harm caused to the victim, victims, or society, and the character of the defendant, including his prior record and any facts or evidence that aggravates or mitigates the offense.

c. White collar criminals:

I would sentence white collar criminals based on the crime committed, the circumstances of the crime, including the harm done to the victim and society, and the character of the defendant, including any prior record or any evidence aggravating or mitigating the offense. I do not believe that a wealthy or white collar defendant should be treated any different than a person who is poor who steals.

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

Again, I would sentence such a defendant based on the crime involved, the circumstances of the crime, including the harm caused to the victim or society, and the character of the defendant, including any prior criminal record and any other aggravating or mitigating evidence.

e. Elderly defendants or those with some infirmity:

Again, the circumstances of each case are different. I would sentence such a defendant based on the crime committed, the circumstances of the crime including the harm caused to the victim or society, the character of the defendant, and any other evidence in aggravation or mitigation of punishment. While I would remain mindful of the age of the defendant, and especially any infirmity of such a defendant in sentencing them, I would not ignore the other factors such as the harm caused to the victim or society and the defendant's prior criminal record.

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?
No. I understand the Rules of Judicial conduct allow some leeway in this regard, however, I believe the appearance of impropriety or impartiality is more important so I would not hear such a case. Of course, I would have to be aware of such an interest or made of aware of such an interest. If I were aware of such an interest, I would recuse myself.
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 Circuit Judge should be calm, respectful, and polite to all parties appearing before the court. A Circuit Judge should be firm, but also have an understanding that when working with people, things do not always go as planned.
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?
Seven days a week, twenty-four hours a day.
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.
26. How much money have you spent on your campaign? None. If it is over \$100, has that amount been reported to the House and Senate Ethics Committees? N/A.
27. If you are a sitting judge, have you used judicial letterhead or the services of your staff while campaigning for this office? N/A
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? No.
Are you aware of any friends or colleagues contacting members of the General Assembly on your behalf? Yes.
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/Anthony Mabry

Sworn to before me this 11th day of August, 2010._

Notary Public for S.C.

My Commission Expires: 1-14-2012_____

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH CIRCUIT
Case No. 99-CP- 42-1174

ORDER GRANTING RELIEF

VS.

MARC KITCHENS

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This court grants relief as set forth herein

The relevant procedural history of this case is as follows. The incident occurred on June 7, 1994, and Applicant was arrested the next day. He was indicted during the July 1994 term of the Court of General Sessions for two (2) counts of murder as to Imogene Kelly and Keith Epps, and assault and with the intent to kill Imogene's daughter, Tracey Smith. On May 15, 1995, the State filed notice of intent to seek the death penalty. A jury trial was held on August 7 through August 14, 1995, with the Hon. Gary E. Clary presiding. The Applicant was convicted of all counts, and sentenced to death based upon the aggravating circumstance of the murder of two persons. On September 19, 1995, the trial court held a hearing and denied a Motion for New Trial. Applicant filed a timely notice of appeal with the South Carolina Supreme Court. On June 29, 1998, in a 3-2 decision, the S.C. Supreme Court affirmed Applicant's conviction and

sentence. *State v. Kelly*, 331 S.C. 132, 502 S.E.2d 99 (1998). On July 30, 1998, the Court denied rehearing. On January 11, 1999, the United States Supreme Court denied certiorari. *Kelly v. South Carolina*, 525 U.S. 1077 (1999).

On May 10, 1999, Applicant filed his initial Application for Post-Conviction Relief in the Court of Common Pleas for Spartanburg County. On June 29, 2000, the Applicant filed an Amended Application, and on July 25, 2000, a Second Amended Application. This Court conducted an evidentiary hearing on July 25 and July 26, 2000. On August 17, 2000, Applicant filed a Motion to Amend the Pleadings, pursuant to S.C.R.C.P.R. 15, so as to conform the pleadings to the evidence adduced at that hearing. Both the Applicant and Respondent filed Preliminary Post Hearing Memoranda as requested by the Court, and also filed Final Post Hearing Memoranda. This Order now follows.

Citations to the 1995 Trial Transcript will be made as "Trial Tr.", with page numbers inserted and reference made to the witness. Citations to the 2000 PCR Transcript will be made as "PCR Tr.", with page numbers inserted and reference made to the witness. Citations to the Applicant's PCR Exhibits admitted into evidence at the 2000 PCR hearing will be made as "App. PCR Ex.", with the exhibit number inserted and reference made to the nature of the exhibit.



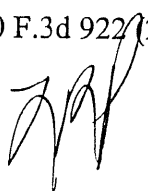
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Matters Involving Juror Price: PCR Application Claims 9 (i), (o), (p), (q), (r).

This court makes the following findings of fact and conclusions of law concerning Juror Price (hereinafter, "Juror"). Applicant is entitled to relief based upon several grounds involving this Juror. However, Respondent asserts a procedural bar to these claims, particularly the Juror's failure to disclose information on voir dire (Claim 9r), pursuant to *Drayton v. Evatt*, 312 S.C. 4, 430 S.E.2d 517 (1993), and *Simmons v. State*, 264 S.C. 417, 215 S.E.2d 883 (1975).

But Applicant has presented additional evidence at PCR regarding this Juror, as well as claims involving ineffective assistance of counsel. While the Court in *State v. Kelly, supra.*, addressed the Motion for New Trial on whether this Juror intentionally concealed information on voir dire, and then denied relief, Applicant presented additional facts and evidence at PCR about this Juror. (App. PCR Ex. 15, Deposition of Deputy Solicitor Mabry; 18, Videotape of execution demonstration depicting the Juror; 19-A and 19-B, Press clippings of interviews with Juror in 1986 and 1995; 21, State Newspaper Photograph of Juror at execution; PCR Tr. 14-27, Testimony of John Rollins; PCR Tr. 521-253, 528-534, Testimony of Mabry). These additional facts and evidence were not presented to the trial court, and thus not considered by either the trial court or the S.C. Supreme Court in its review; and, the additional facts shed new light on the limited facts that were known to the trial court and Supreme Court in its review.

Moreover, allegations of ineffective assistance of counsel are properly reserved for this court in PCR. Claims of ineffective assistance of counsel are allowed to be considered in collateral proceedings, even though the appellate court has previously considered the claim on direct appeal, because PCR claims require consideration of additional matters outside the direct appeal record. See *Abbamonte v. United States*, 160 F.3d 922 (2nd Cir. 1998).



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Finally, to allow the State to assert a procedural bar when it was a State actor – the Deputy Solicitor – who possessed the information as to the Juror’s misconduct (in discussing the case during the trial phase with a third party), but that State actor failed to reveal the information to the trial court or defense counsel, would be to allow the State’s own misconduct (in failing to reveal the information) form the basis for preventing Applicant from raising this constitutional claim. The State cannot benefit from its own misconduct. *Gibson v. State*, 334 S.C. 515, 514 S.E.2d 320 (1999) (Guilty plea invalidated and case remanded due to State’s failure to disclose material information as to eyewitness); *Washington v. State*, 324 S.C. 232, 478 S.E.2d 833 (1996) (Defendant was entitled to new trial in a successive PCR where state declared in opening statement that there was no deal with a state's witness when there was a deal).

Matters Involving Juror Price.

Discussion of Case By Juror with a SLED Agent: PCR Application Claim 9 (on)

Juror Price – directly contrary to instructions by the trial court – engaged in discussions about the case during the trial (guilt) phase with a SLED agent who was charged with safeguarding the jury. This evidence was not presented to the trial court, and thus not considered by either the trial court or the S.C. Supreme Court in its review. Such discussion by the Juror with a SLED agent would alone be cause for reversal. *State v. Cameron*, 311 S.C. 204, 428 S.E.2d 10 (Ct.App. 1993). But the substance of the discussion is important here: In direct violation of the trial judge’s orders not to discuss the case with anyone, this Juror had a discussion about the case with a SLED agent charged with safeguarding the jury. (App. PCR Ex. 15, Deposition of Mabry, p.18-25; PCR Tr. 520-523, 528-534, Testimony of Mabry). The Juror asked the SLED agent if the jury would have to convict Mr. Kelly on both counts of murder as to

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Imogene Kelly and Keith Epps in order for the jury to reach a penalty phase. (Id.). The SLED agent answered 'yes': That there would be no penalty phase if the defendant was not convicted of both murders. (Id).

The trial judge charged the jury as to self-defense, as to the homicide of Epps, and also charged voluntary manslaughter as to both homicides. (Trial Tr. p.1524, 1525-1528, 1531). The only aggravating circumstance at penalty was the murder of two persons during one act or course of conduct. (Trial Tr. p. 1783, 1795). This means that there would be no penalty phase unless the defendant were convicted of the two murders. *See* S.C. Code § 16-3-20. But it is a fundamental precept of law in capital cases that it is improper for jurors to consider penalty phase issues prior to a determination of guilt.

Thus, the SLED agent's answer to the Juror's question makes this extremely prejudicial. It improperly introduces an illegitimate factor affecting Mr. Kelly's defenses at trial, especially where Mr. Kelly had interposed the defenses of self-defense (as to one homicide) and the lesser-included offense to murder of voluntary manslaughter (as to both homicides). It undermines the trial judge's instructions to the jury. It also constitutes premature deliberations by this Juror. Indeed, it violates the very integrity of the jury system. Plus, this Juror violated instructions by the trial judge who had repeatedly instructed the jurors to not discuss the case with anyone. (*See* Trial Tr. 196, 224, 226, 237, 746, 747, 754, 757, 758, 952, 962, 963, 971, 972, 974, 975, 1048, 1088, 1105, 1160, 1210, 1232, 1303, 1371, 1380, 1392, 1430, 1459, 1468, 1478, 1532, 1538, 1580, 1598, 1705, 1720, 1737, 1790).

The prosecutor testified at PCR, and the State argues, that the contact here was "innocuous." (PCR Tr. 523, Testimony of Mabry). However, such questions by jurors are strictly reserved for the trial court to answer, especially since they involve questions of law and

not by one attending to the safekeeping of the jurors. *United States v. Holmes*, 284 F.2d 716 (4th Cir. 1960); *Blake v. Spartanburg General Hospital*, 307 S.C. 14, 413 S.E.2d 816 (1992). Nor is it relevant that the Juror's contact with the SLED Agent did not occur during actual jury deliberations, *United States v. Holmes, supra.*, although this is unclear from the record since the trial court disallowed the taking of the Juror's testimony. (Trial Tr. 1825).

Discussion by a juror with a person outside the jury room of this kind is reversible error. *State v. Cameron, supra.* Even inadvertent contact not initiated by a juror has been held to constitute reversal. *Stockton v. Virginia*, 852 F.2d 740 (4th Cir. 1988). Here, the contact was neither inadvertent nor harmless, and certainly not "innocuous." In Mr. Kelly's case, it affected the very issues and defenses raised by Mr. Kelly so that he was prejudiced. Applicant had raised self-defense as to the homicide of Epps, and voluntary manslaughter as to the homicides of both Epps and Imogene Kelly. For a juror to be informed by a third party that, in effect, to reach the death penalty phase the juror must not accept self-defense or manslaughter, is intrusive into the very sanctity of the jury process.

A new trial must be granted when a juror communicates with a third party "unless it clearly appears that the subject matter of the communication was harmless and could not have affected the verdict." *State v. Cameron*, 428 S.E.2d at 12, *quoting U.S. v. Holmes*, 284 F.2d at 718. Here, the communication occurred during the trial phase and informed the Juror that in order to reach a death penalty sentencing phase, the jury must convict the defendant on both counts of murder. Further prejudice is found in the undermining of the trial judge's role and instructions to the jury, as well as the Juror's conduct which amounts to premature deliberations.

In granting relief in *Fullwood v. Lee*, Judge Traxler eloquently made the very point at issue in Applicant's case:



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The Sixth Amendment guarantees a criminal defendant the right to an impartial jury. 'In essence, the right to jury trial guarantees to the criminally accused a fair trial by a panel of impartial, indifferent jurors. The failure to accord an accused a fair hearing violates even the minimal standards of due process.' *Irvin v. Dowd*, 366 U.S. 717, 722, 81 S.Ct. 1639, 6 L.Ed. 2d 751 (1961)(internal quotation marks omitted). The Supreme Court has clearly stated that private communications between an outside party and a juror raise Sixth Amendment concerns. See *Parker v. Gladden*, 385 U.S. 363, 364, 87 S.Ct. 468, 17 L.Ed. 2d 420 (1966)(per curiam). '[P]rivate talk, tending to reach the jury by outside influence' is constitutionally suspect because it is not subject to "full judicial protection of the defendant's right of confrontation, of cross-examination, and of counsel." *Id.* (internal quotation marks omitted). Extrajudicial remarks directed at influencing a juror's resolution of an issue under deliberation, even if the remarks are isolated, may contravene the constitutional guarantee to a fair trial See *id.* at 363-65, 87 S.Ct. 468 (finding habeas petitioner was deprived of his right to an impartial jury where the bailiff commented to two jurors during trial that the 'wicked fellow [petitioner], he is guilty' and that '[i]f there is anything wrong [in finding petitioner guilty] the Supreme Court will correct it.' (first and third alterations in original)); *Stockton v. Virginia*, 852 F.2d 740, 743-46 (4th Cir. 1998)(granting habeas relief where jurors were subject to remarks of a local restaurant owner who suggested they 'fry the son of a bitch'). And, if even a single juror's impartiality is overcome by an improper extraneous influence, the accused has been deprived of the right to an impartial jury. See *Parker*, 385 U.S. at 366, 87 S.Ct. 468 ('[P]etitioner was entitled to be tried by 12 not 9 or even 10, impartial and unprejudiced jurors.').

Because the potential for mischief is so great when a third party establishes private, extrajudicial contact with a juror, the Supreme Court adopted the rule that 'any private communication [or] contact. . .with a juror during a trial about the matter pending before the jury is. . .presumptively prejudicial, if not made in pursuance of known rules of the court and the instructions and directions of the court made during the trial, with full knowledge of the parties.' *Remmer v. United States*, 347 U.S. 227, 229, 74 S.Ct. 450, 98 L.Ed. 654 (1954). The government bears the burden of rebutting the presumption of prejudice by demonstrating that "such contact with the juror was harmless to the defendant." *Id.*

Fullwood v. Lee, 290 F.3d 663, 677-78 (4th Cir. 2002).

The law overwhelmingly condemns juror contact with a third party to discuss the case, with the remedy being reversal. *Parker v. Gladden*, 385 U.S. 363 (1966) (Per Curiam) (Bailiff who blurted out while walking on a public sidewalk "oh what a wicked fellow" to two jurors who were walking with him, caused the ordering of a new trial); *Fullwood v. Lee*, *supra*.

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(Remanded for full evidentiary hearing where husband of juror told her to convict and sentence to death, and jurors also learned from outside source about defendant's prior death sentence); *Stockton v. Virginia, supra*. (Death sentence vacated where jurors overheard someone say "Fry the son of a bitch" at restaurant); *U.S. v. Holmes, supra*. (New trial required where a courtroom Marshall answered the foreperson's question that one of the defendants was staying in the jail and had a prior conviction even though this contact did not take place during deliberations); *State v. Gallman*, 307 S.C. 273, 414 S.E.2d 780 (1992) (New trial granted based on ineffective assistance of counsel due to failure to object to trial judge's comment to jury that invited premature deliberations: "Obviously, you can talk about it among yourselves but you are not to render a decision"); *Blake v. Spartanburg General Hospital, supra*. (Upholding grant of a new trial for bailiff's statement that this judge does not like mistrials and mistrials place an extra burden on taxpayers, enumerating appropriate factors a trial court should consider, and noting "the test is whether the verdict was solely the result of honest deliberation on the case as publicly developed at trial, or whether there is reason to suppose outside influences entered into it as a factor"); *State v. Pierce*, 289 S.C. 430, 346 S.E.2d 707 (1986) (A jury should not begin discussing the case, nor deciding the issues, until all the evidence has been introduced the arguments of counsel are complete, and the applicable law charged); *State v. Joyner*, 289 S.C. 436, 346 S.E.2d 74 (1986) (Instructions inviting jury to discuss the case, which is tantamount to deliberation, prior to its completion is reversible error); *State v. Gill*, 272 S.C. 190, 255 S.E.2d 455 (1979) (Holding that a jury instruction which advised jurors it was proper to begin their deliberation before close of the case was "inherently prejudicial and required reversal"); *State v. McGuire*, 272 S.C. 547, 253 S.E.2d 103 (1979) (Holding that a jury should not begin discussing a case, nor deciding the issues until the conclusion of the presentation of evidence, the arguments



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of counsel, and the charge of law are completed); *State v. Cameron, supra*. (Bailiff's contact with jury foreperson and statement during deliberations, "This is a fair Judge, that's all I can answer you. He is a fair Judge. . ." was a private communication by a court official, to members of the jury, an occurrence which cannot be tolerated if the sanctity of the jury system is to be maintained); *See also, Winebrenner v. U.S.*, 147 F.2d 322 (8th Cir. 1945) (If jurors are permitted to discuss a case among themselves prior to final submission of the case to them, they would be giving premature consideration to the evidence); *People v. Hunter*, 121 N.W.2d 442 (1963) (It was clear beyond any doubt that jurors should not be encouraged to discuss evidence until all the evidence has been introduced, the arguments to the jury made, and the jury charged by the court); *State v. Washington*, 438 A.2d 1144 (1980) (Granting jurors permission to discuss in jury room evidence heard daily. . . .deprived defendant of due process of law under federal and state constitutions and ordered new trial); *Pool v. Chicago B & A. R. Co.*, 6 F. 844 (Iowa 1881) (Jurors tend to adhere to their opinions once they have made them known to the public regardless of evidence subsequently presented, so that once a juror prematurely discussed the case outside the jury room, he was no longer an impartial and unbiased juror).

I further find as a fact and conclude as a matter of law that the third party contact by this Juror prejudiced the Applicant substantially, as set forth in this Order as to this Juror, and is incorporated herein, and further that the prejudice was to such a degree as to deny the Applicant a fair trial and a fair and impartial jury. I further find and conclude that the government has not rebutted this or shown that the contact was harmless.

Therefore, this Court finds and concludes that the Applicant's rights to due process, a fair trial, and a fair jury, under the Fifth, Sixth, Eighth, and Fourteenth Amendments of the U.S. Constitution, and other applicable law, were violated, based upon Juror Price's contact and

discussions with a third party during the trial, such that the Applicant's convictions and sentences are vacated, and the Applicant is granted a new trial.

Matters Involving Juror Price.

Failure of the Prosecutor to Inform the Court, or Defense Counsel, of the Juror's

Conduct: PCR Application Claim 9 (p).

The prosecution failed to disclose the information learned from the Juror to the trial court, and to the defense, as soon as the prosecution learned of the matter. This compounds the error of the Juror's contact with a third party, as set forth above. This evidence was not presented to the trial court, and thus not considered by either the trial court or the S.C. Supreme Court in its review.

After the end of the trial on August 14, 1995, but before the Motion for New Trial on September 19, 1995, the Juror met with the prosecutor. (App. PCR Ex. 15, Deposition of Mabry, at p.18-19). During that meeting, the Juror revealed to the prosecutor information about the Juror's contact and discussion with the SLED Agent, and also the relationship with the victim in the capital case and execution of Roach. (App. PCR Ex. 15, Deposition of Mabry, at p.18-25; PCR Tr. 520-523, 528-534, Testimony of Mabry). The prosecution never disclosed that information to the trial court, or defense counsel, even though the Motion for New Trial was pending and involved this very same Juror. Thus, both the trial court and the S.C. Supreme Court believed that they had all the relevant information involving this Juror at the time of the September 19, 1995, hearing and on appeal. But the record now makes clear that they did not.

The prosecutor had a plain duty to disclose the matter to the trial court. See (Michael) Williams v. Taylor, supra. (Remanded case for full evidentiary hearing on Jury Foreperson's



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failure to reveal that she was ex-wife of state's leading police investigator who testified, and prosecutor's failure to reveal he represented same juror in her divorce); *Imbler v. Pachtman*, 424 U.S. 409, 427 n.25 (1976) ("After a conviction the prosecutor ... is bound by the ethics of his office to inform the appropriate authority of after-acquired or other information that casts doubt upon the correctness of the conviction). Here, the prosecutor had a separate obligation to provide the information to defense counsel, especially since it involved a juror over which a Motion for New Trial was pending. *Gibson v. State*, 334 S.C. 515, 514 S.E.2d 320 (1999) (Guilty plea vacated where prosecutor failed to reveal material information about eyewitness); *See also, Kyles v. Whitley*, 514 U.S. 419 (1995); *Brady v. Maryland*, 373 U.S. 83 (1963).

The State argues that the prosecutor had no duty to reveal the information to the trial court, or to defense counsel. However, the prosecutor objected to the taking of the Juror's testimony at a post-trial hearing about this Juror, (Trial Tr. 1804), even though at that time he made the objection the prosecutor had knowledge of this Juror's misconduct. The State cannot now argue the prosecutor had no duty to reveal when it was the prosecutor's objection that prevented the defense from making the necessary record involving this Juror. *See Gibson v. State, supra*. (Court invalidates guilty plea due to State misconduct); *Washington v. State, supra*. (Court grants new trial due to State misconduct).

The information about the juror was material: it certainly put this case "in such a different light as to undermine confidence in the verdict." *Kyles*, 514 U.S. at 435. The information from the juror about his friendship to a relative of the crime victim in the Roach case was directly material to the Motion pending before the trial court because the Motion involved the juror's conduct and activities surrounding the Roach execution, and any potential bias. But even more material was the contact by the juror with a third party since it went to the juror's

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conduct during his service at trial, and “was of such a character as to reasonably draw into question the integrity of the verdict.” *Fullwood v. Lee*, 290 F.3d at 678. It was not merely “innocuous”, as described by the prosecutor. (PCR Tr. p.529, 530, Testimony of Mabry). In fact, the prosecutor contacted the SLED officer in charge of the sequestration team after the trial to communicate that SLED Agents do not need to be answering jurors’ questions (App. PCR Ex. 14, Deposition of Mabry, at p. 20, 23). This communication by the prosecutor to SLED demonstrates that the prosecutor was in fact concerned, but evidently not concerned enough to inform the trial court. Additional prejudice is set forth in this Order as to this Juror, and is incorporated herein by reference.

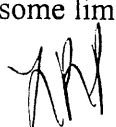
Therefore, this Court finds and concludes that the Applicant’s rights to due process, a fair trial, and a fair jury, under the Fifth, Sixth, Eighth, and Fourteenth Amendments of the U.S. Constitution, and other applicable law, were violated, based upon the prosecution’s failure to disclose post-trial information about juror Price, such that the Applicant’s convictions and sentences are vacated, and the Applicant is granted a new trial.

Matters Involving Juror Price.

Failure of the Juror to Reveal Matters During Voir Dire: PCR Application

Claims 9 (r), (q).

This Court finds and concludes that the Juror intentionally failed to disclose his capital punishment views, as well as his relationship to the relative of a homicide victim in another capital case. This finding is based upon additional evidence presented at PCR but which was not presented to the trial court, and thus not considered by either the trial court or the S.C. Supreme Court. Although the trial court had some limited information about the juror before it for



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consideration, *Kelly*, 502 S.E.2d at 106, the trial court did not have all of the additional following evidence, which was presented at PCR. Thus, even the evidence on this point that the trial court did have, when considered with the additional evidence presented at PCR, is now more persuasive than when it was initially considered by the trial court in a vacuum.

First, after Mr. Kelly's trial, the Juror used a disturbingly similar quote to what the Juror said at the Roach execution. On August 21, 1995, after serving on the Kelly jury, this Juror told the press: "I think the only thing that I regret is that Theodore Kelly has only one life to give for the two he took." (App. Appendix 3, Press clipping from "The Herald-Journal"; Defense Ex. 2 at Trial). On January 10, 1986, in an interview with the press about the Roach execution, the Juror said: "I regret that Terry Roach had only one life to give for the three he took." (App. PCR Ex. 19-B, Press Clipping from "The Johnsonian"; Trial Tr. 1810). This court finds that the similarity between these two separate quotes by this Juror is not mere coincidence, especially when considered along with other evidence about this juror as set forth below.

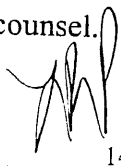
Second, a video shows that this Juror did not simply organize a student rally as an educational program, but that he made an extremely opinionated placard, "CCI - Where Roaches Check In but Don't Check Out," which the Juror was actually holding himself. (App. PCR Ex. 18, Video; 21, Photograph). The video of this Juror was not placed in evidence at the post-trial hearing and so not considered by the trial court, or by the S.C. Supreme Court in its review.

Third, the video shows this Juror using a megaphone at the rally to actively chant and promote various pro-capital punishment slogans, including that the execution itself should be prolonged and painful. (App. PCR Ex. 18, Video). The Juror used the megaphone to shout, "Goodbye, Terry Roach." (App. PCR Ex. 18, Video; PCR Tr. 19, Testimony of Rollins). The Juror pushed a button on the megaphone to play a death march tune. (App. PCR Ex. 18, Video;

PCR Tr. 19-20, Testimony of Rollins). The Juror engaged in other activity that cannot be merely categorized as an “educational” field trip concerning the serious issue of capital punishment.

Fourth, this Juror also failed to reveal in voir dire that he was close personal friends with a relative of a homicide victim, Carlotta Hartness, in the Roach death penalty case, even though the Juror shared this fact post-trial with the prosecutor’s office. (App. PCR Ex. 15, Deposition of Mabry, p.25; PCR Tr. 532, Testimony of Mabry). It appears from the voir dire transcript that no one asked the Juror about any relationship with victims or family members of victims of violent crime. However, this Juror initiated contact with the prosecutor post-trial and volunteered such information. The voir dire transcript, as well as the media articles and video, reveal a Juror who is articulate, intelligent, and media-savvy. (Trial Tr. pp.746-756; App. PCR Ex. 19-A, 19-B, Press Clippings of interviews with juror). In light of this Juror’s contacts with a SLED Agent during the trial phase in violation of repeated instructions by the trial court, as set forth below, and the context of the Juror’s post-trial contact with the prosecutor, and all other available information presented in PCR, as set forth in this Order, his answers in voir dire are now seen by this Court in a different light and not in isolation.

The State argues that the Juror’s answers in voir dire do not reveal any bias. However, it is significant, based upon all of the evidence now in the record about this Juror, that he answered questions about his views on the death penalty in the *past* tense: “When you say position, I *have* thought about it in the past,” and “I don’t think I *had* a position either way.” (Trial Tr. 752, Voir Dire of Juror Price). With the complete record about this Juror now before this Court, such answers are clearly an attempt by this Juror to evade providing a direct – and fully honest and complete – answer to the trial court or counsel.



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Fifth, the Juror went to the prosecutor's office post-trial to discuss the case with the deputy prosecutor. This by itself is not unusual. But the *content* of the information disclosed by the Juror indicates an apparent desire by the Juror to communicate to the prosecutor that the Juror was on the prosecution's side all along. This inference from all of the available evidence as to the Juror arises because the Juror clearly *understood* the significance of such information for the prosecution: [1] That the Juror *avored* the prosecution because he knew a crime victim, as a friend of one of Ms. Hartness' relatives; and, [2] That the juror had *discovered during the trial phase*, by asking a SLED Agent, that in order to get to sentencing the jury had to contact the defendant of both murders.

Sixth, and most importantly, this Juror – in direct contradiction of the trial judge's instructions to not discuss the case with anyone – had an improper conversation about the case itself during the guilt phase with a SLED agent who was guarding the jury, as set forth above. Indeed, if this fact had been provided to the trial judge by the prosecution at the post-trial hearing, there is a reasonable probability that the trial judge's decision would have been different on the Motion for New Trial.

Finally, had this Juror's capital punishment views and activities, and relationship to a crime victim in another capital case, been known, defense counsel would have peremptorily excused him or challenged for cause. (PCR Tr. 63, Testimony of Rollins; Trial Tr. 1813-1814, Statement of Don Thompson).

Thus, the additional evidence presented to this court in PCR shows that the Juror more probably than not possessed a predisposition in favor of the death penalty, and that his failure to reveal his prior pro-death activities and opinions, as well as his relationship with a relative of a crime victim in another capital case, was intentional, or at a minimum, negligent. (*Michael*)

Williams v. Taylor, supra.; *Gallman v. State*, 307 S.C. 273, 414 S.E.2d 780 (1992); *State v. Gullede*, 277 S.C. 368, 287 S.E.2d 488 (1982). The trial judge asked the Juror during general qualifications to reveal any information that might cause any type of bias, specifically including a question of any possible bias *for* the state. (Trial Tr. 212). The trial court also asked the Juror to answer the questions “openly and honestly and fully.” (Trial Tr. 747).

Furthermore, this Court finds and concludes that there is substantial prejudice to the Applicant. This Juror was the **FOREMAN**. Now that the full evidence has been presented to this Court, the accurate picture of this Juror’s pro-death penalty views and activities are more than what was presented to the trial court and considered on appeal in *State v. Kelly, supra*. This Juror’s pro-death penalty activities were not disclosed or discovered for the defense to either move for a challenge for cause or by peremptory challenge. His discussion with a SLED officer not only violated every instruction by the trial court to not discuss the case, but also revealed an intent, more probable than not, by this Juror to deceive the trial court itself. He was obviously media-savvy and articulate based upon his interviews in the two newspapers, and his responses in voir dire. It is improbable and unreasonable that the juror failed to understand the trial judge’s instructions not to discuss the case. Moreover, Mr. Kelly presented the defenses of self-defense (as to the homicide of Epps) and voluntary manslaughter (as to both Epps and Imogene Kelly), such that the question by the Juror to the SLED agent, and the affirmative answer given, directly harmed the defenses as presented, and undermined the trial judge’s role and instructions, and constituted premature deliberations by this Juror, thus denying the defendant a fair trial. Additional prejudice is set forth in this Order as to this Juror, and is incorporated herein by reference.



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The U.S. Supreme Court has recently spoken on a juror's failure to be forthright in voir dire, but after the decision in *State v. Kelly*. The failure of a juror to honestly disclose information which held evidence of bias was part of the reason the Supreme Court reversed and remanded a Virginia death penalty case. (*Michael*) *Williams v. Taylor*, 529 U.S. 420, 120 S.Ct. 1479, 146 L.Ed.2d 435 (2000).

Therefore, this Court finds and concludes that the Applicant's rights to due process, a fair trial, and a fair jury, under the Fifth, Sixth, Eighth, and Fourteenth Amendments of the U.S. Constitution, and other applicable law, were violated, based upon additional evidence that the Juror deliberately did not reveal the relevant information concerning his views and activities about the death penalty, and his relationship to a homicide victim in a capital case in which he attended and vehemently supported the execution, such that the Applicant's convictions and sentences are vacated, and the Applicant is granted a new trial.

Alternatively, and as a separate, independent ground, this court finds and concludes that Applicant is entitled to relief on this ground based upon ineffective assistance of counsel. *Strickland v. Washington*, 466 U.S. at 668, 80 L.Ed.2d 674, 104 S.Ct. 2052 (1984); (*Terry*) *Williams v. Taylor*, 529 U.S. 362 (2000); *Wiggins v. Smith*, 1235 S.Ct. 2527 (June 26, 2003). To prove ineffective assistance of counsel, the Applicant must establish, first, that counsel failed to render reasonably effective assistance under prevailing professional norms, and second, that the Applicant was prejudiced at trial by counsel's deficient performance. *Sanchez v. State*, 351 S.C. 270 , 569 S.E.2d 363 (2002) citing *Strickland, supra*. In order to determine whether counsel's conduct was deficient, a petitioner must show that the particular acts or omissions of counsel were outside the "wide range of professionally competent assistance." *Strickland*, 466 U.S. at 694. It is critical to understand that *Strickland's* prejudice component is not an outcome



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determinative test, and the Applicant must demonstrate that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland supra.*, 466 U.S. at 694; *Accord (Terry) Williams v. Taylor, supra.*

In Applicant's case, trial counsel failed to ask the basic necessary questions which would have revealed the information and bias concerning this juror. (Trial Tr. 746-756). Trial counsel did not even ask this juror whether anyone he knew had been the victim of a violent crime. (Id.). Trial counsel had no strategic reason for failing to ask such fundamental questions of a juror in a capital case. (PCR Tr. 15-16, Testimony of Rollins).

Voir dire is essential part of a capital defendant's trial. *Morgan v. Illinois*, 504 U.S. 719 (1992). A juror whose personal beliefs about the use of the death penalty "would prevent or substantially impair the performance of his duties as a juror in accordance with his instructions and his oath," must be excused. *Wainwright v. Witt*, 469 U.S. 412, 424 (1985) (quoting *Adams v. Texas*, 448 U.S. 38, 45 (1980)); *See also, State v. Green*, 301 S.C. 347, 392 S.E.2d 157 (1990); S.C. Code § 14-7-1020. Likewise, a juror who cannot fairly and impartially listen and consider all of the evidence must be excused, because in a capital sentencing proceeding, "the jury is called upon to make a 'highly subjective, unique, individualized judgment regarding the punishment that a particular person deserves.'" *Turner v. Murray*, 476 U.S. 28, 33-34 (1986) (quoting *Caldwell v. Mississippi*, 472 U.S. 320, 340 n.7 (1985)). Thus, "[a]ny juror to whom mitigating factors are . . . irrelevant should be disqualified for cause, for that juror has formed an opinion concerning the merits of the case without basis in the evidence developed at trial." *Morgan v. Illinois*, 504 U.S. 719, 739 (1992).

The only way for a capital defendant to determine whether a juror will find that the mitigating factors are irrelevant is "through questioning." *Wainwright v. Witt*, 469 U.S. at 423.



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Moreover, general questions as to the juror's ability to be fair and to follow the court's instructions are simply insufficient to determine juror bias, because jurors can be unaware that beliefs they hold can counter their ability to be "indifferent" jurors. *Morgan*, 504 U.S. at 727; *id.* at 735 ("It may be that a juror could, in good conscience, swear to uphold the law and yet be unaware that maintaining such dogmatic beliefs about the death penalty would prevent him or her from doing so"). Thus, a "defendant on trial for his life must be permitted on *voir dire* to ascertain whether his prospective jurors" are irrevocably committed to voting for the death penalty or will refuse or be unable to consider the mitigation evidence. *Id.* The right to a fair and impartial jury is guaranteed by the Sixth and Fourteenth Amendments. *Duncan v. Louisiana*, 391 U.S. 145 (1968); *Ham v. South Carolina*, 409 U.S. 524 (1973); *see also Irvin v. Dowd*, 366 U.S. 717 (1961). Thus, a capital defendant is constitutionally shielded from a hanging jury: a "State may not entrust the determination of whether a man should live or die to a tribunal organized to return a verdict of death." *Witherspoon v. Illinois*, 391 U.S. 510, 521-22 (1968).

Asking a juror about their connections to anyone who has been the victim of a violent crime is a fundamental question asked of potential jurors in virtually all capital cases, and trial counsel's duty is to probe each juror for potential bias. *Bailey v. State*, 309 S.C. 455, 461, 424 S.E.2d 503, 506 (1992) ("[E]ach juror, individually, must be interrogated by the attorney who, prior to trial, has searchingly researched and probed the background of every prospective juror.").

Failure to ask the question, absent a reasonable strategic reason, constitutes ineffective assistance of counsel. *United States v. Poole*, 450 F.2d 1082 (3rd Cir. 1971); *Virgin Islands v. Bodle*, 427 F.2d 532 (3rd Cir. 1970); *United States ex. rel. DeVita v. McCorkle*, 248 F.2d 1 (3rd Cir. 1956); *Knese v. State*, 85 S.W.3d 628 (Mo. 2002) (Counsel ineffective for failing to read



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two juror questionnaires and asking jurors about their written responses). Whether a potential juror is a victim of violent crime or has a relationship with a victim of violent crime is of such status that it is often included on the juror questionnaire sent out by the Clerk of Court to prospective jurors; though it was not in this case. (App. PCR Ex. 13, Juror Price's Jury Questionnaire). The juror in question in this case would have answered such a question in the affirmative, as he was a friend of a family member to the victim in the Roach case. While follow-up questions would have been likely, and may have laid a basis for a challenge for cause, based upon the additional information about this from the one answer about knowing a crime victim in another capital case alone would have led to a legitimate basis for a peremptory challenge.

Thus, the prejudice to the Applicant is established in that a juror with an apparent bias and a probable predisposition in favor of death, as well as a relationship to a victim in another capital case in which he attended the execution, was seated on the jury, and in fact became the foreman. Additional prejudice is set forth in this Order as to this Juror, and incorporated herein by reference.

Therefore, this court finds and concludes that the Applicant's right to effective assistance of counsel, under the Sixth, Eighth, and Fourteenth Amendments of the U.S. Constitution, and other applicable law, were violated, based upon the failure by trial counsel in asking the juror about his relationship to any victims of violent crime, such that the Applicant's convictions and sentences are vacated, and the Applicant is granted a new trial.

Matters Involving Juror Price.

Failure of Appellate Counsel to Raise on Direct Appeal the Trial Court's Refusal of Juror

Testimony: PCR Application Claim 9 (i)



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While trial counsel offered to call the juror at the Motion for New Trial, this request was denied by the trial judge, (Trial Tr. 1825), and appellate counsel failed to raise this meritorious issue on appeal. Thus, the Applicant never had the benefit of this issue on appeal; and, after a passage of eight years from the time of trial, the availability – or even reliability – of this juror as a witness is questionable.

It is well established that that juror testimony into allegations of juror bias, misconduct, or third party contacts during the trial is admissible. *Smith v. Phillips*, 455 U.S. 209 (1982) (Juror testimony permitted concerning juror's application for employment at the district attorney's office); *State v. Aldret*, 333 S.C. 307, 509 S.E.2d 811 (1999) (Juror testimony regarding misconduct admissible to ensure fundamental fairness); *State v. Hunter*, 320 S.C. 85, 463 S.E.2d 314 (1995) (Finding that where allegations “involve principles of fundamental fairness,” trial court’s consideration of juror’s testimony regarding effect of racial prejudice upon deliberations was appropriate); *State v. Gullett*, 277 S.C. 368, 287 S.E.2d 488 (1982) (Trial judge has duty to assure himself that every juror is unbiased, fair and impartial).

At PCR, the Applicant clearly established the juror’s bias in favor of the State and misconduct regarding contact with a third party, from the testimony of the prosecutor himself. (PCR Tr. p.520-523, 528-534, Testimony of Mabry; App. Ex. 15, Deposition of Mabry, at pp.18-25). Appellate counsel testified at PCR that he used the record from voir dire and the Motion for New Trial as the main appeal issue – that the juror deliberately misled the trial court with his responses – because this appeared to be a strong appellate issue. (PCR Tr. 248, Testimony of Robert Pachek). However, appellate counsel also acknowledged that he did not “seriously consider” for appeal at all the other issue appearing from the record at the Motion For New Trial:

Whether the trial court erred in not allowing trial counsel to call the juror as a witness on the Motion. (PCR Tr. 241, Testimony of Pachek).

The State, relying upon *Blake v. Spartanburg Gen. Hospital, supra.*, and *Campbell v. Paschal*, 290 S.C. 1, 347 S.E.2d 892 (Ct.App. 1986), argues that it is within the sole discretion of the trial court to take, or not take, juror testimony, so that, in effect, there was nothing for appellate counsel to appeal. In *Blake*, the trial court did take testimony from the jury, and others, where it appeared a bailiff – one charged with safe-guarding the jury as in Applicant’s situation – communicated with the jury. The trial court in *Blake* then granted a new trial and the Court affirmed. Thus, *Blake* actually supports Applicant’s position. In *Campbell*, the trial court did not take testimony, and the Court affirmed such ruling, where it appeared that a juror during the lunch recess merely asked one of the parties sitting in court about something “sweet” to eat. The conduct and bias of the Juror in Applicant’s case is not about “sweets.” This Order already sets forth the lengthy cases in which juror testimony is clearly admissible to show bias or prejudice. *Smith v. Phillips, supra.*; *State v. Aldret, supra.*; *et. al.*; *See also, Fullwood v. Lee, supra.* (Case reversed and remanded to district court specifically for taking of juror testimony due to allegations of juror bias and misconduct). Indeed, an appeal on this issue may well have included the argument that the trial court’s denial of taking juror testimony was an abuse of discretion under the circumstances. *See State v. McMillian*, 349 S.C. 17, 561 S.E.2d 602 (2002) (Abuse of discretion in trial court’s failure to grant a motion for continuance where such denial prejudiced defense counsel’s ability to conduct effective cross-examination); *State v. Proctor*, 345 S.C. 299, 546 S.E.2d 673 (Ct.App. 2001) (A reviewing court will reverse a trial court’s determination when it is based on an error of law or a lack of supporting evidence renders it arbitrary or capricious).



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Certainly, appellate counsel has no constitutional duty to raise every non-frivolous issue on appeal. *Jones v. Barnes*, 463 U.S. 745 (1983). However, “[w]hen a contention which is not patently frivolous is abandoned, the decision to do so must be justified by some reasonable basis intended to inure to the client’s benefit.” *Commonwealth v. Yocham*, 375 A.2d 325, 328 (Pa. 1977). In most cases, the reason for abandoning one issue is to enable counsel to focus on the more meritorious issues, since a “brief that raises every colorable issue runs the risk of burying good arguments.” *Jones*, 463 U.S. at 752-53; *See also, Smith v. South Carolina*, 882 F.2d 895, 899 (4th Cir. 1989) (Attorney “strategically [sic] elected not to raise the vagueness claim in order to avoid diverting the appellate court’s attention from what he felt were stronger claims”); *Mason v. Hanks*, 97 F.3d 887, 893 (7th Cir. 1996) (“One of the principal functions of appellate counsel is winnowing the potential claims so that the court may focus on those with the best prospects”).

But the *Jones* reasoning is inapplicable here. Appellate counsel did not strategically abandon the juror as witness issue in order to press other objections on appeal. Rather, he did not consider the juror as witness issue *at all*. Furthermore, this court finds that failure to raise the juror testimony issue was constitutionally deficient: “Strategy of defense counsel may warrant deliberate choice as to the manner, emphasis, and length of argument but complete disregard of an important issue cannot be ignored as a matter of strategy.” *Commonwealth v. Townsell*, 379 A.2d 98, 101 (Pa. 1977); *Gray v. Greer*, 800 F.2d 644, 646 (7th Cir. 1986) (“Were it legitimate to dismiss a claim of ineffective assistance of counsel on appeal solely because we found it improper to review appellate counsel’s choice of issues, the right to the effective assistance of counsel on appeal would be worthless.”). This is because of the solid precedent which allows juror testimony under the circumstances here: To establish, through testimony, juror bias, third

party contact with the juror, and similar misconduct. *Smith v. Phillips, supra; State v. Aldret, supra.; et. al.*

Due process of law requires that a defendant receive effective assistance of counsel on direct appeal. *Evitts v. Lucey*, 469 U.S. 387, 396 (1985). Effectiveness of appellate counsel is judged under the same test as other ineffectiveness claims. *Strickland v. Washington*, 466 U.S. 668 (1984); *Smith v. South Carolina*, 882 F.2d 895, 898 (4th Cir. 1989); *Griffin v. Aiken*, 775 F.2d 1226, 1235-36 (4th Cir. 1985). Essentially, to demonstrate ineffective assistance of appellate counsel, a petitioner must show that appellate counsel failed to raise a significant constitutional claim and that there is a reasonable probability that the neglected claim would have been successful on direct appeal. *Smith v. Robbins*, 120 S. Ct. 746 (2000).

Counsel's decisions will not be considered "strategic" when counsel's investigation of the facts or law are insufficient for counsel to make a reasonable judgement in the matter. *Wiggins v. Smith*, 1235 S.Ct. 2527 (June 26, 2003). Here, appellate counsel acknowledged that he did not seriously consider or research the merits at all of the trial court's denial of taking juror testimony. Thus, appellate counsel's alleged "strategy" in not even reviewing or researching this issue for appeal is unreasonable under the circumstances. *Id; Patrick v. State*, 349 S.C. 203, 562 S.E.2d 609 (2002) (Appellate counsel ineffective for failing to adequately brief issue); *Ezell v. State*, 345 S.C. 312, 548 S.E.2d 852 (2001) (Appellate counsel ineffective for failing to complete record as to hearsay issue); *Simpkins v. State*, 303 S.C. 364, 401 S.E.2d 142 (1991) (Appellate counsel ineffective for failing to raise an obvious reversible error on direct appeal).

The prejudice to the Applicant is significant regarding this Juror and the absence of his timely testimony in the record at the post-trial hearing. At a minimum, under established case law, the appellate court would more probably than not have remanded the case for the taking of

the Juror's testimony. *Smith v. Phillips, supra.*; *State v. Aldret, supra.*; *et. al.* Applicant was denied due process because the Applicant was entitled to preserve Juror testimony as to bias and related issues. In addition, the juror's testimony may have resulted in different proceedings. For example, trial counsel could have asked the Juror about his pro-death penalty views and conduct and why he did not previously disclose them, and about his relationship to the homicide victim in another capital case. Plus, trial counsel may have discovered through testimony, under oath, about the Juror's contact with the SLED Agent or his post-trial communications with the prosecution. Without the opportunity to make a record of the Juror's sworn testimony at the post-trial hearing, it has taken five years – from the 1995 trial to the 2000 PCR hearing – for this Juror's misconduct at trial to come under review and scrutiny by the courts. Additional prejudice is set forth in this Order as to this juror, and is incorporated herein by reference.

Therefore, this court finds and concludes that the Applicant's right to effective assistance of appellate counsel, under the Sixth, Eighth, and Fourteenth Amendments of the U.S. Constitution, and other applicable law, was violated, based upon the failure by appellate counsel in raising on appeal the refusal of the trial court to take the testimony of the juror on matters relating to the Motion for New Trial, such that the Applicant is entitled to a new trial because the juror's bias and conduct have been established through other reliable evidence. Alternatively, Applicant is entitled to an appeal on this specific issue.

Selection of the Trial Judge by the Prosecution: PCR Application Claim 9 (I).

The prosecution improperly and unconstitutionally selected, ex parte, the trial judge in this case. The Solicitor's Office admitted that the trial judge was contacted prior to trial. (PCR Tr. 527-28). The Solicitor also sent a letter to the S.C. Court Administration requesting, by

name, that a specific trial judge be assigned to this case. (App. PCR Ex. 12, 17, Letters by Solicitor). Mr. Kelly's trial counsel stated that they knew nothing about the letters or the Solicitor's request for a specific judge. (PCR Tr. 27-30, Testimony of Rollins). Trial counsel testified at PCR that they would have moved to recuse the trial judge or taken other appropriate action, if they had known of the Solicitor's request for a specific judge. (PCR Tr. 30, 132-35, Testimony of Rollins). While the State asserts that there was no *discussion* about the case between the prosecutor and judge, it is the very *selection* of the trial judge by the prosecutor that violates due process.

It is a fundamental precept of due process and a fundamentally fair trial that one side to the litigation does not get to "pick" the judge, even if the judge acts impartially at trial. *In re Murchison*, 349 U.S. 133 (1955) (Holding that a state judge sitting as a "one-man grand jury," who charges a witness with contempt arising out of that proceeding, and thereby assumes an at least partly prosecutorial function, may not also preside at the contempt hearing; his interest in the outcome violates the defendant's due process rights); *Simeon v. Hardin*, 451 S.E.2d 858 (N.C. 1994) (Statutes authorizing the district attorney to calendar criminal cases for trial, prepare the criminal trial dockets, and dismiss criminal charges against defendants do not authorize the district attorney to choose a particular judge to preside over a particular criminal case); *State v. Simpson*, 551 So.2d 1303, 1304 & n.1, 4 (La. 1989) (per curiam) (Holding that, in capital and other felony cases, a system that vests in the district attorney the power to choose the judge whom a particular case is assigned is "facially unfair," and that due process and fundamental fairness require an assignment process, whether random, rotating or otherwise, that is independent of the prosecutor's influence; the system as constituted violates due process even absent any suggestion of impropriety, and cannot be justified even by substantial administrative

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and logistical exigencies); *McDonald v. Goldstein*, 83 N.Y. 5.2 i 620,622-26 (N.Y. Sup. Ct.) (Holding that a system in which the district attorney selected the county judge to preside over each trial allocated to the district attorney a power that was not within his authority; "Courts must be independent and free from outside supervision, especially by any of the litigants. . . . A court dealing with the life and liberty of the people must be free from outside control."), aff'd, 79 N.Y.S.2d 690 (N.Y. App. Div. 1948); *United States v. Braasch*, 505 F.2d 139, 147 (7th Cir.1974) ("A litigant does not have a right to have his case heard by a particular judge"); *Hvass v. Graven*, 257 F.2d 15 (8th Cir. 1958) (Holding that "a litigant has no vested right to have his case tried before any particular judge"); *United States v. Baker*, 441 F. Supp. 612, 615 (M.D. Tenn. 1977) (Holding that "neither the government nor a defendant has a right or interest in having a particular judge try a particular case"); *United States v. Devlin*, 284 F. Supp. 477,482 (D. Conn.1968) (Holding that "in a criminal case... [n]either the government [n]or a defendant ha[ve] a right or an interest in having a particular judge try a particular case"); *Badertscher v. Badertscher*, 460 P.2d 37, 40 (Ariz. Ct. App. 1969) (Holding that "a litigant has no right to insist that a matter be heard before any particular judge"); *State v. Peterson*, 553 A.2d 672, 678 (Md. 1989) ("Generally, a litigant has no right to have his case heard before a particular judge"); *Sinito v. United States*, 750 F.2d 512, 515 (6th Cir. 1984) (Holding that "a defendant does not have a right to have his case heard by a particular judge"); *United States v. Radlick*, 581 F.2d 225, 230 (9th Cir.1978) (Holding that there was no basis for concluding that either criminal appellant "was entitled to the judge of his choice"); *United States v. Stone*, 411 F.2d 597, 598 (5th Cir. 1969) (Holding that the "contention that a district judge cannot transfer his arraignment calendar to another district judge without the consent of the accused and his lawyer is patently frivolous"); *Lane v. State*, 172 A.2d 410, 406 (Md. 1961) ("The accused in a criminal case does

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not have the right to select a judge of his own choosing to try his case”); *United States v. Minsky*, 963 F.2d 870, 874 (6th Cir. 1992) (Holding that to give the government private access to the ear of the court is not only “a gross breach of the appearance of justice,” but also a “dangerous procedure”).

The prosecutorial intervention and influence in the assignment of a particular judge to a specific case also violates the separation of powers mandate of article I, § 8 of the South Carolina Constitution: “In the government of this State, the legislative, executive and judicial powers of the government shall be forever separate and distinct from each other, and no person or persons exercising the functions of one department shall assume or discharge the duties of any other.” The Solicitor is a member of the executive branch of government, and any influence by the solicitor in functions that are as fundamental to the authority and independence of the judicial branch as the assignment of judicial personnel infringes on the functions and duties of the judiciary. *See also, State ex rel. MeLeod v. Yonce*, 247 S.C. 81, 85, 261 S.E.2d 303, 305 (1979) (Holding unconstitutional a statute providing for the state's Chief Justice to appoint circuit judges to preside over certain administrative bodies). In fact, South Carolina law requires the trial judge to make an independent review and affirm the jury’s death verdict upon a determination that the verdict was not the outcome of passion, prejudice, or arbitrary factors. S.C. Code § 16-3-20(C).

It is also significant that the improper contact in Applicant's case occurred at the inception of the trial proceeding. Here the impropriety lies at the root of the entire proceeding, and involves the selection of the judge, whose impartiality is absolutely indispensable to a fair trial. This is the type of circumstance in which “the error permeates the entire proceeding, and harmless error analysis would inevitably entail speculation.” *United States v. Gallo*, 859 F.2d

1078, 1083 (2nd Cir. 1988). Like jurors, presiding judges should be selected at random and impartially. This Court takes notice that Black judges and female judges work on the Circuit bench as well as another qualified resident judge in Spartanburg. Due process and Equal protection requires that every defendant have an equal opportunity to draw a judge from all the sitting judges who have been screened and elected by the General Assembly, or that judges be randomly assigned.

Furthermore, contrary to the assertion of the deputy prosecutor that this was the accepted method at the time in getting a judge assigned to a capital case (PCR Tr. 519, 527, Testimony of Mabry), there is no evidence that the Solicitor's pre-trial request for a particular judge was part of an approved general system in Spartanburg County of prosecutorial administrative involvement in judicial assignments, or even that Solicitors in other counties or circuits engaged in a similar approved practice of picking the trial judge in capital cases under some *de facto* system. Indeed, this court is unaware of the asserted "routine practice" alluded to in the prosecutor's testimony. This makes the Solicitor's conduct in this particular case far more suspect than if such involvement were routine.

First, it is more probable that the Solicitor's conduct was in fact designed to select a particular judge. The most reasonable conclusion is that the Solicitor took the unusual step of asking for a certain judge because the prosecutor felt that to have that specific judge presiding at this particular trial would enhance the likelihood of trial rulings, and an outcome, favorable to the prosecution. At PCR, trial counsel recognized this very intent on the part of the Solicitor, and stated such as his reason to move for recusal of a prosecution hand-picked judge had the defense known about the hidden selection.

Rollins: And I could make the argument that the, that the judge solicited – there may be a judge in this state that if he errs, he errs on the side of the State all the time and cuts defense attorneys no



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slack at all and if that's the type of judge there is, and I'm the solicitor, that's the kind of judge I want on my trial. And what that does is allow the solicitor to set the tone of that case, and basically have a stacked deck.

PCR Tr. 132.

Second, because the Solicitor's action was not part of a broader system of routine prosecutorial involvement in judicial assignments, Applicant's trial counsel lacked notice of the Solicitor's conduct, and thus lacked the opportunity to take appropriate action in response. (PCR Tr. 27-30, Testimony of Rollins). Thus, ex parte communications between the one party and the trial judge can create "both the appearance of impropriety and the possibility of actual misconduct." *United States v. Napue*, 834 F.2d 1311, 1318-19 (7th Cir.1987); *Portland Audubon Society v. Endangered Species Comm.*, 984 F.2d 1534, 1543 (9th Cir. 1993) ("By definition, ex parte contacts cannot be addressed and rebutted through an adversarial discussion among the parties.").

If there are any doubts about the propriety of the Solicitor's conduct, then Applicant's lack of opportunity to address the issue contemporaneously at trial indicates that those doubts should be resolved in Applicant's favor. Ex parte communications between the court and the solicitor are impermissible and "grossly improper." *State v. Skipper*, 285 S.C. 42, 47, 328 S.E.2d 58, 61 (1985). (This is because where defense counsel is not present, and the communication was not on the record, then the reviewing court cannot know whether defendant's rights were prejudiced, so that, in such circumstances, the court must presume prejudice.) *Locklear v. Harvey*, 273 S.C. 58, 59, 254 S.E.2d 293 (1979); *State v. McGuinn*, 268 S.C. 112, 116, 232 S.E.2d 229, 230 (1977).



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It is instructive that in a decision where the state court of appeals noted the disfavored status of ex parte communications between solicitor and judge, the court nonetheless concluded there was no prejudice because the solicitor had voluntarily *disclosed* to the defense the evidence that was the subject matter of the ex parte meeting. *State v. Caulder*, 287 S.C. 507, 511, 339 S.E.2d 876, 878-79 (S.C. App. 1986). However, in Applicant's trial, this emphasizes once more the importance of timely notice to the defense. Because there was no notice or disclosure to the defense the result is that the Solicitor handpicked the trial judge in secret.

The error is such a basic violation of due process that prejudice need not be shown when the matter involves a basic systemic error. *See, e.g., Arizona v. Fulminante*, 499 U.S. 279 (1991) "Systemic error" is one which so taints the process of justice that a defendant need not show prejudice, and harmless error analysis is inapplicable. *Id.* Such errors affect "[t]he entire conduct of the trial from beginning to end" and deprive the defendant of "basic protections, without which " a criminal trial cannot reliably serve its function" *Id.* at 310 quoting *Rose* *Clark*, 478 U.S. 570, 577-78 (1986). "Errors of this type are so intrinsically harmful as to require automatic reversal ... without regard to their effect on the outcome." *Neder v. United States*, 527 U.S. 1, 7 (1999). If a criminal proceeding includes such an error, the resulting punishment "may [not] be regarded as fundamentally fair." *Rose*, 478 U.S. at 577-78.

However, in this situation prejudice can be demonstrated by the trial judge's failure to ensure that defense counsel had been informed of the phone conversation with the Solicitor's Office and the letters to Court Administration to determine if defense counsel had any objections with such ex parte contact, or with the Solicitor's request for a particular judge, since such ex parte contact is strictly prohibited and violates due process. *Gardner v. Florida*, 430 U.S. 349 (1977). Prejudice is further shown by points in the trial where the trial court's rulings appear to

favor the State. For example, at the post-trial motion regarding the Juror, the trial court's ruling to not allow any Juror testimony as to bias is not in accord with established law. *Smith v. Phillips, supra.*; *State v. Aldret, supra., et. al.* Additionally, the trial court's lack of ensuring that both defense counsel were present at such hearing is likewise contrary to state law. See S.C. Code § 16-3-26(B); *State v. Diddlemeyer, infra.*

Therefore, this Court finds and concludes that the Applicant's rights to due process, a fair trial, and a fair tribunal, and the separation of powers, under the Fifth, Sixth, Eighth, and Fourteenth Amendments of the U.S. Constitution, and Article I § 8 of the S.C. Constitution, and other applicable law, were violated, based upon the prosecution's ex parte selection of the trial judge, such that the Applicant's convictions and sentences are vacated, and the Applicant is granted a new trial.

The Strickland Standard.

Many of the Applicant's following claims involve an analysis of ineffective assistance of counsel, so that a thorough review here of the proper standard is appropriate. A claim of ineffective assistance of counsel must be examined under the standard established in *Strickland v. Washington*, 466 U.S. at 668, 80 L.Ed.2d 674, 104 S.Ct. 2052 (1984). The *Strickland* standard is satisfied if a petitioner establishes both that his attorney's representation "fell below an objective standard of reasonableness," 466 U.S. at 688, and that the petitioner was "prejudiced" by his attorney's substandard performance," *Id.* at 692. See also, *Pauling v. State*, 331 S.C. 606, 609, 503 S.E.2d 468, 470 (1998).

In order to determine whether counsel's conduct was deficient, a petitioner must show that the particular acts or omissions of counsel were outside the "wide range of professionally competent assistance." *Strickland*, 466 U.S. at 694. *Strickland's* prejudice component is not an

outcome determinative test. Applicant must demonstrate that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland supra.*, 466 U.S. at 694; *Accord (Terry) Williams v. Taylor, infra.* A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. *Pauling v. State, supra.*

Recently, the U.S. Supreme Court again informed all courts considering ineffectiveness of counsel claims in capital cases of the appropriate standard. *(Terry) Williams v. Taylor*, 529 U.S. 362 (2000); *Wiggins v. Smith*, 1235 S.Ct. 2527 (June 26, 2003). In *Williams* the reasonable probability standard was met where unpresented mitigating evidence "might well have influenced the jury's appraisal of [Applicant's] moral culpability." *Williams*, 529 U.S. at 398. Thus, *Williams* makes clear that *Strickland* means what it says. Deviations, big or small, from a prejudice inquiry governed by reliability fails to secure the Sixth Amendment's guarantee of meaningful counsel for the accused. Indeed, *Williams* actually involved the Fourth Circuit's application of an *erroneous* prejudice standard:

Take, for example, our decision in *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). If a state court were to reject a prisoner's claim of ineffective assistance of counsel on the grounds that the prisoner had not established by a preponderance of the evidence that the result of his criminal proceeding would have been different, that decision would be "diametrically different," "opposite in character or nature," and "mutually opposed" to our clearly established precedent because we held in *Strickland* that the prisoner need only demonstrate a "reasonable probability that ... the result of the proceeding would have been different."

(Terry) Williams v. Taylor, 529 U.S. at 405-06. (concurring opinion of O'Connor, J.).

Thus, the "Strickland standard" for judging ineffective assistance of counsel claims is "reasonable probability, which is less than a preponderance. *Id.*



The reviewing court also has an obligation to ensure that any alleged "strategy" by trial counsel is reasonable only if trial counsel had first conducted the necessary investigation and review of the facts and the law in order to reach an independent strategy decision. attorneys in capital cases "must be conversant with constantly *new* interpretations of constitutional law by not only the United States Supreme Court, but by courts of all jurisdictions, both Federal and State." *Bailey v. State*, 309 S.C. 455, 460, 424 S.E.2d 503, 506 (1992). If counsel fails to object to prejudicial legal errors at trial, a valid strategy cannot be found where "counsel . . . fail[s] to object to comments which constitute an error of law and are inherently prejudicial." *Matthews v. State*, 350 S.C. 272, 276, 565 S.E.2d 766, 768 (2002). Likewise, a valid strategy cannot be found when the professed strategy is invalid under an objective standard of reasonableness. *Roseboro v. State*, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995). Finally, when counsel's conduct is based on an erroneous understanding of the law "counsel made no tactical 'choice.'" *Luchenburg v. Smith*, 79 F.3d 388, 392-93 (4th Cir. 1996). Thus, the South Carolina Supreme Court stated in *Bailey* that defense counsel must not only investigate the state's case during trial and sentencing, but also must investigate the defendant's entire life to prepare for sentencing. *Bailey*, 309 S.C. at 461, 424 S.E.2d at 506-507.

In *Wiggins*, the Court again reinforced and emphasized the standard as first enunciated in *Strickland* when reviewing trial counsel's assertions of "strategy":

In this case, as in *Strickland*, petitioner's claim stems from counsel's decision to limit the scope of their investigation into potential mitigating evidence. *Id.*, at 673. Here, as in *Strickland*, counsel attempt to justify their limited investigation as reflecting a tactical judgment not to present mitigating evidence at sentencing and to pursue an alternate strategy instead. In rejecting *Strickland*'s claim, we defined the deference owed such strategic judgments in terms of the adequacy of the investigations supporting those judgments: [S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after

less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation. In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary. In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments. *Id.*, at 690.691.

Wiggins v. Smith, 1235 S.Ct. 2527 (O'Connor, J., majority opinion).

Furthermore, the resulting prejudice from counsel's errors must be "considered collectively, not item-by-item." *Kyles v. Whitley*, 514 U.S. 419, 436 (1995). The South Carolina Supreme Court has not specifically addressed the application of a cumulative prejudice analysis. *Green v. State*, 351 S.C. 184, 569 S.E.2d 318 (2002). However, in *Frett v. State*, 298 S.C. 54, 57, 378 S.E.2d 249, 251 (1988), the Court found that "counsel's ineffectiveness [was] so pervasive as to render a particularized prejudice inquiry unnecessary." *Frett* is the current legal precedent. *Accord, Spann v. Martin*, 963 F.2d 663, 671 (4th Cir. 1992); *Green v. State, supra*; *McKnight v. State*, 320 S.C. 356, 358, 465 S.E.2d 352, 353 (1995); *Whitehead v. State*, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992). Likewise, in *Williams v. Taylor*, 529 U.S. 362, 399 (2000), the Supreme Court considered "the entire post conviction record . . . as a whole and cumulative of mitigation evidence presented originally" in conducting its prejudice analysis and finding counsel ineffective for failing to adequately prepare and present mitigation evidence. In *Wiggins, supra*, the Court also looked at the entire record. Clearly then a cumulative prejudice analysis is appropriate.

Remaining Trial Phase Issues: PCR Application Claims 9 (d), (e), (f), (h), (k), (t)



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The court grants relief on the remaining claims presented by Applicant which affected the guilt, and sentencing, phases of the trial. The Court makes the following findings of fact and conclusions of law as to the claims as set forth below.

Trial Attorneys' Questioning as to Right to Silence: PCR Application Claim 9(e)

Trial counsel injected the Applicant's own post-arrest silence. (Trial Tr. 1180-1191, Cross-examination of Deputy Sheriff Gist, and of Det. Maxwell). It is a basic principle of constitutional law that a defendant's assertion of his right to silence and to counsel, and to choose to make *no* statement, cannot be used against him. *Doyle v. Ohio*, 426 U.S. 610 (1976); *Edmond v. State*, 341 S.C. 340, 534 S.E.2d 682 (2000) (Counsel ineffective in burglary and grand larceny case for failing to object to detective's testimony and prosecutor's comments regarding petitioner's invocation of his rights to counsel and to remain silent, as jurors may have used testimony and comments to infer petitioner was guilty simply because he exercised his rights, and circumstantial evidence of petitioner's guilt was not overwhelming); *McFadden v. State*, 342 S.C. 637, 539 S.E.2d 391 (2000) (Counsel ineffective in drug case for failing to object to prosecutor's argument that he only had one closing because the defense presented no evidence, which was essentially a comment on defendant's right to silence; and, defendant was prejudiced by this single reference because his exculpatory story was not totally implausible, the evidence of guilt was not overwhelming, and the trial court's general charge on defendant's right not to testify did not cover this situation); *State v. Arthur*, 290 S.C. 291, 350 S.E.2d 187 (1986) (Case reversed where prosecutor's argument constituted improper comment upon defendant's right to remain silent).

Trial counsel did not have a strategic reason for this. (PCR Tr. 37-38, Testimony of

Rollins). In fact, trial counsel admitted that he did not discuss it with co-counsel, or with his client, and that it was “one of those stream of consciousness things.” (Id. at p. 38). For defense counsel to elicit the same information which the jury otherwise would not know because it is inadmissible and prejudicial evidence – and without a clear strategy for doing so – is ineffective assistance of counsel. *Ingle v. State*, 348 S.C. 467, 560 S.E.2d 401 (2002) (Counsel ineffective for eliciting prejudicial hearsay); *Sanchez v. State*, 351 S.C. 270, 569 S.E.2d 363 (2002) (Failure to object to inadmissible hearsay is ineffective assistance of counsel); *Also See Brown v. State*, 974 S.W.2d 289 (Tx. Ct. App. 1998); *Messer v. State*, 509 N.E.2d 249 (Ind. Ct. App. 1987). Thus, the failure to object to inadmissible evidence which is prejudicial to the defendant is objectively unreasonable and constitutes ineffective assistance of counsel. Here, the prejudice to the Applicant is that the jury was given information, by the defense, without a strategic reason, and which is categorically excluded if the State attempted to introduce the same information. Thus, the jury is allowed to consider that the Applicant invoked his right to silence upon arrest. In a case where the Applicant testified, and his credibility was challenged, the prejudice is significant.

Therefore, this court finds and concludes that the Applicant’s right to effective assistance of counsel, under the Sixth, Eighth, and Fourteenth Amendments of the U.S. Constitution, and other applicable law, were violated, based upon the injection by trial counsel of the Applicant’s post-arrest invocation of his right to silence, such that the Applicant’s convictions and sentences are vacated, and the Applicant is granted a new trial. Alternatively, the Applicant’s death sentence is vacated and the Applicant is granted a new sentencing hearing.

The State’s Use of Race in Deciding to Seek the Death Penalty: PCR Application

Claim 9 (t)



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This court grants the Applicant's Motion to Amend the Pleadings, pursuant to S.C.R.Civ.P.R. 15(a) and (b). Testimony presented at PCR established a constitutional claim not previously known to the Applicant. In fact, the testimony came from the prosecutor who did not reveal such information in his deposition so that the first opportunity that Applicant had to learn of such information was at the PCR hearing itself. At PCR, on direct examination, the deputy solicitor testified that race was discussed and considered by the State in deciding to file Notice of Intent to Seek the Death Penalty:

Mabry: ... I told Holman (Solicitor Gossett) that I felt like the black community would be upset though if we did not seek the death penalty because there were two black victims in this case ... The only mention that was ever made of race was when I said that I felt like if we did not seek the death penalty, that the community, the black community would be upset because we are seeking the death penalty in the (Andre) Rosemond case for the murder of two white people.
PCR Tr. 518.

While the witness adamantly denied that race was *the reason* the State sought the death penalty in this case, his own words admit that race was, in fact, a consideration, and thus a factor in the decision to seek the death penalty. Race can never be an intentional factor, in any degree whatsoever, in the State's decision to seek death. *McKleskey v. Kemp*, 481 U.S. 279, 95 L.Ed.2d 262, 107 S.Ct. 1756 (1987); *Also See Batson v. Kentucky*, 476 U.S. 79 (1986) (Disallowing use of race in jury selection); *Turner v. Murray*, 476 U.S. 28, 90 L.Ed.2d 27, 106 S.Ct. 1669 (1986) (Allowing voir dire on race to probe for juror bias where black defendant charged with killing a white). By analogy, if the victims in this case had been white, and the deputy prosecutor had stated that the "white community would have been upset if the State had not sought death," then clearly it would be an unconstitutional race-based decision to seek death, and a new trial would be required. It is no different when the deputy prosecutor states that the concerns of the black community were discussed and considered in the State's decision to seek death.

The Supreme Court "has repeatedly stated that prosecutorial discretion cannot be exercised on the basis of race." *McKleskey*, 481 U.S. at 309 n.30 (citing cases). *McKleskey* specifically held that any proof that racial consideration had entered into a capital sentencing determination would mean that the sentence was unconstitutional under the Eighth and Fourteenth Amendments. *Id.* An inference of abuse of prosecutorial discretion motivated by racial discrimination may be made upon sufficient proof. *Id.* at 291 n.8 citing *Oyler v. Boles*, 368 U.S. 448, 456 (1962). Improper racial influences would create an unconstitutionally arbitrary application of a capital punishment system. *Id.* at 297.

Furthermore, the Supreme Court has held that a conviction violates a defendant's Fourteenth Amendment due process rights and cannot be sustained if it is obtained at a trial wherein the prosecution was impelled by "community coercion." See *Hawk v. Olson*, 326 U.S. 271, 275 (1945). It can be no more proper for a prosecutor to *decide* to seek a death sentence in response to the pressures of racially-based community sentiment. By comparison, the U.S. Supreme Court recently reversed a death penalty case where evidence involved a history by the prosecutor's office of possible racial discrimination in jury selection. *Miller-el v. Cockrell*, 537 U.S. 322 (Slip Op. No. 01-7662, February 25, 2003) (Remanding case for full evidentiary hearing).

The introduction of the extraneous considerations of the race of the decedents and the sentiments of a racial community into the Solicitor's decision to seek a death sentence against Applicant constitute such a fundamental violation of due process as to have given rise to a basic, systemic error, so tainting the process of justice that prejudice need not be shown to require reversal. See, e.g., *Arizona v. Fulminante*, 499 U.S. 279, 309 (1991). Such errors affect "[t]he entire conduct of the trial from beginning to end" and deprive the defendant of basic



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protections,” without which “ ‘a criminal trial cannot reliably serve its function as a vehicle for determination of guilt or innocence.’ ” *Id.* at 310 (quoting *Rose v. Clark*, 478 U.S. 570, 577-78 (1986)). “Errors of this type are so intrinsically harmful as to require automatic reversal ... without regard to their effect on the outcome.” *Neder v. United States*, 527 U.S. 1, 7 (1999). If a criminal proceeding includes such an error, the resulting punishment “may [not] be regarded as fundamentally fair.” *Rose*, 478 U.S. at 577-78.

Nonetheless, prejudice can be shown here, because the timing of events suggests that, but for the racial pressures recognized by the prosecution, the State almost surely would not have sought a death sentence against Applicant. The incident occurred on June 7, 1994, and Mr. Kelly was arrested the next day. He was indicted the next month during the July 1994 term of the Court of General Sessions for two (2) counts of murder, and assault with the intent to kill. Some eleven months after arrest, and ten months after indictment, on May 15, 1995, the State filed notice of intent to seek the death penalty. In between Mr. Kelly’s arrest and the death notice, counsel for Mr. Rosemond was making prominent public accusations of racial bias in the Solicitor’s decision to seek a death sentence in *Rosemond*. (PCR Tr. 150, Testimony of Rollins). Thus, the public controversy surrounding the State’s decision to seek a death sentence against Applicant is readily apparent, especially when considered with the deputy solicitor’s admission at PCR that he was discussing the *Rosemond* controversy with Solicitor Gossett when they were deciding to seek a death sentence against Applicant.

Therefore, this Court finds and concludes that the Applicant’s rights to due process, a fair trial, and equal protection, under the Fifth, Sixth, Eighth, and Fourteenth Amendments of the U.S. Constitution, and other applicable law, were violated, based upon the prosecution’s

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consideration of race as a factor in deciding to seek the death penalty, such that the Applicant's convictions and sentences are vacated, and the Applicant is granted a new trial.

Alternatively, and as a separate, independent ground, this court finds and concludes that Applicant is entitled to relief on this ground based upon ineffective assistance of counsel. *Strickland, supra.*; (*Terry*) *Williams v. Taylor, supra.*; *Wiggins, supra.* Trial counsel failed to move for a hearing on whether the State unconstitutionally considered race as a factor in deciding to seek the death penalty, even though counsel believed that to be the situation. (PCR Tr. 85-86, 113-114, 150-152, Testimony of Rollins). In fact, trial counsel believed prior to trial exactly what the deputy solicitor testified to at PCR: That the State was seeking the death penalty against Mr. Kelly because the State had already filed a notice of death in the (Andre) Rosemond case where there were two white victims, and that this was also based upon the State's lengthy delay in filing for death in Mr. Kelly's case. (*Id.*). This court incorporates from above and herein the same findings and conclusions regarding prejudice in this matter.

Therefore, this court finds and concludes that the Applicant's right to effective assistance of counsel, under the Sixth, Eighth, and Fourteenth Amendments of the U.S. Constitution, and other applicable law, were violated, based upon the failure by trial counsel to move or object to the State's use of race as a factor in deciding to seek the death penalty, such that the Applicant's convictions and sentences are vacated, and the Applicant is granted a new trial.

While this court's findings and conclusions as set forth above hold that the use of race by the prosecution infects the whole proceeding, so that Applicant is entitled to a new trial, alternatively, this court finds and concludes that the Applicant's death sentence is vacated and the Applicant is granted a new sentencing hearing.



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Failure to Object, and Introduction by, Trial Counsel of the Applicant's Psychiatric
Records: PCR Application Claim 9 (h)

The State used the Applicant's own psychiatric records from the Wm. S. Hall Psychiatric Institute (hereinafter, "WSHPI"), or the "state hospital to cross-examine the Applicant as well as several of the Applicant's witnesses at the 1995 trial. This is impermissible and amounts to reversible error. *Hudgins v. Moore*, 337 S.C. 333, 524 S.E.2d 105 (1999); *State v. Myers*, 220 S.C. 309, 67 S.E.2d 506 (1951).

The defense attorney initially propounded an objection at trial based on the "confrontation of witnesses", which may have been construed as a Sixth Amendment objection (Trial Tr. 1459). However, the defense attorney did not pursue this objection or any other of the appropriate Fifth and Sixth Amendment objections that could have been made. Thus, defense counsel waived this issue without any hearing, stating "That's fine." (Trial Tr. 1460). So, at the 1995 trial, Dr. Shea's report was admitted as a State's exhibit without objection. (Trial Tr. 1460-1461; State Ex. 43 at 1995 trial). The defense then introduced the whole psychiatric file, including Dr. Shea's report, at the trial court's invitation. (Trial Tr. 1665; Def. Ex. 13 at 1995 trial; App. PCR Ex. 20).

At the PCR hearing, trial counsel stated he had several strategic reasons for the introduction of the WSHPI file (PCR Tr. 168-186), Testimony of Thompson). But these alleged reasons are not supported by the record or any reasonable strategy. *Wiggins, supra*. In reviewing trial counsel's asserted "strategies", this court finds that they do not bear up under the degree of scrutiny required by this court. In *Sikes v. State*, 323 S.C. 28, 448 S.E.2d 560 (1994), our Court reversed a dismissal of PCR and found that counsel's decision not to challenge "a blatant violation" of petitioner's Fourth Amendment rights could not have been a valid strategic choice.

For a decision to be a valid “strategy”, the decision must be objectively reasonable under the law. *Id.*; *Luchenburg v. Smith*, 79 F.3d 388, 392-93 (4th Cir. 1996) (Where counsel's trial strategy was based on a misunderstanding of law, counsel made no tactical choice); *Roseboro v. State*, 317 S.C. 292, 454 S.E.2d 312 (1995) (Ineffective assistance of counsel found when counsel's professed “strategy” was invalid under an objective standard of reasonableness); *Turpin v. Lipham*, 510 S.E.2d 32, 40 (Ga. 1998) (“While trial counsel is afforded tremendous deference over matters of trial strategy, the strategy that is selected must be supported by adequate investigation”); *Accord, Wiggins, supra.*

Even upon a cursory review of trial counsel’s alleged strategy as asserted at the PCR hearing, this court is able to determine that such a strategy was neither “objectively reasonable”, nor was it even actively considered by defense counsel at the time of trial, because defense counsel initially *objected* to the admission of the records. One does not *object* to the admission of records if one’s “strategy” is to *admit* them as evidence.

An analysis of trial counsel’s asserted “strategy” reasons, and a review of the record, is appropriate here. The trial transcript itself shows that trial counsel first objected and then quickly withdrew the objection when the Court acknowledged that defense counsel could introduce the whole state hospital file if the defense wanted to – so the defense quickly acquiesced in this procedure. (Trial Tr. 1460-1465). The trial counsel cannot now state that he had a well-planned strategic reason for introducing the WSHPI file when the record reflects that trial counsel initially was making vague objections and then acquiescing to the Court’s offer to introduce the whole psychiatric file as a defense exhibit.

Next, the reason offered in testimony at the PCR hearing, that the defense hoped for a Guilty But Mentally Ill (hereinafter, “GBMI”) verdict, is not supported by the record. The



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WSHPI file actually states that the defendant does not qualify for a GBMI defense. (PCR Tr. 448). The defense's own experts acknowledged that diagnosis at trial. (Trial Tr. 1440-1469, Testimony of Dr. Enwright; 1682-1683, Testimony of Dr. Tidler). Finally, Dr. Pam Laughon, an experienced psychologist and mitigation expert, testified at PCR that there is no record, anywhere in the state hospital file, which even remotely supports any such GBMI defense. (PCR Tr. 448-450).

The remaining strategic reasons offered by trial counsel at the PCR hearing --- that the defense hoped some juror would read it and find mitigation "early", or that the psychiatric information would amount to the lesser offense of voluntary manslaughter --- are not strategic reasons which comport with a proper understanding of the law. *Sikes v. State, supra*; *Luchenburg v. Smith, supra*. As to finding mitigation "early," the jury is not instructed on sentencing issues at the guilt-innocence phase. As to voluntary manslaughter, this defense to murder is not authorized under S.C. law purely based upon the state of mind of the defendant, presumably what would be shown by the state psychiatric information -- so that there must also be the additional requirement of sufficient legal provocation by the victim. *State v. Cooney*, 320 S.C. 107, 463 S.E.2d 597 (1995); *State v. Jackson*, 301 S.C. 41, 389 S.E.2d 650 (1990); *Also See State v. Day*, 341 S.C. 410, 535 S.E.2d 431 (2000) (Self-defense cannot be sustained solely on psychiatric mental state of the defendant). It is noted that voluntary manslaughter was charged to the jury, but this was based upon the defendant's own testimony as to a struggle, and not his psychiatric records. Nor did trial counsel use the WSHPI file with other witnesses or in the charge conference with the trial court or in closing argument to the jury to assert that the WSHPI file arguably supported voluntary manslaughter. Finally, "dumping" hundreds of pages of psychiatric files as an exhibit before a jury at the guilt-phase in hopes they would later find some

mitigation is not a reasonable mitigation strategy. (PCR Tr. 452, Testimony of Dr. Laughon). *Wiggins, supra*. The jury was instructed to only consider guilt-related issues, and not sentencing issues, at the guilt phase of the trial. (Trial Tr. 970-971). Plus, if any of these were actual strategic reasons at trial in 1995, then the defense attorneys would not have objected at all to the admission of the records. (Trial Tr. 1459-1461).

The prejudice to the Applicant is substantial. First, a defendant's statements and related information to the state examiners is supposed to remain confidential and not admissible in court. *Myers, supra*; *Hudgins, supra*. In the case of *Hudgins*, our state Supreme Court recognized that it is particularly harmful and prejudicial when the Solicitor uses information in the state psychiatric file to cross-examine the defendant, especially where such information is then used to argue against the defendant's believability and credibility. The Court in *Hudgins* reversed the conviction and sentence. Likewise, Mr. Kelly is entitled to a new trial because the Solicitor improperly used the state psychiatric file to cross-examine and then argue that Mr. Kelly was not believable *specifically because of* information contained in the state psychiatric file. At trial, the Solicitor directly attacks the defendant's credibility using confidential state hospital information and accusing the defendant of numerous lies. (Trial Tr. 1418-1419, 1421-1422, 1424-1427, 1438-1439).

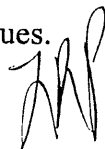
Second, the Solicitor commented on this in closing argument at the guilt-phase, by comparing the defendant's "lies" at the state hospital to the defendant's testimony at trial. (Trial Tr. 1489, 11.3-4, 11.8-13; 1490, 1.13). The Court in *Hudgins* explicitly stated that such questioning and argument is improper and requires reversal.


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Third, in closing argument at sentencing, the Solicitor prejudicially used the WSHPI file by arguing for a sentence of death using the information improperly gleaned from the WSHPI file. (Trial Tr. 1757, 1758, 1760, 1761, 1764). The solicitor's tactics violated the integrity of a court-ordered mental health examination, violated Applicant's Fifth and Sixth Amendment rights, and constituted an improper questioning technique. *Myers, supra.*; *Hudgins, supra.*; *Powell v. Texas, supra.*; *et. al.*

Fourth, the Solicitor made improper use of the WSHPI file during cross-examination by pitting a non-testifying expert's report, Dr. Shea, against the defense's testifying experts at both phases of the trial. (Trial Tr. 1451-1454, 1456, 1466-1468; Cross-examination of Dr. Enwright) (Trial Tr. 1669-1670, 1674-1682; Cross-examination of Dr. Tidler). This procedure is not allowed under the S.C. Rules of Evidence, and also constitutes a Sixth Amendment violation of the defendant's right to confront and cross-examine a witness. *State v. Sapps*, 295 S.C. 484, 369 S.E.2d 145 (1988) (pitting witnesses not allowed); *Burgess v. State*, 329 S.C. 88, 91, 495 S.E.2d 445, 447 (1998) (pitting witnesses). This kind of argumentative questioning is improper."); *State v. Slocumb*, 336 S.C. 319, 521 S.E.2d 507 (S.C.Ct.App. 1999) (Discussing S.C. R.Evid. 703 and 705, the Court finds that a party cannot cross-examine expert with the report of a non-testifying expert. This court notes there was no testimony at all from the state hospital psychologist, Dr. Shea, although the Solicitor relied upon and quoted Dr. Shea extensively. While normally a party can cross-examine an expert about the contents of a report or test if that expert relied upon such report or test, it is never clear from the record that either of the experts called by the defense ever relied upon Dr. Shea's report. In fact, the expert witnesses appear to disagree at points with Dr. Shea's opinions, especially concerning anti-social personality traits, which is a significant disagreement as to sentencing issues.



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Fifth, the court order for the evaluation is dated 1994. (App. PCR Ex. 10). This means that the evaluation order came before any death notice, which was issued in 1995. So, neither the Applicant nor his attorneys were on notice that any information he gave to the state hospital could be used against him at a sentencing proceeding. This violates basic Fifth and Sixth Amendment principles. *Powell v. Texas*, 492 U.S. 680 (1989); *Buchanan v. Kentucky*, 483 U.S. 402 (1987); *Estelle v. Smith*, 451 U.S. 454 (1981).

Therefore, this court finds and concludes that the Applicant's right to effective assistance of counsel, under the Sixth, Eighth, and Fourteenth Amendments of the U.S. Constitution, and other applicable law, were violated, based upon the failure to object, and introduction by, trial counsel of Applicant's psychiatric records from the state psychiatric hospital, such that the Applicant's convictions and sentences are vacated, and the Applicant is granted a new trial. Alternatively, the Applicant's death sentence is vacated and the Applicant is granted a new sentencing hearing.

Failure of the State to Disclose Evidence, and Failure of Trial Counsel to Investigate Evidence and Failure to Object to Portions of the State's Evidence: PCR Application Claims (f), (j), and (k)

This court finds that the prosecution did not disclose several items of material evidence and that the jury was misled in several respects; alternatively, this court finds that trial counsel failed to investigate and discover such evidence, and further failed to properly object to certain evidence. The prejudice to the Applicant is that the evidence was material as to both the guilt and sentencing phases, and there is a reasonable probability, but for this error, that the result of the



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proceeding would have been different. *Strickland, supra.*; *Wiggins, supra.* Additionally, the objectionable evidence was properly excludable and failure to object was ineffective assistance of counsel.

The items of evidence at issue are as follows: The conviction records of decedent Epps for felony Criminal Sexual Conduct With A Minor (hereinafter, "CSC") and two counts of Lewd Act Upon A Minor, and the Union County Sheriff's Department file concerning the details of these 3 incidents, including the ages of the female victims being 13, 11, and 9; (App. PCR Ex. 4-A, 4-B, 5, 6, 7, 8); and, Information as to decedent Imogene Kelly's reputation for drug dealing and violence, and severe psychiatric problems; (App. PCR Ex. 1, 2, 9; PCR Tr. 267, Testimony of O'Shields).

The convictions of decedent Epps were known to the prosecution *before* the death penalty notice was ever filed: Assistant Solicitor Mabry met shortly after the homicide with decedent Epps' mother and learned of this information. (PCR Tr. 511, Testimony of Mabry). The Sheriff's file containing the incident reports, while apparently not actually in the possession of the prosecutor's office, is attributable to the State, especially since the prosecution was informed about Epps' convictions and knew Epps was from Union County, which geographically adjoins Spartanburg. This is all significant because, even according to the prosecution, such evidence was not disclosed to the defense until less than an hour before the sentencing phase began.

The information as to Imogene Kelly was known to the prosecution through interviews at the prosecutor's office with former police officer Mark O'Shields and also Ms. Jackie Prater. Both witnesses testified at the PCR hearing as to Imogene Kelly's reputation for drug dealing and temper or violence, and also testified that they gave the same information to the prosecution

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when interviewed prior to the 1995 trial. (PCR Tr. 266-267, Testimony of O'Shields; 273-280, Testimony of Prater). This information was not disclosed to the defense. (PCR Tr. 75, Testimony of Rollins).

Also, at the PCR hearing trial counsel testified that they had never before seen copies of Epps' criminal convictions. (PCR Tr. 70-71, 200-201, Testimony of Rollins, Thompson). Nor did defense counsel ever see the Union County Sheriff's Department file concerning the details of these incidents. (PCR Tr. 70-71).

Material information which may be favorable to the accused must be disclosed. *Brady v. Maryland*, 373 U.S. 83 (1963); *Kyles v. Whitley*, 514 U.S. 419 (1995). All of this information as to Epps and Imogene Kelly was material because it went to issues relevant to the Applicant's defenses of voluntary manslaughter and self-defense, such as difficulties among the parties, state of mind, prior acts of aggression or violence by Epps or Imogene Kelly, bias to State's witness Tracy Kelly, and similar relevant matters.

The State asserts that as to Epps' convictions, the information was given to attorney Thompson by Solicitor investigator Dyer. (PCR Tr. 502-503). But attorney Rollins never saw the information (PCR Tr. 70-71). Nor did attorney Thompson remember this "discovery" episode or recall ever seeing this evidence. (PCR Tr. 200). It is apparent that Thompson and Rollins did not discuss the issue with each other or Mr. Kelly. (PCR Tr. 73, Testimony of Rollins). Additionally, the record as to purported service of trial counsel by the State is problematic in several respects. First, the affidavit of service is post-dated after the trial when memories are more fallible as to exactly what was delivered, unlike the other file affidavits executed on the day of delivery. Second, the affidavit of service, if believed, indicates that Epps' conviction record was delivered to defense counsel's office a mere 45 minutes before the beginning of the sentencing phase trial,



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whereas nothing appears in the sentencing phase trial transcript to reflect acknowledgement of delivery, or to object to late delivery. Third, testimony at the PCR hearing indicated that there were no copies of any convictions concerning decedent Epps in the defense attorneys' files. (PCR Tr. 200, Testimony of Thompson).

Even if it is assumed that the State did disclose such evidence, the defense attorneys did not adequately review or investigate the evidence, or additional items of evidence available to them. *Wiggins, supra.*; *(Terry) Williams v. Taylor, supra.*

First, no additional information or details were sought or investigated concerning Epps' background and convictions. The State's assertion is that attorney Thompson had some type of "agreement" with the prosecution "not to get into that" as to Epps' CSC convictions, unless the State tried to make Epps appear to be a "choir boy" (PCR Tr. 514, Testimony of Mabry). Even if that assertion is correct, it is impermissible and ineffective assistance of counsel, and not attributable to reasonable trial strategy, to acquiesce in the presentation to the jury of misleading evidence and untrue facts. *United States v. Agurs*, 427 U.S. 97 (1976); *Giglio v. United States*, 405 U.S. 150 (1972); *Napue v. Illinois*, 360 U.S. 264 (1959). Plus, it is clear from the overall testimony of trial counsel at PCR that none of this information was shared or discussed between the trial attorneys, or with their client, Mr. Kelly. In fact, witness Mary Epps (mother of decedent Epps) did in fact put the decedent's character into evidence during the sentencing phase, and this testimony not only went unanswered by the defense but also was misleading to the jury. (Trial Tr. 1591-1599).

Next, the defense attorneys did not conduct any investigation into the background of decedent Imogene Kelly, even though they knew enough facts so that further investigation would have been warranted. (PCR Tr. 79, 203, Testimony of Rollins, Thompson). Thus, they did not



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independently obtain her psychiatric records, or other information concerning her reputation for violence and drug dealing. (App. PCR Ex. 1, 2). Failure to obtain a victim's psychiatric records had been held to be ineffective assistance of counsel. *Dove v. State*, 337 S.C. 298, 523 S.E.2d 459 (S.C. 1989).

The psychiatric records of Imogene Kelly were available from within Spartanburg County itself: from the regional medical hospital and the local county mental health center. The records were definitely relevant to the sentencing phase as rebuttal to victim impact testimony; and, trial counsel stated at the PCR hearing that had he known of them he would have used them in plea bargaining along with any other relevant information for the trial itself in either phase. (PCR Tr. 71-73, Testimony of Rollins). The records could have been used at the trial phase to elicit information about Imogene Kelly's violent outbursts, temper, and other relevant information. At the PCR hearing, trial counsel acknowledged that failure to obtain these records was not a strategic decision. (PCR Tr. 76, 162-164). Also, Dr. Pam Laughon testified as to the material information in the records that could have been used at trial. (PCR Tr. 468-482).

Additionally, trial counsel failed to contact and use friends and family members of the Applicant in order to present favorable character mitigation evidence. Information about such mitigation witnesses, including addresses, was readily available to trial counsel from the defendant's own S.C. Department of Corrections records. (App. PCR Ex. 14). The facts and conclusions as set forth in this Order below, in addressing Applicant's PCR Claim 9 (g), are incorporated herein.

Finally, defense counsel did not independently conduct an adequate review or investigation of the crime scene. Such an investigation would have supported the defendant's



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testimony, allowed defense counsel to challenge through cross-examination the State's witnesses and experts, and led to the introduction of additional evidence to contest the State's theory of the case. At the PCR hearing, crime scene expert Don Girndt stated that there were several ways in which defense counsel could have challenged the State's evidence. All of this derived directly from the State's own video of the crime scene. (App. PCR Ex. 22). First, the lack of gun shot residue on either of Ketih Epps' hands – which was important for the State to argue that Epps was not armed – was easily explained because of the way in which Epps' hands and body was handled at the crime scene. (PCR Tr. 342-350, 353-357, Testimony of Girndt). Second, there was in fact evidence from the crime scene which contradicted the State's expert as to stippling around the gunshot wound to decedent Epps, and thus supported the defendant's testimony as to a struggle. (PCR Tr. 351-352, Testimony of Girndt). Third, there was also evidence which supported a second weapon at the scene – consistent with the defendant's testimony – and cast doubt on the prosecution's characterization of the .380 ammunition clip as "irrelevant", especially since no trace was done for a .380 weapon and inconsistencies existed in other testimony relating to the .380 clip. (PCR Tr. 357-364). Such unexplored evidence would have supported the defendant's testimony, and even if he were still convicted of 2 counts of murder, would have placed the sentencing phase in a different light. This is especially so when considered with the additional background evidence of Epps and Imogene Kelly, which presents a more truthful picture to the State's victim impact evidence.

Finally, the Applicant testified at the 1995 trial that he had never carried a gun before as support for his own testimony of self-defense/manslaughter. (Trial Tr. 1423). On cross-examination, the Solicitor used Applicant's prior 1985 conviction for armed robbery to infer that

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the defendant had in fact used a gun before and was now lying about it. (Id.). The Solicitor later argued against the defendant's believability in closing argument. (Trial Tr. 1489).

This was an improper comment on the defendant's credibility using an untrue fact because the defendant had not, in fact, used or possessed a gun in the 1985 armed robbery. The defendant's indictment for armed robbery states on its face that a knife was the weapon for the prior 1985 armed robbery, and not a gun. (App. PCR Ex. 13). Furthermore, the armed robbery transcript shows that it was not even the defendant who had possessed or used the knife in the 1985 armed robbery, but was in fact the co-defendant. (App. PCR Ex. 11, Trial Tr. of Armed Robbery trial at pp. 1147, 1154, 1166-67, 1261, 1263, 1265, 1326, 1327, 1332-37; Hon. E.C. Burnette, III, presiding judge).

It was the same Solicitor's Office in Applicant's capital 1995 trial – that of the Hon. Holman Gossett – which had prosecuted the defendant for the 1985 armed robbery. So, the Solicitor presumably knew that this defendant had not previously possessed or used a gun from the prior 1985 matter. Additionally, defense counsel had a copy of the 1985 indictment and trial transcript in their file, and knew that the Applicant would be asked about his prior conviction, but failed to object to the clear, but untrue, implication by the prosecution that the Applicant's prior armed robbery involved the use of a gun. (PCR Tr. 46-47, Testimony of Rollins).

Presenting or creating the inference of an untrue fact for the jury violates due process, and the failure by trial counsel to object to it is ineffective assistance of counsel: it placed the credibility of the defendant in issue using an untrue fact. *Alcorta v. Texas*, 355 U.S. 28 (1957); *Townsend v. Burke*, 334 U.S. 736 (1948). See also *Miller v. Pate*, 386 U.S. 1, 6-7 (1968). The prejudice to the Applicant, who testified at trial, is that it challenged his credibility using an untrue fact.



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Failure by the prosecution to disclose material evidence favorable to the accused is reversible error. *Brady v. Maryland, supra.*; *Kyles v. Whitley, supra.* Failure by defense counsel to adequately investigate and prepare a case, including investigation of information relevant to the sentencing phase, constitutes ineffective assistance of counsel. (*Terry*) *Williams v. Taylor, supra.*; *Wiggins, supra.* The prejudice to the Applicant is manifest. There was substantial evidence, either not turned over to the defense or independently investigated and discovered by the defense, that would have made a material difference at trial. Such evidence would have: Corroborated the Applicant's testimony at trial; Supported the defenses of voluntary manslaughter and/or self-defense; Rebutted prosecution facts at trial, both at the guilt and sentencing phases; and, Supported both statutory and non-statutory mitigating circumstances.

Therefore, this court finds and concludes that the Applicant's right to due process and effective assistance of counsel, under the Fifth, Sixth, Eighth, and Fourteenth Amendments of the U.S. Constitution, and other applicable law, were violated, based upon the failure of the State to disclose material evidence, and alternatively, based upon the failure of trial counsel to investigate and discover such material evidence, such that the Applicant's convictions and sentences are vacated, and the Applicant is granted a new trial. Alternatively, the Applicant's death sentence is vacated and the Applicant is granted a new sentencing hearing.

Failure to Have the Second Appointed Counsel at the Post-Trial Motion

Hearing: PCR Application Claim 9 (d)

The second attorney was not present at the September 19, 1995, post-trial hearing on the Motion for a New Trial which involved Juror Price. (Trial Tr. 1803-1825; PCR Tr. 20). This is explicitly contrary to the requirement of S.C. Code § 16-3-26(B). A capital defendant is entitled

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to two attorneys at meaningful stages of the proceeding. *State v. Diddlemeyer*, 296 S.C. 235, 237-38, 371 S.E.2d 793, 794-95 (1988), *overruled on other grounds by*, *State v. Torrence*, 305 S.C. 45, 406 S.E.2d 315 (1991).

At the PCR hearing, Mr. Rollins — who was absent from the post-trial motion hearing concerning this juror — confirmed that he would have made a proffer of relevant matters so that at least the appellate court could have reviewed the significance of these items, to specifically include the news videotape of the juror at the Roach execution (App. PCR Ex. 18), and, a proffer of what the content of the juror's testimony would have been. (PCR Tr. 20-22). Mr. Rollins acknowledged that his absence from the hearing was not attributable to any strategic reason. (PCR Tr. 20-22, 26-27, 62-68).

This court has already recounted the extensive prejudice involving this juror, and hereby incorporates herein such findings and conclusions as contained in this Order.

Therefore, this court finds and concludes that the Applicant's right to due process and effective assistance of counsel, under the Fifth, Sixth, Eighth, and Fourteenth Amendments of the U.S. Constitution, and other applicable law, were violated, based upon the failure by the trial court and trial counsel to ensure that the second attorney for the Applicant was present at a post-trial hearing which involved substantive issues of fact and law. such that the Applicant's convictions and sentences are vacated, and the Applicant is granted a new trial. Alternatively, the Applicant's death sentence is vacated and the Applicant is granted a new sentencing hearing.

Sentencing Phase Issues: PCR Application Claims 9 (a), (b), (c), (g), (m), (n), (s)



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The court also grants relief on the remaining claims presented by Applicant which affected the sentencing phase of the trial. While the above findings and conclusions grant the Applicant a new trial, which inherently involves a new sentencing proceeding, S.C. law requires this court to enter findings as to each and every claim as presented by the Applicant. S.C. Code § 17-27-80; *See also, Pruitt v. State*, 310 S.C. 254, 423 S.E.2d 127 (1992); *McCray v. State*, 305 S.C. 329, 408 S.E.2d 241 (1991). Thus, these findings and conclusions follow.

Failure to Request a "Norris" Charge: PCR App. Claim 9 (n)

A "plain meaning" instruction is as follows: "Life imprisonment is to be understood in its plain and ordinary meaning." *State v. Norris*, 285 S.C. 86, 328 S.E.2d 339, 344 (1985). Our Court has previously held that the failure to request a "plain meaning" charge constitutes ineffective assistance of counsel and reversible error. *Southerland v. State*, 337 S.C. 610, 524 S.E.2d 833 (1999). Here, trial counsel failed to request such a charge on behalf of Mr. Kelly, and no such charge was given at the penalty phase. (Trial Tr. 1778-1791). Trial counsel admitted that the failure to request the charge was not a strategic decision. (PCR Tr. 158, Testimony of Thompson).

This court notes that Applicant conceded at the PCR hearing that the statutory law in effect at the time of Applicant's prior conviction did not classify such conviction as a "violent crime" so that Applicant would not have been entitled to a "life without parole" charge pursuant to *Simmons v. South Carolina*, 512 U.S. 154 (1994), so that such claim was withdrawn.

But the prejudice to the Applicant is that he did not have the benefit of a basic jury instruction given in all capital trials in South Carolina, prior to the change in the law regarding life without parole. *See* S.C. Code §§ 16-1-60 (1986, as amended), 16-3-20 (1996, as amended),



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24-24-640; *Simmons, supra.*; (*William*) *Kelly v. S.C.*, 534 U.S. 246 (2002). Thus, the *Southerland* case is directly on point.

Therefore, this court finds and concludes that the Applicant's right to effective assistance of counsel, under the Sixth, Eighth, and Fourteenth Amendments of the U.S. Constitution, and other applicable law, were violated, based upon the failure by trial counsel to request a "plain meaning" jury instruction pursuant to *Norris, supra.*, such that the Applicant's death sentence is vacated, and the Applicant is granted a new sentencing trial.

Failure to Present Thorough Mitigation Evidence: PCR App. Claim 9 (g)

The U.S. Supreme Court cases of both *Wiggins v. Smith, supra.* and (*Terry*) *Williams v. Taylor, supra.*, are especially instructive, and controlling authority, on this claim.

One of the grounds in (*Terry*) *Williams* for the Court finding ineffective assistance of counsel and granting relief was trial counsel's failure to conduct a thorough background investigation, which included the failure to call a character witness who was a CPA and so had some substantial standing in the community as a witness. In *Wiggins*, defense counsel called a psychologist as a witness at sentencing, but the Court again found a failure to conduct a thorough background investigation. *Wiggins* is illustrative because it shows that the presentation of a diagnosis and IQ score through an expert, along with some other mitigating circumstances, does not replace trial counsel's obligation to conduct a thorough background investigation of a client in a capital case and present available mitigating circumstances, unless there is a reasonable strategic reason to not conduct such investigation or not present such information. The Court in

Wiggins explained:



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[C]ounsel abandoned their investigation of petitioner's background after having acquired only rudimentary knowledge of his history from a narrow set of sources. Cf. *id.* (ABA Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases 1989), 11.8.6, p. 133 (noting that among the topics counsel should consider presenting are medical history, educational history, employment and training history, *family and social history*, prior adult and juvenile correctional experience, and religious and cultural influences) (emphasis added in original opinion); 1 ABA Standards for Criminal Justice 4.4.1, commentary, p. 4.55 (The lawyer also has a substantial and important role to perform in raising mitigating factors both to the prosecutor initially and to the court at sentencing. . . . Investigation is essential to fulfillment of these functions.).

Wiggins v. Smith, 1235 S.Ct. 2527.

In Applicant's case, like in *Williams and Wiggins*, trial counsel also failed to conduct a thorough and adequate investigation into mitigating circumstances. At trial for the penalty phase in mitigation, defense counsel presented four witnesses: Dr. Lillian Tidler, a psychiatrist from the "state hospital"; Pam Jobe, a social worker retained by the defense; Louis Jarrell, a custodian of the school records; and Nathaniel McSwain, a deputy warden from the department of corrections. At PCR, regarding penalty phase issues, Applicant presented numerous character and community witnesses: Jim Everhart, Wayne Thomas, Alvin Landrum, Louise Hardy, and Taft Miller. Concerning an inadequate background investigation, Applicant also presented the expert testimony of: Dr. Pamela Laughon, a psychologist, and again called Pam Jobe.

Character witnesses were available at the time of Applicant's trial in 1995, and all lived or worked in Spartanburg County, or nearby but less than 20 miles. (PCR Tr. 310-311). These witnesses also testified at the PCR hearing as to the Applicant's good character traits. Each witness, in his or her own right, clearly is equal in community stature and credibility as the one CPA in *Williams*. This court recounts each witness here to show the important nature of their character testimony in favor of the Applicant, as well as each witness' credibility and standing.

At the PCR hearing, trial counsel testified that they called as a witness at trial the Defendant's probation officer as a favorable witness. (PCR Tr. 108-09, Testimony of Rollins). But the trial transcript reflects that no such witness ever testified. (Trial Tr. 1600-1701). It appears that trial counsel was referring to a person who was never actually the *Applicant's* probation officer, but who was instead a law-enforcement trained parole examiner and a close boyhood friend of Mr. Kelly's, and has maintained frequent contact with the Applicant throughout their adult lives. (PCR Tr. 217 – 218, Testimony of Thompson; 303, Testimony of Wayne Thomas). At the PCR hearing, this witness, Mr. Wayne Thomas, did testify. (PCR Tr. 292-306). Mr. Thomas spoke of Mr. Kelly's positive character traits, Kelly's lack of violence and no fighting throughout his life, Kelly's friendly personality, and his easy ability to make friends. (PCR Tr. 292-302). Mr. Thomas further stated that trial counsel never contacted him in 1995, even though he told the social worker retained by the defense that he would be willing to appear as a witness for Mr. Kelly. (PCR Tr. 301-02). Since Mr. Thomas is a trained law enforcement parole examiner, and thus has a reputable standing in the community, like the CPA in *Williams*, the failure of trial counsel to call Mr. Thomas as a witness at Applicant's trial – and even confusing him with Applicant's probation officer – indicates a failure by trial counsel to present an available, favorable, and credible character witness on behalf of the Applicant, and this amounts to ineffective assistance of counsel.

Mr. Jim Everhart has lived in the Spartanburg community for over 75 years. He is known fondly, and widely, as "Coach Everhart" for his extensive years of volunteer service with youth baseball, basketball, and other sports. In fact, Coach Everhart knew Mr. Kelly as a youth on one of the local teams, and spoke highly of Mr. Kelly, including that young Mr. Kelly was never involved in any fights. As a much-beloved, neighborhood coach, Mr. "Coach" Everhart has the

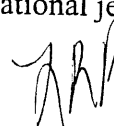


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respect and admiration of much of the Spartanburg community, and thus carries a strong amount of credibility with him as a witness. He was available to testify at Applicant's 1995 trial, but was never contacted. (PCR Tr. 288-292).

Mr. Alvin Landrum is Mr. Kelly's nephew, although they are close in age and spent much of their time as children together so that they are more like brothers. Mr. Landrum spoke of Mr. Kelly's kindness and consideration for others, including the local church, and also how Kelly cared for his own invalid father. Mr. Landrum also testified as to Mr. Kelly's peaceful nature and how he would often walk away from any fights. As for credibility and respect of the community, Mr. Landrum served in the Army at the rank of E-7, a Sergeant first class, and was honorably discharged. Mr. Landrum was easily available as a witness since he lived in nearby Rutherfordton, N.C., which is only about 20 miles from the Spartanburg Courthouse. (PCR Tr. 306-311). This court notes that the "out-of-state-witness" act authorizes attorneys to seek a subpoena to compel any out of state witness, such as those in N.C., to attend and testify. S.C. Code § 19-9-10 *et. seq.*

Ms. Louise Hardy is Mr. Kelly's niece who lives in Spartanburg, and appears in court as one of the matriarchal pillars of the family. She testified how Mr. Kelly once protected her from being sexually abused from a member in the household, and in fact made the potential abuser permanently leave the household. She also spoke of Mr. Kelly's volunteer activities with the church, and how Mr. Kelly cared for his parents and other family members. Ms. Hardy also confirmed Mr. Landrum's testimony about Mr. Kelly's peaceful nature and how he would often walk away from any fights; and furthermore, was able to characterize the family relative who got Mr. Kelly in trouble with his prior conviction for armed robbery. Additionally, Ms. Hardy corroborated Imogene Kelly's often violent and irrational jealous nature towards Mr. Kelly.



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(PCR Tr. 315-331).

Mr. Taft Miller is a boyhood friend of Mr. Kelly's. He verified that Mr. Kelly was of a peaceful nature, including his conduct towards women. Like Mr. Landrum, Mr. Miller served this country, having spent 21 years in the Army and as a Staff Sergeant in the Nation Guard. As for further ties and respectability within the Spartanburg community, Mr. Miller works in Spartanburg County (though he lives just across the state line in N.C.), and one of his children is a S.C. Highway Patrol Officer while another child serves as a Probation Officer in Spartanburg County. (PCR Tr. 436-441).

Information about all of the above mitigation witnesses, including addresses, was readily available to trial counsel, prior to the 1995 trial, from the defendant's own S.C. Department of Corrections records. (App. PCR Ex. 14). The critical nature of such positive character testimony is that it is contrary to the picture that the State sought to paint of Mr. Kelly to the jury, so that the absence of such positive character testimony is prejudicial to Applicant's case at trial.

While trial counsel testified at PCR that they had some difficulty with interviewing Mr. Kelly's family members, (PCR Tr. 217), more persuasive is the testimony of Mr. Thomas, Mr. Everhart, Mr. Landrum, Ms. Hardy, and Mr. Miller, all of whom stated they were available to testify, lived in Spartanburg County or nearby, and would have testified if asked. Plus, in 1995 prior to trial, social worker Pamela Jobe actually had contacted and interviewed Mr. Everhart and Ms. Hardy and made such information available to trial counsel. (PCR Tr. 396, 401-402). But trial counsel did not follow-up in any manner whatsoever. It is the responsibility of trial counsel to interview and then call such witnesses to testify, and not the witness' job to show up in the courtroom, nor the retained social worker's role to tell trial counsel who to call as a witness. *Williams, supra.*

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Trial counsel cannot rely on "strategic" reasons for not presenting possible mitigation evidence if counsel never investigated the information; unless, there is a legitimate reason counsel decided that it was not necessary to investigate the information. *Wiggins v. Smith, supra*. "A decision not to investigate thus must be directly assessed for reasonableness in all the circumstances." *Id.* Here, trial counsel gave the reason that the witnesses were not cooperative. (PCR Tr. 217-219, Testimony of Thompson). However, trial counsel never interviewed or attempted to subpoena the character witnesses who testified at PCR, so that it cannot be a reasoned decision that the witnesses were allegedly uncooperative. *Wiggins, supra*. Thus, as in *Wiggins*, "counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." *Id.* In Applicant's case, trial counsel failed to conduct a reasonable investigation to use these witnesses, and any decision to not conduct a further investigation was not based on any informed basis and so was unreasonable. The character witnesses were either all within Spartanburg County or less than 20 miles away across the state line in Rutherfordton, N.C., all the witnesses were willing to testify, and trial counsel even had two of their names.

Two expert witnesses also testified at PCR. Dr. Pamela Laughon is a psychologist and mitigation specialist. Ms. Pamela Jobe is a social worker who did testify at Applicant's trial. In *Williams*, the Court found a failure by defense counsel to investigate an abusive background of the defendant and other general background information. In Mr. Kelly's case, trial counsel failed to properly investigate factors which were highly relevant to sentencing as to his background and mitigating circumstances, and failed to investigate and provide available and relevant records to their own expert, namely the psychiatric and police records of Imogene Kelly, and criminal conviction records of Keith Epps. (App. PCR Ex. 1, 2, 3, 4, 5, 6, 7, and 8).

Pam Jobe testified that she never saw, prior to trial and her testimony in 1995, the numerous records submitted by PCR counsel regarding Mrs. Kelly's psychiatric and police records, and Mr. Epps' criminal convictions. (PCR Tr. 375-377, Testimony of Jobe). Mrs. Kelly's records reveal acts and threats of violence and aggression against others, including using a gun to shoot at her own sister, thoughts of killing her own sister, convictions for assault and battery, picking up a 7-month old baby and threatening to throw the infant out the window (PCR Tr. 391-394, Testimony of Jobe; App. PCR Ex. No. 1 and 2). Mr. Epps' records show convictions for criminal sexual conduct with minors convictions and related police reports. Trial counsel acknowledged that they did not obtain all of these records prior to trial for their expert. (PCR Tr. 69-77, 163-164, Testimony of Rollins, Thompson). The failure to obtain critical records, especially records which can corroborate the defendant's testimony, is reversible error. Our Court has granted PCR relief where trial counsel failed to obtain critical records about the murder victim, leaving applicant's testimony uncorroborated. *Dove v. State*, 337 S.C. 298, 523 S.E.2d 459 (1999).

Using the additional records, Ms. Jobe was able to substantially provide amended testimony and a revised opinion favorable to the Applicant and supporting substantial mitigating circumstances. (PCR Tr. 377-394, Testimony of Jobe). Dr. Pam Laughon, a psychologist, corroborated Ms. Jobe's amended opinion based upon the supplemental records of Imogene Kelly and Keith Epps. Dr. Laughon was able to interpret previous psychological evaluations and hospital records of Imogene Kelly. The evaluations actually indicated that Imogene Kelly had an "explosive personality," including "homicidal thinking," "aggressive and violent behaviors," and "paranoid delusional" thinking. (PCR Tr. 470-476, Testimony of Dr. Laughon). It further indicated that Mrs. Kelly was attempting to malingering some symptoms. (Id. at 469). The defense

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expert at trial did not have the benefit of this evidence. (PCR Tr. 472, Testimony of Jobe). It is also apparent that the other two experts at trial did not have these records either, both from their own testimony and trial counsel's acknowledgement at PCR that the defense did not investigate or utilize these records. (Trial Tr. 1442, Testimony of Dr. Enwright; 1655-1656, 1671, 1674, Testimony of Dr. Tidler; PCR Tr. 69-77, 163-164, Testimony of Rollins, Thompson). This type of information is certainly relevant at sentencing in mitigation since the Applicant was married to the victim and explains the severely dysfunctional and chaotic environment of the household at the time. (PCR Tr. 477-782, Testimony of Dr. Laughon). It would even be admissible at guilt-innocence regarding the self-defense and manslaughter issues. *Dove v. State, supra*.

With respect to counsel's failure to adequately investigate, the Supreme Court has declared that "counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." *Strickland*, 466 U.S. at 691. While there is no requirement that defense counsel have "a scorch-the-earth strategy," there is a requirement that "an attorney must look into readily available sources of evidence." *Hall v. Washington*, 106 F.3d 742, 749-50 (7th Cir. 1997). "While trial counsel is afforded tremendous deference over matters of trial strategy, the strategy that is selected must be supported by adequate investigation." *Turpin v. Lipham*, 510 S.E.2d 32, 40 (Ga. 1998); *see also State v. Francis*, 809 So. 2d 1132, 1140 (La. Ct. App. 2002) (Strategy could not be imputed to tactics formed by inadequate investigation).

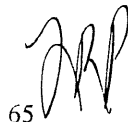
In Applicant's case, trial counsel did not need to conduct anything even close to a "scorch the earth" strategy in order to investigate Applicant's background thoroughly and properly. A reasonable investigation into Applicant's background would have uncovered both material

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character witnesses in the community as well as easily accessible records and information which would have properly prepared the defense's own experts. All of this information was material to Applicant's mitigation case and was readily available if trial counsel had conducted a reasonable investigation into Applicant's background.

The prejudice to the Applicant is abundant. Three of the witnesses – Mr. Everhart, Mr. Thomas, and Mr. Miller – were people of substantial standing in the community who could have testified as to the character of the Applicant. (*Terry*) *Williams v. Taylor, supra*. All of the character witnesses testified very favorably to Mr. Kelly's redeeming character traits and good deeds he had performed in the past, along with other significant mitigating circumstances such as protecting a female family member from sexual abuse. Applicant is prejudiced by the failure of trial counsel to call such witnesses because their credible testimony directly rebuts critical allegations of the State at trial. Failure to call available character witnesses in the sentencing phase, absent evidence that this was "the product of a reasoned choice," is ineffective assistance of counsel. *See Correll v. Stewart*, 137 F.3d 1404, 1412-13 (9th Cir. 1998); *Williams, supra*. Since trial counsel admitted that they did not interview any of these witnesses, then the failure to call such witnesses cannot be a reasoned choice. *Wiggins, supra*. Moreover, the additional psychiatric and police records of Imogene Kelly, as well as the criminal sexual conduct with minors record of Keith Epps, are significant documented evidence of substantial mitigating circumstances. In these circumstances, there is at least a reasonable probability that had counsel brought before the jury the witnesses who were available and willing to testify to Mr. Kelly's good character traits, as well as the amended expert testimony regarding the additional records, then a juror would have deemed that testimony sufficiently compelling to counteract the single



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statutory aggravating factor on the basis of which they imposed the death sentence. Thus, there is a reasonable doubt over the prospect that the jury still would have imposed a death sentence.

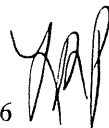
Therefore, this court finds and concludes that the Applicant's right to effective assistance of counsel, under the Sixth, Eighth, and Fourteenth Amendments of the U.S. Constitution, and other applicable law, were violated, based upon the failure by trial counsel to conduct a reasonable mitigation investigation which would have led to the presentation of substantial evidence in mitigation of sentence, such that the Applicant's death sentence is vacated, and the Applicant is granted a new sentencing trial.

Failure to Preserve Error as to Use of Bibles in the Jury Room: PCR App.

Claims 9 (a), (b), (c)

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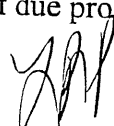
At Applicant's sentencing phase at the close of the evidence, but prior to closing arguments by counsel and instructions from the trial court, jurors were using a religious pamphlet favoring capital punishment, and the Bible. Trial counsel made a motion for mistrial, which was denied. (Trial Tr. 1705-1752). At the motion for mistrial, defense counsel failed to specifically object on the grounds that the discussion by the jurors constituted premature deliberations. Trial counsel also failed to state as a specific ground that use of a Bible violated the prohibition against extraneous evidence or information other than that introduced at trial. Nor did trial counsel raise a due process objection. While trial counsel made a motion for a mistrial, it was not on any of these grounds. Thus, these issues were found to be "procedurally defaulted" by the state Supreme Court in *State v. Kelly*, 502 S.E.2d at 104, Fn. 4. This means that contrary



independent constitutional obligation to make inquiry when facts emerge suggesting the Sixth Amendment's requirement of non-conflicted counsel is in peril. *See, e.g. Holloway v. Arkansas*, 435 U.S. 475 (1978); *Wood v. Georgia*, 450 U.S. 261 (1981); *United States v. Gilliam*, 975 F.2d 1050 (4th Cir. 1992).

In Applicant's case, the trial court had a similar obligation to ensure Applicant's Sixth Amendment right to a fair and impartial proceeding was not abrogated by premature jury deliberations. There was ample evidence presented to the trial court, in addition to Juror Oxley's possession of the pamphlet, that premature deliberations were taking place. For example, Juror Sellars actually testified that Biblical verse was being cited and exchanged between jurors. Despite this testimony, in the *midst* of the trial court's inquiry into Juror Oxley's misconduct, the trial court limited the inquiry inquiring of Juror Sellars (who had already informed the court group Biblical discussions were taking place) whether the jurors with Bibles were consulting their Bibles on an "individual" basis. The same process was repeated when, after Juror Price and Juror Pace denied they had been exposed to "any material," subsequently admitted they were reading Bibles. Once again, rather than requesting whether they had cited passages in DEUTERONOMY, as Juror Sellars testified, the trial court glossed over this problem by characterizing it as Biblical reading on an "individual" basis, as if an "individual" reading of extraneous material, or premature deliberations on an "individual" level, as opposed to the jury doing so as a group, was acceptable or that "individual" considerations by the jurors somehow safeguarded Applicant's right to a fair trial. It is noted that the Court in *Kelly* did not address whatsoever this issue.

Although the trial court at first expressed its disbelief that Juror Oxley could have violated its twice daily orders, and its intent to enforce those orders through contempt, the trial judge then changed his mind. Under a minimum of due process, the trial court should have



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pursued a line of examination *ab initio* as to, "Have you heard Biblical citation or verse being exchanged in the jury room this morning ?", or trial counsel should have moved for it. This is particularly true where the jury had ignored repeated instructions by the trial court on how and when deliberations must take place. In this fashion, the trial court abrogated its independent constitutional duty to make an inquiry capable of discerning whether Applicant's right to a fair and impartial jury had been undermined. Thus, Applicant's freestanding due process claim that his Sixth Amendment right to a fair and impartial jury had been violated, this claim is one of manifest justice which goes to the very integrity of such proceedings. Moreover, the State cannot argue a procedural bar when the Solicitor selected the specific trial judge *ex parte*, or the Deputy Solicitor's failure to advise the defense, the trial court, or the South Carolina Supreme Court that Juror Price had informed him of third party contact and other matters amounting to misconduct, and as set forth in this Order and now incorporated herein. Accordingly, this due process claim is not subject to a procedural bar and is properly before this Court on the merits.

Next, this Court finds that trial counsel's failure to properly object constitutes ineffective assistance of counsel, especially where the *Kelly* Court was unable to appropriately address the issue due to a failure to make the proper objection at trial:

Appellant did not argue to the trial judge that the jurors were engaging in premature deliberations. Therefore, this issue is not preserved for appellate review. [citation omitted]. Further, in his brief, appellant relies on the Bible reading by certain jurors as a ground for a mistrial. Although this issue was raised in the new trial motion, it was not raised as a ground for a mistrial. Thus, appellant cannot properly raise this type of trial error for the first time in his new trial motion. [citation omitted].

State v. Kelly, 502 S.E.2d at 104, Fn. 4.

While the state high court refused to reach the merits, due to the procedural default, it did acknowledge this claim was capable of generating relief, although "possession by jurors of



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personal Bibles consulted for personal guidance in the jury room prior to deliberations is not *per se* jury misconduct.” *Id.*, citing *Jones v. Kemp*, 706 F. Supp 1534 (D.C. N.D. Ga. 1989).

However, based upon all of the facts and issues as presented to this Court, *Jones* demonstrates a new trial is now required. *Jones* in fact held that: “In sum, it was constitutional error for the court to permit the Christian Bible to go into the jury room at the request of the jurors apparently for consultation in connection with their deliberations.” *Id.* at 1560. In Applicant’s case, while the trial court did not permit Bibles in the jury room upon jurors’ request, as in *Jones*, the jurors in Applicants case – based upon their responses in the record to the trial court (Trial Tr. 1707-1709, 1733, 1736, 1744) – had in fact engaged in using the Bibles for “consultation in connection with their deliberations.” *Id.* This resulted in premature deliberations, use of extraneous evidence, due process violations, and prejudice to the Applicant, no different from that found in *Jones, supra.* Of course, if a timely objection under South Carolina law would have placed this issue before the state high court on the merits and, on the merits, that court indicates relief could be granted, *State v. Kelly*, 502 S.E.2d at 104, Fn. 4, then *Strickland’s* deficient performance and prejudice prongs are satisfied. Trial counsel candidly admitted that the failure to object or move for a mistrial upon the grounds and issues now set before this Court was not a tactical decision (PCR Tr. 56, Testimony of Rollins; 160, Testimony of Thompson).

Apart from *Jones, supra.*, the law disfavoring the use of extraneous materials as a violation of the accused’s right to a fair and impartial trial during jury deliberations is extensive, including dictionaries, *Palestroni v. Jacobs*, 10 N.J. Super. 266, 77 A.2d 183 (1950); *Alvarez v. People*, 653 P.2d 1127 (Colo. 1982); *Smith v. State*, 95 So.2d 525 (Fla. 1957), and Reader’s Digest, *Moore v. State*, 172 Ga. App. 844, 324 S.E. 2d 760 (1984), and Bibles. *United States v. Giry*, 818 F.2d 120 (1st Cir. 1987) (Reference to Bible is improper appeal to jurors’ private

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religious beliefs); *Evans v. Thigpen*, 809 F.2d 239 (5th Cir. 1987) (Biblical evidence irrelevant at sentencing phase); *Tennessee v. Harrington*, 627 S.W. 2d 345 (Tenn 1981) (Foreman's reading of Bible passages to jury during deliberations at capital penalty phase required resentencing). See also, *Commonwealth v. Chambers*, 528 Pa. 558, 599 A.2d 630, 644 (1991) (Biblical argument constitutes *per se* reversible error).

As the Court in *Jones* explained, when there is a loss of judicial supervision resulting in jurors use of extraneous materials which have the "potentiality for harmful influence", then the Sixth Amendment's guarantee of a fair trial is violated. *Jones* at 1560, quoting *Palestroni supra.*, 117 A.2d at 186, Here, the record before this Court establishes the following: (1) The presence of Bibles in the jury room; (2) The sharing of holy scripture among jurors; (3) Attempts by two jurors to cover-up the presence of Bibles; (4) Group exchanges among the jurors with respect to specific Biblical passages relating to capital punishment, including Deuteronomy; (5) No action to remove the Bibles; and, (6) The presence of other extraneous religious materials shared with Applicant's jury.

It must be pointed out that this Court cannot consider the effect of jurors using their Bibles individually. The *Strickland* prejudice analysis requires this Court to access the collective effect of trial counsel's deficient performance, which failed to preserve a fair and impartial jury. When the Solicitor's undisclosed misconduct as to Juror Price's contact with the SLED Agent is added to the analysis, as previously set forth in this Order, there can be no confidence in the outcome of these proceedings.

Furthermore, counsel was ineffective for failing to object to premature deliberations. As with trial counsel's failure to make an appropriate objection to the presence of Bibles extraneous evidence, counsel likewise failed to make an appropriate objection. This

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unreasonable performance led to the identical procedural bar being imposed on direct appeal. *Kelly, supra.*, 331 S.C. at 141 n. 4, 502 S.E. 2d 104 n.4. And, counsel acknowledged this failure was not the product of a tactical decision, but was attributable to mere oversight. (PCR Tr. 54, Testimony of Rollins; 159, Testimony of Thompson).

It is clear the South Carolina Constitution and the Sixth Amendment prohibit any pre-determination of issues by the jury until all of the evidence has been received, arguments are made by counsel, and the trial court instructs as to the law. *See State v. Pierce*, 289 S.C. 430, 434, 346 S.E. 2d 707, 709-10 (1986) *vacated on other grounds sub nom State v. Torrence*, 305 S.C. 45, 406 S.E. 315 (1991) (Conflicting admonitions with respect to whether jury could discuss case prior to deliberations constituted reversible error); *State v. McGuire*, 272 S.C. 547, 253 S.E. 2d 103, 105 (1979) (“[A] jury should not begin discussing a case, nor deciding the issues, until all of the evidence, the argument of counsel, and the charge of the law is completed.” citing *State v. Drake*, 31 N.C. App. 187, 229 S.E. 2d 51 (1976)); *State v. Aldret*, 333 S.C. 307, 311 509 S.E. 2d 811, 813 (1999) (Premature deliberations involves matters of the trial’s fundamental fairness); *United States v. Resko*, 3 F.3d 684, (3rd Cir. 1993) (Premature deliberations violate the Sixth Amendment guarantee to fair trial).

Here, had counsel made an appropriate objection, the trial court would have been required to undertake a specific inquiry calculated to uncover *when* the use and discussion had arisen as to the pamphlet or the Bibles. A serious question regarding premature deliberations is found in Juror Oxley’s reference to “God’s View on Capital Punishment,” *prior to sequestration*, when the question of whether a capital sentencing proceeding would be reached had yet to be determined. *See Kelly supra.*, 331 S.C. at 154, 502 S.E. 2d 99, 111 (dissenting opinion of

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FINNEY, C.J.) ("First Juror O[xley] state that she obtained the pamphlet prior to sequestration, which raises the stark implication that guilt was already presumed and that appellant's death sentence was a forgone conclusion of the jury being tainted by the influence of Juror O[xley] and through its exposure to the pamphlet."). In *dicta*, the majority noted, there was "no evidence suggesting any juror except Juror O[xley] had access to the pamphlet prior to the morning of the closing arguments in the sentencing phase." *Id.*, 502 S.E.2d at 105. Herein lies both the problem and the prejudice sustained by the Applicant. As counsel failed to make a timely objection to premature deliberations, there never was any inquiry into whether other evidence of premature deliberations existed.

[P]rior to the jury's verdict, counsel for Aldret, in talking to Juror Laskey, discovered the jury's allegedly premature deliberations. Although Aldret's brief indicates this information was made known to the trial judge and the state prior to the verdict, there is no indication on the record that the trial judge was made aware of this fact, or that the trial court was asked, prior to the verdict, to question the jurors regarding any premature deliberations. *Had such a request been timely made, the court could have voir dined the jury prior to its verdict to determine if, in fact there had been premature deliberations* and whether Aldret had been prejudiced thereby. (emphasis supplied).

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Aldret, 509 S.E.2d at 312, citing *Bertoli supra.*, 40 F.3d at 1384, n. 5.

Counsel's failure to make a timely objection in the face of evidence Applicant's jury was engaged in premature deliberations was unreasonable attorney performance which prejudiced the Applicant by precluding any meaningful inquiry which would have revealed the true extent of misconduct requiring a mistrial to be declared.

Therefore, this court finds and concludes that the Applicant's right to due process of law and the effective assistance of counsel, under the Sixth, Eighth, and Fourteenth Amendments of the U.S. Constitution, and other applicable law, were violated, based upon the failure by trial



counsel to properly object to the introduction and use by jurors of Bibles, and/or a pamphlet on capital punishment, and the trial court's failure to act on its own, *ab initio*, to ensure a fair and impartial trial, such that the Applicant's death sentence is vacated, and the Applicant is granted a new sentencing trial.

Failure to Object to Trial Court's Use of 'Recommendation' and Failure to Object to 'Parole': PCR App. Claims 9 (m), (s)

The word "recommendation" was used to the jury over 40 (forty) times at the critical stage of sentencing instructions. (Trial Tr. 1780, 1782 – 91). Although the trial judge told the jury that he would follow the jury's recommendation, (Trial Tr. 1790), this instruction was insufficient to overcome the repeated, improper use of the term. *Caldwell v. Mississippi*, 472 U.S. 320 (1985) (It is constitutionally impermissible for sentencer to be led to believe that responsibility for decision rests elsewhere); *State v. Davis*, 411 S.E.2d 220, 306 S.C. 246 (S.C. 1991) (Trial court's repeated use of the term "recommend" to describe effect of jury's decision was error); *State v. Plemmons*, 370 S.E.2d 871, 296 S.C. 76 (S.C. 1988).

Caldwell places the burden on the State to show that the erroneous remarks had no adverse effect on the sentencing decision pursuant to the Eighth Amendment reliability standard. Thus, the effect of impermissible remarks under *Caldwell* is evaluated not under the "reasonable probability"-of-prejudice standard of *Strickland*, but under the Eighth Amendment's even more demanding standard of reliability. *Caldwell, supra.*; *Driscoll v. Delo*, 71 F.3d 701, 712 (8th Cir. 1995). In this case, the Applicant has shown that statements to the jury tended to diminish the jurors' collective sense of their responsibility and authority in the capital sentencing hearing, so that the State bears the burden of showing that the statements "had no effect on the sentencing

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decision.” *Caldwell*, 477 U.S. at 341. While the State is not responsible for defense attorney errors, the State is obligated to object to judicial remarks that mislead jurors. *Strickland*, 466 U.S. at 693.

Alternatively, the trial attorneys’ failure to object to erroneous instructions by the trial court was objectively unreasonable, and constituted ineffective assistance of counsel. Trial counsels’ testimony in the PCR hearing made it clear that they assumed that because at some point the technically correct significance of the jury’s sentencing “recommendation” under South Carolina law was recited to the jury, then that settled the issue. (PCR Tr. 51, 147-48, 214, Testimony of Rollins, Thompson). Their failure to object to the prolific use of the term “recommendation” was objectively unreasonable, and simply deficient protection of their client’s constitutional right to an impartial jury. Even if this Court applies the *Strickland* standard, trial counsels’ error prejudiced Applicant, in failing to object to the overuse of the word “recommendation” at the sentencing phase instructions. In Applicant’s case — where there was decidedly limited statutory aggravation, where the jury was subject to several extraneous influences, and where the jury had before it only a limited amount of material evidence and impartial eyewitness testimony — any acts or omissions by counsel (or by the court or prosecution) that tended to diminish the jurors’ sense of responsibility and authority for their sentencing verdict’s role in Mr. Kelly’s ultimate fate can only have been highly prejudicial to the Applicant.

Additionally, trial counsel improperly injected “parole” into the proceedings both in the direct examination of Mr. Kelly and as contained in the state hospital records regarding that the Applicant had been paroled on a previous armed robbery charge. (Trial Tr. 1392; PCR Tr. 44-45, 48-51, Testimony of Rollins). The Solicitor argued to the jury at sentencing to consider that

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Applicant was already "out of prison" and "was on parole" when this incident occurred. (Trial Tr. 1757).

Thus, the jury could easily infer that the Applicant would likely be paroled if given a life sentence. At the time of Applicant's trial, consideration of "parole" by jurors at sentencing was inappropriate. *State v. Torrence*, 305 S.C. 45, 406 S.E.2d 315 (1991).

Failure to object to parole considerations at the trial (guilt-innocence) phase constitutes ineffective assistance of counsel. *Simmons v. State*, 331 S.C. 333, 503 S.E.2d 164 (1998) (Counsel ineffective in burglary case for failing to object to improper argument by solicitor concerning the meaning of a life sentence. Under state law, jury in burglary case could find guilty, which meant at the time a mandatory life sentence, or guilty with a recommendation of mercy, which allowed judge to give a lesser sentence. The prosecutor's argument that a life sentence "is not the entire natural life of a person" injected the issue of parole into the proceedings. Likewise, the prosecutor's argument equated a recommendation of mercy with a much lighter sentence or an acquittal. The trial court instructed the jury that the court would sentence the defendant but gave no instruction to cure the errors.).

Indeed, in Applicant's case, the jury received *no* instruction from the trial court as to the effect of a life sentence, pursuant to the *Norris* "plain meaning" rule, nor any limiting instruction regarding the Applicant's earlier parole on an armed robbery conviction. The prejudice to the Applicant is that the jury was left to speculate as to parole without any proper limitation or guidance from the trial court.

Therefore, this court finds and concludes that the Applicant's right to due process and the effective assistance of counsel, under the Fifth, Sixth, Eighth, and Fourteenth Amendments of the U.S. Constitution, and other applicable law, were violated, based upon the trial court's

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repeated use of the word "recommendation" at sentencing, and by the failure of trial counsel to object to such term, and also by trial counsel's failure to object to the inferences of "parole" at sentencing, such that the Applicant's death sentence is vacated, and the Applicant is granted a new sentencing trial.

IT IS THEREFORE ORDERED, based upon the foregoing findings of fact and conclusions of law, that the Applicant is granted a new trial. Alternatively, the Applicant is granted a new sentencing trial.

AND IT IS SO ORDERED.

Dated: October 6, 2003
Spaulding, S.C.

L. R. Patterson
Judge Larry R. Patterson
Designated PCR-Trial Judge
Court of Common Pleas
Seventh Judicial Circuit

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The Supreme Court of South Carolina

In re Anthony Mabry, Appellant.

ORDER

This is an appeal from an order holding appellant in contempt of court. After oral argument was concluded in this appeal, the parties indicated a desire to settle this matter and a separate hearing was held regarding the proposed settlement.

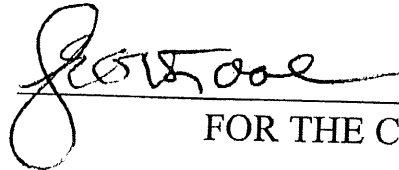
At this hearing, the parties placed the terms of their settlement on the record and expressed a strong desire to resolve this matter in an amicable manner. The parties both expressed their regret that this matter had occurred, and apologies were exchanged and presented to the Court.

I find that the settlement should be accepted. Accordingly, it is ordered that:

- (1) The order of contempt filed September 29, 2000, is hereby vacated.
- (2) Any records relating to this contempt maintained by the

Sheriff of Spartanburg County, any other law enforcement agency or any confinement facility shall be expunged. This includes any fingerprint cards or mug shots which may have been taken as a result of the finding of contempt.

(3) This appeal is dismissed. The remittitur shall be sent as provided by Rule 221, SCACR.



FOR THE COURT C.J.

Columbia, South Carolina

June 14, 2002

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Supreme Court of South Carolina.
The STATE, Respondent,
v.
Brad Edward WILLIAMS, Appellant.
No. 24609.

Heard Jan. 8, 1997.
Decided April 28, 1997.
Rehearing Denied May 27, 1997.

Defendant was convicted in the Circuit Court, Spartanburg County, Gary E. Clary, J., of murder. Appeal was taken. The Supreme Court, Finney, C.J., held that: (1) evidence supported finding of improper influence by state concerning potential defense witness' refusal to be interviewed by defense counsel; (2) improper intimidation of potential defense witness was not harmless error; (3) proper remedy for improper intimidation of potential defense witness was reversal of conviction and remand for new trial; and (4) double jeopardy was not implicated by murder charges arising from different unlawful acts than prior prosecution for leaving scene of accident concerning collision of van with several cars after van left scene of shooting.

Reversed and remanded.

West Headnotes

[1] Criminal Law 110 ⚡ 1158.36

110 Criminal Law

110XXIV Review

110XXIV(O) Questions of Fact and Findings

110k1158.36 k. Post-Conviction Relief.

Most Cited Cases

(Formerly 110k1158(1))

Findings of trial court are binding on Supreme Court unless findings are unsupported by evidence, are clearly wrong, or are controlled by error of law.

[2] Criminal Law 110 ⚡ 666.5

110 Criminal Law

110XX Trial

110XX(C) Reception of Evidence

110k666.5 k. Consultation Between Accused or Counsel and Witnesses. Most Cited Cases
Evidence supported finding of improper influence by state concerning potential defense witness' refusal to be interviewed by defense counsel; defense counsel testified that attorney for potential witness indicated that solicitor's office would not allow interview, and attorney for potential witness testified that assistant solicitor informed him that it would not be in witness' best interests to talk to defense counsel, from which attorney perceived that interview could jeopardize witness' own plea bargain.

[3] Constitutional Law 92 ⚡ 4689

92 Constitutional Law

92XXVII Due Process

92XXVII(H) Criminal Law

92XXVII(H)5 Evidence and Witnesses

92k4689 k. Interference with Witnesses.

Most Cited Cases

(Formerly 92k268(10))

Improper intimidation of witness may violate defendant's due process right to present his or her defense witnesses freely if intimidation amounts to substantial government interference with defense witness' free and unhampered choice to testify. U.S.C.A. Const. Amend. 5.

[4] Criminal Law 110 ⚡ 1168(2)

110 Criminal Law

110XXIV Review

110XXIV(Q) Harmless and Reversible Error

110k1168 Rulings as to Evidence in General

110k1168(2) k. Reception of Evidence.

Most Cited Cases

Criminal Law 110 ⚡ 1171.1(1)

110 Criminal Law

110XXIV Review

110XXIV(Q) Harmless and Reversible Error

110k1171 Arguments and Conduct of

Counsel

110k1171.1 In General

110k1171.1(1) k. Conduct of Counsel
in General. Most Cited Cases
Governmental intimidation of witness can be deemed harmless error where witness nonetheless testifies, but fact that witness does not testify does not automatically result in reversal, and, in order to obtain relief, defendant instead must demonstrate both substantial interference and prejudice.

[5] Criminal Law 110 ⚡ 1168(2)

110 Criminal Law

110XXIV Review

110XXIV(Q) Harmless and Reversible Error

110k1168 Rulings as to Evidence in General

110k1168(2) k. Reception of Evidence.

Most Cited Cases

State's improper intimidation of potential defense witness resulting in witness' refusal to be interviewed by defense counsel was not harmless error; testimony of single lay witness implicating defendant was unsupported by any forensic evidence and thus did not constitute overwhelming evidence, and witness who gave testimony similar to anticipated testimony of intimidated witness was impeached at trial.

[6] Criminal Law 110 ⚡ 666.5

110 Criminal Law

110XX Trial

110XX(C) Reception of Evidence

110k666.5 k. Consultation Between Accused or Counsel and Witnesses. Most Cited Cases
Remedy to be afforded defendant for state's improper intimidation of potential defense witness is determined by facts and circumstances of each case, depending on prejudice suffered by defendant.

[7] Criminal Law 110 ⚡ 1168(2)

110 Criminal Law

110XXIV Review

110XXIV(Q) Harmless and Reversible Error

110k1168 Rulings as to Evidence in General

110k1168(2) k. Reception of Evidence.

Most Cited Cases

Criminal Law 110 ⚡ 1189

110 Criminal Law

110XXIV Review

110XXIV(U) Determination and Disposition of Cause

110k1185 Reversal

110k1189 k. Ordering New Trial. Most Cited Cases

Proper remedy for state's intimidation of potential defense witness was reversal of defendant's conviction and remand for new trial; defendant had learned what potential witness' testimony would be, and, even if witness does not testify at retrial, knowledge of such testimony could unquestionably aid defendant in formulating his trial strategy.

[8] Double Jeopardy 135H ⚡ 187

135H Double Jeopardy

135HV Offenses, Elements, and Issues Foreclosed

135HV(C) Identity of Parties

135Hk183 Offenses Against Different Sovereignities or Governmental Units

135Hk187 k. Offenses Against Municipality and Other Governments. Most Cited Cases
Defendant's guilty plea in municipal court to leaving the scene of accident that occurred when defendant's van crashed into several cars while defendant was fleeing from shooting did not create double jeopardy bar to prosecution of defendant on murder charge that arose from shot fired from defendant's van. U.S.C.A. Const. Amend. 5.

****100 *132** Chief Attorney Daniel T. Stacey, of South Carolina Office of Appellate Defense, Columbia; and Ray E. Thompson, Jr., Spartanburg, for appellant.

Attorney General Charles Molony Condon, Assistant Deputy Attorney General Donald J. Zelenka, Assistant Attorney General Robert F. Daley, Jr., Columbia; and Solicitor Holman C. Gossett, Spartanburg, for respondent.

****101 *133 FINNEY**, Chief Justice:

Appellant was convicted of murder and received a life sentence. He raises several issues on appeal, including a claim that the State unconstitutionally intimidated a potential defense witness, causing the witness to refuse to be interviewed by appellant's counsel. We find appellant has established prejudicial error on this ground, and reverse and remand.

The State's theory was that appellant was the driver of a van from which shots were fired into a church parking lot following a heated basketball game. There is no contention appellant actually fired the shots. A coach of one of the basketball teams was the victim. The evidence tended to show that the fatal shot was fired out of the driver's window of the van, which had been rolled down, while the van cruised by slowly with its headlights off. Following the shooting, the van careened through several neighborhoods, hitting several cars, before being pulled over. The gun from which the fatal bullet was fired was never found.

Marion Lindsey was a passenger in the van. He was represented by Attorney Johnston, and had negotiated a plea agreement. Appellant's attorney learned from Johnston that Lindsey had given an oral statement to the police in which he stated that at the same time the shooter in the van was firing shots, other shots were being fired by an unknown gun man (or men) outside the van. This information would be exculpatory as to appellant since his liability for murder rested on the fatal shots being fired from the van. Further, while several witnesses heard shots being fired in the area after the game, only one other witness ^{FN1} would testify he heard the other shots fired contemporaneously with those fired from the van. Lindsey did not testify at appellant's trial.

^{FN1}. Codefendant Moore, discussed *infra*.

At trial, appellant alleged that the State had unconstitutionally interfered with his due process right to establish his defense by intimidating Lindsey from speaking to appellant's counsel. See *Webb v. Texas*, 409 U.S. 95, 93 S.Ct. 351, 34 L.Ed.2d 330 (1972). The circuit court conducted an in camera hearing. At this hearing, appellant's attorney testified Attorney*134 Johnston agreed to allow appellant's attorney to interview Lindsey, conditioned on informing the solicitor's office of the meeting, which the attorney did by letter dated April 11. An investigator (McGraw) for the solicitor's office called appellant's attorney on April 13, the day before the scheduled interview, and told him "that it would be improper for me to interview Marion Lindsey and that the Solicitor's Office would not allow the interview." This statement is uncontradicted in the record since the State failed to call Investigator McGraw at the hearing.

Attorney Johnston testified that he conditioned ap-

pellant's interview of Lindsey on the "permission" of the Solicitor's Office. He testified that Assistant Solicitor Mabry spoke to him and "expressed disapproval" of the planned interview, and told Attorney Johnston it would not be in Lindsey's "best interest" to allow him to be interviewed by defense counsel. Attorney Johnston perceived from Mabry's comments that allowing the interview to go forward could jeopardize the plea offer, and communicated this "implication" to Lindsey and his mother, ^{FN2} who then declined to speak with appellant's attorney. A lawyer who was representing a third codefendant, and who had hoped to interview Lindsey along with appellant's attorney, testified and supported the testimony of appellant's attorney and Attorney Johnston.

^{FN2}. Lindsey was a juvenile, and his plea agreement involved reduced charges in family court.

Assistant Solicitor Mabry said that while he told Attorney Johnston that he could not tell his client not to talk to another attorney, ^{FN3} he did tell him he believed it was not in his client's "best interest" to talk to another defendant's attorney because that attorney might "shake him up" and cause Lindsey not to cooperate and therefore lose his deal. He admitted telling Attorney Johnston that he did not want Lindsey to go through with the interview.

^{FN3}. Attorney Johnston testified he did not recall these words being said.

[1][2] The trial judge ruled that he understood "from the testimony and evidence and **102 questions by the Court that Mr. Johnston did not in anyway feel that the State prevented this witness from being interviewed or talking with anyone else. But that it was a decision made by the two of them that it *135 would be in his best interest not to testify, but the ultimate decision [sic], or to be interviewed, but the ultimate decision of an individual as to whether or not they talk with a defense attorney or anyone else is made by them." The findings of the circuit court are binding on this Court unless unsupported by the evidence or clearly wrong, or controlled by an error of law. *State v. Thrift*, 312 S.C. 282, 440 S.E.2d 341 (1994). We agree that the evidence shows that the decision not to talk to appellant's counsel was made by Lindsey, but that finding is not dispositive of the issue raised by the appellant: whether that decision was influenced by

improper governmental interference? On this point, we find the only evidence in the record shows improper interference.

[3][4] "Improper intimidation of a witness may violate a defendant's due process right to present his defense witnesses freely if the intimidation amounts to 'substantial government interference with a defense witness' free and unhampered choice to testify." *United States v. Saunders*, 943 F.2d 388, 392 (4th Cir.1991) (citations omitted). Generally, courts have found unconstitutional intimidation where the government has advised a potential defense witness that it would not be in his "best interest" to talk to the defendant or his attorney. See, e.g., *United States v. Terzado-Madruga*, 897 F.2d 1099 (11th Cir.1990) (error cured by subsequent governmental advice that witness was free to talk to defense); *United States v. Wellman*, 830 F.2d 1453 (7th Cir.1987) (while "best interest" advice susceptible of construction as veiled threat, where witness none-the-less gave statement to defense, no reversible error occurred). Where substantial interference is found, the next issue is whether the error can be deemed harmless. *United States v. Saunders, supra*. The rule in the Fourth Circuit appears to be that governmental intimidation can be deemed harmless error where the witness nonetheless testifies. Compare *United States v. Teague*, 737 F.2d 378 (4th Cir.1984) (harmless where defendant was not denied either all or the helpful part of the witness' testimony as a result of the attempted intimidation) with *United States v. MacCloskey*, 682 F.2d 468 (4th Cir.1982). Under this rule, the intimidation in this case could not be deemed harmless. We decline, however, to adopt such an automatic reversal rule and hold that in order to obtain relief, a defendant must demonstrate both substantial interference and prejudice.

[5] *136 In brief, the State essentially admits improper conduct occurred, but asserts three grounds why "the present case presents a weaker case for government overreaching" than others, and why the conduct can therefore be deemed harmless error. First, there was one witness (out of many) who testified directly that the victim was killed by a bullet fired from the van. The testimony of this single lay witness, whose testimony is unsupported by any forensic evidence, does not make this an overwhelming evidence situation. Second, the State asserts Lindsey's testimony would have been merely cumulative to that of other witnesses, his codefendants Juan Moore and Ernest Wil-

liams. Juan Moore, however, was impeached by the fact his current description of the event, including the testimony that he heard simultaneous shooting, was not consistent with his original statement. He was further impeached by evidence that his statement had changed to exonerate appellant and his codefendants only after he was incarcerated with them. We do not find Moore's impeached testimony renders the exclusion of Lindsey's harmless error. Further, contrary to the State's assertion, Williams testified that after the shots were fired from the van towards the parking lot, some shots were fired back from the lot towards the street. Obviously, Williams "after the fact" testimony cannot be equated with Lindsey's "simultaneous shooting" evidence.

Third, the State asks the Court to take judicial notice of Lindsey's testimony in the shooter's case, currently on appeal to this Court. The State alleges Lindsey's testimony in that case was consistent with codefendants Moore and William's testimony at appellant's trial that the shots were fired at the same time as the shots fired from the van. This contention bolsters appellant's claim of prejudice. As noted above Williams did not **103 testify that there was a "simultaneous shooter," and Lindsey, unlike Moore, was not impeached. In short, we do not deem the improper intimidation harmless.

[6][7] The remedy to be afforded a defendant in this situation is determined by the facts and circumstances of each case, depending on the prejudice suffered by the defendant. *State v. Melvin*, 326 N.C. 173, 388 S.E.2d 72 (1990). Under the circumstances here, we find the proper remedy is a reversal of appellant's conviction, and a remand for a new trial. Appellant now knows what Lindsey's testimony would *137 be, and can use the transcript from the shooter's case if Lindsey is unavailable to testify at appellant's retrial. Even if Lindsey does not testify, the knowledge of what his testimony would be will unquestionably aid appellant in formulating his trial strategy. See *United States v. Opager*, 589 F.2d 799, 804 (5th Cir.1979) (subsequent history omitted) ("The importance to a litigant of interviewing potential witnesses is undeniable. In particular in criminal cases, where a defendant's very liberty is at stake, such interviews are especially crucial").

[8] In light of our ruling on this issue, we need reach only one other claim raised by appellant. As noted

above, the evidence showed that after the van left the church area, it crashed into several cars and traveled for several more miles before being stopped by police officers. Prior to this murder trial, appellant pled guilty in municipal court to leaving the scene of an accident, and received a thirty day sentence. At this trial, he moved to dismiss the murder charge alleging this prosecution was barred by double jeopardy. This argument was properly rejected by the trial judge. Double jeopardy is not implicated where, as here, the charges arise from different unlawful acts. e.g., State v. Clarke, 302 S.C. 423, 396 S.E.2d 827 (1990). Accordingly, this matter is

REVERSED AND REMANDED.

TOAL, MOORE, WALLER and BURNETT, JJ.,
concur.
S.C., 1997.
State v. Williams
326 S.C. 130, 485 S.E.2d 99

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Supreme Court of South Carolina.
 Keith Lasean SIMPSON, Respondent-Petitioner,
 v.
 Michael MOORE, Commissioner, S.C. Department of
 Corrections, and Henry Dargan McMaster, Attorney
 General, State of South Carolina, Petition-
 er-Respondent.
No. 26114.

Submitted April 20, 2005.
 Decided Feb. 13, 2006.
 Rehearing Denied March 22, 2006.

Background: Following affirmance of his conviction for murder and sentence of death on direct appeal, 325 S.C. 37, 479 S.E.2d 57, defendant filed petition for post-conviction relief. The Circuit Court, Spartanburg County, John C. Hayes, III, J., denied relief on all issue to guilt but granted relief on sentencing.

Holdings: On grant of both defendant's and State's petition for certiorari review, the Supreme Court, Toal, C.J., held that:

- (1) defendant was not denied effective assistance;
- (2) State's failure to tell defense that a bag of money was found behind the counter of store where armed robbery and murder of victim occurred prejudiced defendant during penalty phase;
- (3) State did not engage in prosecutorial misconduct by engineering and introducing materially false and misleading testimony regarding whether child witness saw defendant take money from store register;
- (4) State did not commit Brady violation by not telling defense counsel about the meeting with child witness at home and at the store where crimes took place; and
- (5) postconviction relief court did not abuse its discretion by allowing defendant to introduce over forty depositions and some twenty-two affidavits into evidence in lieu of live testimony.

Affirmed in part; reversed in part.

Pleicones, J., dissented and filed a separate opinion.

West Headnotes

[1] Criminal Law 110 ↪ 1134.90

110 Criminal Law

110XXIV Review

110XXIV(L) Scope of Review in General

110XXIV(L)10 Interlocutory, Collateral, and Supplementary Proceedings and Questions
110k1134.90 k. In General. Most Cited

Cases

(Formerly 110k1134(10))

Supreme Court gives great deference to the post-conviction relief court's findings of fact and conclusions of law.

[2] Criminal Law 110 ↪ 1158.36

110 Criminal Law

110XXIV Review

110XXIV(O) Questions of Fact and Findings

110k1158.36 k. Post-Conviction Relief.
Most Cited Cases

(Formerly 110k1158(1))

On review, a post-conviction relief judge's findings will be upheld if there is any evidence of probative value sufficient to support them; if no probative evidence exists to support the findings, an appellate court will reverse.

[3] Criminal Law 110 ↪ 1881

110 Criminal Law

110XXXI Counsel

110XXXI(C) Adequacy of Representation

110XXXI(C)1 In General
110k1879 Standard of Effective Assistance in General

110k1881 k. Deficient Representation and Prejudice in General. Most Cited Cases

(Formerly 110k641.13(1))

To establish a claim that counsel was ineffective, a defendant must show that (1) counsel's representation fell below an objective standard of reasonableness and (2) but for counsel's errors, there is a reasonable probability that the outcome of the trial would have been different; "reasonable probability" is a probability sufficient to undermine confidence in the outcome

110XXXI(C) Adequacy of Representation

110XXXI(C)1 In General

110k1871 k. Presumptions and Burden of Proof in General. Most Cited Cases

(Formerly 110k641.13(1))

Judicial scrutiny of counsel's performance for purposes of ineffective assistance claim is highly deferential and an appellate court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance. U.S.C.A. Const.Amend. 6.

[10] Criminal Law 110 ⚡1575

110 Criminal Law

110XXX Post-Conviction Relief

110XXX(C) Proceedings

110XXX(C)1 In General

110k1574 Petition or Motion

110k1575 k. In General. Most Cited

Cases

Defendant was entitled to amend his application for post-conviction relief to include claim that State failed to disclose potentially exculpatory evidence related to charged offense of armed robbery, where at post-conviction relief hearing, testimony was given concerning such evidence and trial court ruled that evidence should have been preserved and subject to discovery by defendant, and State would not be prejudiced by such an amendment, given that State cross-examined defense counsel on the issue and was permitted to present its own witness, to contest the issue's relevance. Rules Crim.Proc., Rule 15(b).

[11] Sentencing and Punishment 350H ⚡1746

350H Sentencing and Punishment

350HVIII The Death Penalty

350HVIII(G) Proceedings

350HVIII(G)1 In General

350Hk1746 k. Other Discovery and Disclosure. Most Cited Cases

Sentencing and Punishment 350H ⚡1789(9)

350H Sentencing and Punishment

350HVIII The Death Penalty

350HVIII(G) Proceedings

350HVIII(G)4 Determination and Disposition

350Hk1789 Review of Proceedings to Impose Death Sentence

350Hk1789(9) k. Harmless and Reversible Error. Most Cited Cases

State's failure to tell defense that a bag of money was found behind the counter of store where armed robbery and murder of victim occurred prejudiced defendant during penalty phase of capital murder trial; armed robbery was both a charge against defendant in its own right and a statutory aggravating circumstance urged by State as ground for imposing death penalty, and since reasonable probability existed that defendant would not have been found guilty of armed robbery had the evidence about the bag of money been disclosed, reasonable probability also existed that defendant would not have received a sentence of death for capital murder charge had State failed to prove defendant committed the robbery. U.S.C.A. Const.Amend. 14.

[12] Constitutional Law 92 ⚡4594(1)

92 Constitutional Law

92XXVII Due Process

92XXVII(H) Criminal Law

92XXVII(H)4 Proceedings and Trial

92k4592 Disclosure and Discovery

92k4594 Evidence

92k4594(1) k. In General. Most

Cited Cases

(Formerly 92k268(5))

The suppression by the prosecution of evidence favorable to a defendant upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution. U.S.C.A. Const.Amend. 14.

[13] Criminal Law 110 ⚡1992

110 Criminal Law

110XXXI Counsel

110XXXI(D) Duties and Obligations of Prosecuting Attorneys

110XXXI(D)2 Disclosure of Information

110k1992 k. Materiality and Probable Effect of Information in General. Most Cited Cases
(Formerly 110k700(2.1))

A *Brady* claim is complete if the defendant can demonstrate (1) the evidence was favorable to the accused, (2) it was in the possession of or known to the prosecution, (3) it was suppressed by the prosecution,

and (4) it was material to guilt or punishment.
U.S.C.A. Const.Amend. 14.

[14] Criminal Law 110 ⚡1992

110 Criminal Law

110XXXI Counsel

110XXXI(D) Duties and Obligations of Prosecuting Attorneys

110XXXI(D)2 Disclosure of Information

110k1992 k. Materiality and Probable Effect of Information in General. Most Cited Cases
(Formerly 110k700(2.1))

Favorable evidence is material for purposes of *Brady* claim if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. U.S.C.A. Const.Amend. 14.

[15] Criminal Law 110 ⚡1042.7(2)

110 Criminal Law

110XXIV Review

110XXIV(E) Presentation and Reservation in Lower Court of Grounds of Review

110XXIV(E)1 In General

110k1042.7 Proceedings After Judgment

110k1042.7(2) k. Post-Conviction Relief. Most Cited Cases
(Formerly 110k1042)

Defendant's claim that State committed *Brady* violation by failing to disclose in capital murder and armed robbery trial memo written by one of the solicitors identifying possible weaknesses in the case, including the fact that "no robbery occurred" and "there was nothing taken from the store only an attempted robbery occurred," was not preserved for review on appeal of post-conviction relief proceeding, where post-conviction court did not consider such claim and post-conviction relief counsel did not raise the issue in a motion to alter or amend. U.S.C.A. Const.Amend. 14.

[16] Criminal Law 110 ⚡2033

110 Criminal Law

110XXXI Counsel

110XXXI(D) Duties and Obligations of Prosecuting Attorneys

110XXXI(D)5 Presentation of Evidence

110k2032 Use of False or Perjured Testimony

110k2033 k. In General. Most Cited

Cases

(Formerly 110k706(2))

State did not engage in prosecutorial misconduct by engineering and introducing materially false and misleading testimony in capital murder and armed robbery trial regarding whether child witness saw defendant take money from store register; while State's investigator took witness to store so that witness could explain what he witnessed, there was no evidence supporting a finding that misconduct actually occurred, rather State was uncertain as to how witness would testify, as it sent a letter to defense counsel saying that witness may testify that he saw defendant take money from the register, and no evidence supported a finding that testimony given by witness was false.

[17] Criminal Law 110 ⚡1171.8(1)

110 Criminal Law

110XXIV Review

110XXIV(Q) Harmless and Reversible Error

110k1171 Arguments and Conduct of Counsel

110k1171.8 Presentation of Evidence

110k1171.8(1) k. In General. Most Cited Cases

Criminal Law 110 ⚡2033

110 Criminal Law

110XXXI Counsel

110XXXI(D) Duties and Obligations of Prosecuting Attorneys

110XXXI(D)5 Presentation of Evidence

110k2032 Use of False or Perjured Testimony

110k2033 k. In General. Most Cited

Cases

(Formerly 110k706(2))

Criminal Law 110 ⚡2037

110 Criminal Law

110XXXI Counsel

110XXXI(D) Duties and Obligations of

Prosecuting Attorneys

110XXXI(D)5 Presentation of Evidence

110k2032 Use of False or Perjured Testimony

110k2037 k. Effect of Perjured Testimony; Remedy. Most Cited Cases

(Formerly 110k706(2))

A conviction obtained by the knowing use of perjured testimony is fundamentally unfair and must be set aside if there is any reasonable likelihood that the false testimony could have affected the jury's judgment.

[18] Criminal Law 110 ↪1999

110 Criminal Law

110XXXI Counsel

110XXXI(D) Duties and Obligations of Prosecuting Attorneys

110XXXI(D)2 Disclosure of Information

110k1993 Particular Types of Information Subject to Disclosure

110k1999 k. Impeaching Evidence.

Most Cited Cases

(Formerly 110k706(2))

Criminal Law 110 ↪2033

110 Criminal Law

110XXXI Counsel

110XXXI(D) Duties and Obligations of Prosecuting Attorneys

110XXXI(D)5 Presentation of Evidence

110k2032 Use of False or Perjured Testimony

110k2033 k. In General. Most Cited

Cases

(Formerly 110k706(2))

The knowing use of perjured testimony is subject to the materiality standard of review: evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.

[19] Criminal Law 110 ↪2001

110 Criminal Law

110XXXI Counsel

110XXXI(D) Duties and Obligations of Prosecuting Attorneys

110XXXI(D)2 Disclosure of Information

110k1993 Particular Types of Information Subject to Disclosure

110k2001 k. Other Particular Issues.

Most Cited Cases

(Formerly 110k700(3))

State did not commit *Brady* violation in capital murder and armed robbery trial by not telling defense counsel about the meeting with child witness at his home and at the store where crimes took place; defendant was unable to show that there was a reasonable probability that the result of the trial would have been different had the defense known about the meeting. U.S.C.A. Const.Amend. 14.

[20] Criminal Law 110 ↪1931

110 Criminal Law

110XXXI Counsel

110XXXI(C) Adequacy of Representation

110XXXI(C)2 Particular Cases and Issues

110k1921 Introduction of and Objections to Evidence at Trial

110k1931 k. Experts; Opinion Testimony. Most Cited Cases

(Formerly 110k641.13(6))

Trial counsel's failure to call an expert to discredit child witness's testimony in capital murder and armed robbery trial was not deficient performance, as element of ineffective assistance claim; counsel sufficiently exposed witness's lack of accurate recall and his susceptibility on cross-examination, as counsel was able to get witness to admit that someone from the solicitor's office "helped" him remember that he saw "a black man taking money out of the cash register." U.S.C.A. Const.Amend. 6.

[21] Criminal Law 110 ↪1901

110 Criminal Law

110XXXI Counsel

110XXXI(C) Adequacy of Representation

110XXXI(C)2 Particular Cases and Issues

110k1901 k. Jury Selection and Composition. Most Cited Cases

(Formerly 110k641.13(2.1))

Trial counsel's failure to challenge the State's peremptory strikes in capital murder trial on the basis of gender did not constitute ineffective assistance; defendant did not present any evidence that potential jurors were struck simply on the basis of their gender, and defendant failed to show that he was prejudiced by

the jury selected. U.S.C.A. Const.Amend. 6.

[22] Criminal Law 110 ↪ 1661

110 Criminal Law

110XXX Post-Conviction Relief

110XXX(C) Proceedings

110XXX(C)3 Hearing and Determination

110k1661 k. Decision or Order. Most

Cited Cases

Post-conviction relief court was not required to conduct a cumulative-error analysis of trial counsel's errors to determine if such constituted ineffective assistance, where postconviction court found only one of defendant's allegations of ineffective assistance had merit. U.S.C.A. Const.Amend. 6.

[23] Criminal Law 110 ↪ 1885

110 Criminal Law

110XXXI Counsel

110XXXI(C) Adequacy of Representation

110XXXI(C)1 In General

110k1879 Standard of Effective Assistance in General

110k1885 k. Exceptions to

Two-Pronged Standard. Most Cited Cases

(Formerly 110k641.13(1))

When a trial counsel's deficiency is so pervasive as to render a particularized prejudice inquiry unnecessary for purposes of ineffective assistance claim, a defendant may be relieved of his burden to show prejudice. U.S.C.A. Const.Amend. 6.

[24] Criminal Law 110 ↪ 1960

110 Criminal Law

110XXXI Counsel

110XXXI(C) Adequacy of Representation

110XXXI(C)2 Particular Cases and Issues

110k1958 Death Penalty

110k1960 k. Adequacy of Investigation of Mitigating Circumstances. Most Cited Cases
(Formerly 110k641.13(7))

Trial counsel did not render deficient performance by failing to fully investigate defendant's medical, mental, social, and familial history for purposes of penalty phase of capital murder trial, as element of ineffective assistance claim; counsel interviewed a number of witnesses about defendant's childhood and life,

counsel hired a private investigator to go and gather background information on defendant, counsel called several witnesses, including three experts, to offer mitigating evidence, and counsel testified that information gathered about defendant's background was available to the experts. U.S.C.A. Const.Amend. 6.

[25] Criminal Law 110 ↪ 1960

110 Criminal Law

110XXXI Counsel

110XXXI(C) Adequacy of Representation

110XXXI(C)2 Particular Cases and Issues

110k1958 Death Penalty

110k1960 k. Adequacy of Investigation of Mitigating Circumstances. Most Cited Cases
(Formerly 110k641.13(7))

Even if trial counsel rendered deficient performance by failing to fully investigate defendant's medical, mental, social, and familial history for purposes of penalty phase of capital murder trial, such failure did not prejudice defendant, and thus could not constitute ineffective assistance; jury was aware of defendant's troubled childhood, traumatic life experiences, and mental condition, and any additional investigation would have merely resulted in a "fancier" mitigation case, having no effect on the outcome of the trial. U.S.C.A. Const.Amend. 6.

[26] Criminal Law 110 ↪ 1656

110 Criminal Law

110XXX Post-Conviction Relief

110XXX(C) Proceedings

110XXX(C)3 Hearing and Determination

110k1656 k. Scope of Hearing. Most

Cited Cases

Postconviction relief court did not abuse its discretion by allowing defendant to introduce over forty depositions and some twenty-two affidavits into evidence in lieu of live testimony; most of the relevant witnesses testified at the post-conviction relief hearing and were cross-examined by the State, and the court gave the State the opportunity to submit additional testimony and affidavits countering the evidence presented by defendant. Code 1976, § 17-27-80.

[27] Criminal Law 110 ↪ 1656

110 Criminal Law

110XXX Post-Conviction Relief

110XXX(C) Proceedings

110XXX(C)3 Hearing and Determination

110k1656 k. Scope of Hearing. Most

Cited Cases

Trial court's decision to admit affidavits and depositions in lieu of live testimony is within the court's discretion. Code 1976, § 17-27-80.

****704** John H. Blume, III, and Sheri L. Johnson, both of Cornell Law School, of Ithaca, NY; and Russell Ghent, of Leatherwood Walker Todd & Mann, of Greenville, for Respondent-Petitioner.

Attorney General Henry Dargan McMaster, Chief Deputy Attorney General John W. McIntosh, Assistant Deputy Attorney General Donald J. Zelenka, and Assistant Attorney General S. Creighton Waters, all of Columbia, for Petitioner-Respondent.

Chief Justice TOAL:

***593** Respondent-Petitioner Keith Lasean Simpson (Simpson) was found guilty of murder and received a death sentence. Simpson appealed and this Court affirmed. State v. Simpson, 325 S.C. 37, 479 S.E.2d 57 (1996). Simpson filed for post-conviction relief (PCR). The PCR court denied relief on all issues related to guilt but granted relief on sentencing. We affirm in part and reverse in part.

FACTUAL/PROCEDURAL BACKGROUND

Simpson and his accomplice planned to rob a convenience store. Armed with guns, the two men went to a store owned by Joe Harrison. Once there, Simpson went inside the store while his accomplice waited in the parking lot. At the same time, a customer entered the store with his nine-year-old son, Nathan. After making his purchase, the customer ****705** went outside to wait for Nathan. Joe Harrison was behind the counter, working the register.

***594** Suddenly, gunshots were fired. A store employee, who was in the back of the store, testified that he saw Harrison walking towards the front door while Simpson shot at Harrison from behind. Nathan testified that he walked towards the front of the store to see what had happened. According to Nathan, Simpson pointed the gun at Nathan's forehead and attempted to fire the gun, but it only made a clicking noise. After this encounter with Simpson, Nathan ran and hid

behind a poker machine. Nathan testified that while he was hiding, he saw Simpson go behind the counter and take money from the cash register.

Once the shooting began inside, Simpson's accomplice shot Nathan's father, Tony Scott, outside, in the parking lot. Scott was injured, and Harrison, the owner, died. Simpson and his accomplice fled the scene, pointing their guns and shooting at others in the area, but injuring no one else.

Simpson was indicted for murder, armed robbery, assault and battery with intent to kill, possession of a firearm during commission of a violent crime, and five counts of pointing a firearm.

At trial, Simpson gave a different version of events. He testified that once inside the store, he "chickened out." He claimed that he lifted his shirt, exposing the gun, as a way of signaling to his accomplice that he no longer wanted to rob the store. When Simpson lifted his shirt, Harrison saw the gun, grabbed Simpson by the shirt collar, and the two began to struggle. During the alleged struggle, two shots went off, Harrison began to stagger, and then Simpson fired two additional shots at Harrison. In addition, Simpson testified that he did not take anything from the store when he left.

The jury found Simpson guilty of murder and he was sentenced to death. He was also sentenced to serve consecutive sentences of thirty years for armed robbery, twenty years for assault, and five years for each of the pointing-a-firearm charges. Simpson appealed and this Court affirmed. State v. Simpson, 325 S.C. 37, 479 S.E.2d 57 (1996). Simpson filed for post-conviction relief (PCR), and following a hearing, Simpson was denied relief on guilt but granted relief on sentencing. We granted Simpson's and the State's petitions for certiorari.

Simpson raises the following issues for review:

***595** I. Did the PCR court err in finding counsel was not ineffective for failing to consult an independent forensic pathologist, medical examiner, or homicide-reconstruction expert?

II. Did the PCR court err by denying Simpson relief due to the State's failure to disclose potentially ex-

culpatory evidence related to the armed-robbery charge?

III. Did the PCR court err in finding the State did not engage in prosecutorial misconduct?

IV. Did the PCR court err in finding counsel was not ineffective for failing to call an expert witness to discredit a child witness's testimony?

V. Did the PCR court err in finding counsel was not ineffective for failing to object to the State's use of peremptory challenges against women?

VI. Did the PCR court err in failing to conduct a cumulative-error analysis?

The State raises the following issues for review:

I. Did the PCR court err in finding Simpson was prejudiced by counsel's failure to fully develop Simpson's mitigation case?

II. Did the PCR court err by considering numerous depositions and affidavits in lieu of live testimony?

LAW/ANALYSIS

Standard of Review

[1][2] This Court gives great deference to the PCR court's findings of fact and conclusions of law. Ca-prood v. State, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000) (citing McCray v. State, 317 S.C. 557, 455 S.E.2d 686 (1995)). On review, a PCR judge's findings will be upheld if there is any evidence of **706 probative value sufficient to support them. Cherry v. State, 300 S.C. 115, 119, 386 S.E.2d 624, 626 (1989). If no probative evidence exists to support the findings, this Court will reverse. Pierce v. State, 338 S.C. 139, 144, 526 S.E.2d 222, 225 (2000) (citing Holland v. State, 322 S.C. 111, 470 S.E.2d 378 (1996)).

[3] To establish a claim that counsel was ineffective, a PCR applicant must show that (1) counsel's representation fell *596 below an objective standard of reasonableness and (2) but for counsel's errors, there is a reasonable probability that the outcome of the trial would have been different. Strickland v. Washington, 466 U.S. 668, 694, 104 S.Ct. 2052, 80 L.Ed.2d 674

(1984); Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997). "A reasonable probability is a probability sufficient to undermine confidence in the outcome" of the trial. Strickland, 466 U.S. at 694, 104 S.Ct. at 2068.

DISCUSSION

ISSUES RAISED BY SIMPSON

I. Failure to Consult a Forensic Expert

[4] Simpson contends that the PCR court erred in finding counsel was not ineffective for failing to consult an independent forensic pathologist, a medical examiner, or a homicide-reconstruction expert. We disagree.

At trial, the State presented the expert testimony of Dr. Wren, the pathologist who performed Harrison's autopsy. Dr. Wren testified that Harrison was shot three times: once through the hand, once through the front abdomen, and once through the back. Dr. Wren stated that all three were distant gunshot wounds, meaning that when fired, the gun was at least twelve inches from the victim.

Defense counsel did not call an expert to rebut Dr. Wren's testimony. Instead, the defense presented Simpson as its sole witness. Simpson testified that the shooting occurred during a struggle over the gun. During closing argument, defense counsel reenacted Simpson's testimony, showing the jury three possible theories regarding the trajectory of the bullets.

At the PCR hearing, defense counsel testified that he did not see a need for calling an expert witness to refute Dr. Wren's testimony. But to show that there was in fact a need for such testimony, PCR counsel called three expert witnesses to the stand. Two of the experts testified that Harrison was shot in the hand while he was gripping the barrel of Simpson's gun, which supported Simpson's testimony that the shots were fired during a struggle. But one expert testified that Harrison could have been shot in the back while lying on the ground *597 or he could have been shot in the back while standing upright and fleeing.

After considering this testimony, the PCR court found that defense counsel was not deficient in failing to

consult an expert. The court viewed the allegations against counsel as relating less with trial strategy and more to the degree that counsel should go in pursuing a defense theory. In addition, the court found that even if counsel was deficient, there was no prejudice. The judge found that the expert testimony presented at the PCR hearing added little either factually or theoretically, and did not negate the fact that all of the elements necessary for a murder conviction were present. Therefore, the PCR court found that there was not a reasonable probability the added testimony would have changed the outcome of the guilt phase of the trial.

[5][6][7] “[C]ounsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.” *Strickland v. Washington*, 466 U.S. 668, 691, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). A decision “not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel’s judgments.” *Id.* When counsel’s performance falls below this standard, a “defendant must show that there is reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Id.* at 694, 104 S.Ct. 2052. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Id.*

****707** [8] We agree with the PCR court and find that counsel was not deficient in failing to consult a forensic expert. It is clear from the record that counsel’s primary strategy was to prove that the shooting occurred during a struggle, and that this struggle somehow negated or lessened Simpson’s criminal liability for Harrison’s death. However, evidence that Harrison grabbed Simpson by the shirt collar does nothing to explain how and why the gun was pulled from Simpson’s waist. Additionally, Simpson himself testified to intentionally shooting a wounded Harrison *twice* after the alleged struggle concluded, once in Harrison’s *back*. Even if Simpson’s testimony about the struggle was corroborated with expert testimony, ***598** there is not a reasonable probability that the jury would not have found Simpson guilty of murder.^{FN1}

^{FN1}. It is these facts, which remained uncontested in the PCR hearing, that compel our finding that counsel was not deficient.

Although there is no doubt that some particulars of the crime are in dispute, there can be no doubt about Simpson’s malicious conduct which amounted to gunning down a wounded crime victim and attempting to execute the witnesses. We further find that Simpson was erroneously given a voluntary manslaughter charge at trial. Given Simpson’s admission to firing on Harrison multiple times after the alleged struggle, under no circumstance could we conclude that Simpson acted without malice or had sufficient legal provocation to use deadly force.

[9] Accordingly, we hold that the PCR court properly held that counsel was not ineffective in failing to consult an independent forensic pathologist, a medical examiner, or a homicide-reconstruction expert.^{FN2}

^{FN2}. In a PCR proceeding, Simpson may not simply posit suppositions and speculations in an attempt to establish that counsel was ineffective. Judicial scrutiny of counsel’s performance is highly deferential and the court must “indulge a strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance....” *Butler v. State*, 286 S.C. 441, 445, 334 S.E.2d 813, 816 (1985) (citing *Strickland*, 466 U.S. at 668, 104 S.Ct. 2052). Though hindsight may provide a different view of counsel’s actions, Simpson is not entitled to a new trial for the sole purpose of presenting a “fancier” case. *Jones v. State*, 332 S.C. 329, 339, 504 S.E.2d 822, 827 (1998).

II. Brady Violation

Simpson contends that the PCR court erred in denying relief due to the State’s failure to disclose potentially exculpatory evidence related to the armed-robbery charge. We agree.

The armed-robbery charge served as an aggravating circumstance that allowed the State to seek the death penalty. See S.C.Code Ann. § 16-3-20 (1976). Accordingly, it was essential for the State to prove that Simpson actually robbed the store.

When police arrived at the scene of the crime, they noticed that the cash register drawer was open, and

there were bills in every slot except the slot that would normally contain twenty-dollar bills. Police also found a bag of money behind the counter, near the register. Instead of preserving the bag and *599 disclosing its existence to Simpson's counsel, the police gave the bag to the victim's brother, Jack Harrison, who helped run the store.

[10] The PCR court found:

The turning over of the bag by law enforcement clearly constitutes sloppy police work in an armed robbery investigation and could be considered a tainting of the scene. Clearly the contents of the bag could have been exculpatory. Clearly this evidence should have been preserved and, thus, been subject to discovery by [Simpson].

Despite this finding, the court ruled that the issue about the bag of money was not preserved for review because Simpson did not specifically raise it in his PCR application. We disagree.

At the PCR hearing, two witnesses were called to testify about the money issue. The first witness was Simpson's defense counsel, who testified that he learned about the bag of money only two hours before testifying. The second witness was Jack Harrison, whom the State called for the specific purpose of addressing the money issue. Jack testified that the money was used to cash customers' checks, and it was unusual for money to be taken from the register and put into the bag.

****708** Given this testimony and the PCR court's ruling on the issue relating to the bag of money, we hold that Simpson should have been permitted to amend his PCR application to conform to the evidence presented. See Rule 15(b), SCRCP (pleadings may be amended, even after judgment, to conform to issues tried by express or implied consent but not raised in the original pleadings); Arnold v. State, 309 S.C. 157, 172, 420 S.E.2d 834, 843 (1992) (amendments must conform to evidence presented at trial, not raise new claims). Moreover, we hold that the State would not be prejudiced by such an amendment given that the State cross-examined Simpson's defense counsel on the issue and was permitted to present its own witness, Jack Harrison, to contest the issue's relevance. See Harvey v. Strickland, 350 S.C. 303, 313, 566 S.E.2d 529, 535 (2002) (amendments should be liberally

allowed when no prejudice to the opposing party will result).

***600** [11][12][13][14] Turning to the merits, we hold that the State's failure to tell the defense that a bag of money was found behind the counter prejudiced Simpson's case in the penalty phase. "[T]he suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." Brady v. State of Maryland, 373 U.S. 83, 87, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963). A Brady claim is complete if the accused can demonstrate (1) the evidence was favorable to the accused, (2) it was in the possession of or known to the prosecution, (3) it was suppressed by the prosecution, and (4) it was material to guilt or punishment. Sheppard v. State, 357 S.C. 646, 659, 594 S.E.2d 462, 470 (2004). Favorable evidence is material if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. Id. at 660, 594 S.E.2d at 470.

[15] Armed robbery was both a charge against Simpson in its own right and a statutory aggravating circumstance urged by the State as a ground for imposing the death penalty. There is a reasonable probability that Simpson would not have been found guilty of armed robbery had the evidence about the bag of money been disclosed.^{FN3} Moreover, because the State needed to prove that a robbery occurred in order to seek the death penalty, there is a reasonable probability that Simpson would not have received a sentence of death had the State failed to prove Simpson robbed the store.

FN3. There was also a memo to the file written by one of the solicitors identifying possible weaknesses in the case, including the fact that "no robbery (larceny) occurred" and "[t]here was nothing taken from the store ... only an attempted robbery occurred." But the PCR court did not consider whether the State's failure to disclose this memo constituted a Brady violation nor did PCR counsel raise the issue in the Rule 59(e), SCRCP, motion to alter or amend. Therefore, the issue is not preserved for review. See Noisette v. Ismail, 304 S.C. 56, 58, 403 S.E.2d 122, 124 (1991).

Therefore, we hold that the PCR court erred in denying relief on this basis. Accordingly, Simpson is entitled to a new trial on the armed robbery charge.

***601 III. Prosecutorial Misconduct**

[16] Simpson contends that the PCR court erred in finding that the State did not engage in prosecutorial misconduct in its alleged coaching of the child witness, Nathan. We disagree.

[17][18] A conviction obtained by the knowing use of perjured testimony is fundamentally unfair and must be set aside if there is any reasonable likelihood that the false testimony could have affected the jury's judgment. U.S. v. Bagley, 473 U.S. 667, 678, 105 S.Ct. 3375, 87 L.Ed.2d 481 (1985). The knowing use of perjured testimony is subject to the materiality standard of review: "evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." *Id.* at 682, 105 S.Ct. 3375.

At trial, Detective Rick Gregory testified that he interviewed nine-year-old Nathan Scott the day after the shooting. During their conversation, which Gregory did not record, Nathan told Gregory that he saw a black man go behind the counter and take **709 money out of the cash register. But twelve days later, Gregory obtained a written statement from Nathan in which Nathan mentioned only that he saw a black man go behind the cash register-not that he saw a man take money from the register.

At some point before trial, the State's investigator, Johnny Dyer, went to Nathan's home to discuss the crime. After talking at the house, Dyer took Nathan to the store so that Nathan could explain what he had witnessed and where he had hidden during the incident. Afterwards, Dyer sent a letter to defense counsel stating "Nathan Scott may testify that he saw the black man in the store, and the man had money in his hand that came from the cash register."

Simpson first contends that the State engineered and introduced materially false and misleading testimony regarding whether Nathan saw Simpson take money from the register. We disagree.

Although there is speculation that Dyer attempted to improperly influence Nathan, there is simply no evidence supporting a finding that such misconduct actually occurred. In fact, the State was uncertain as to how Nathan would testify. *602 In a letter to defense counsel, Dyer stated that Nathan *may* testify that he saw Simpson take money from the register. And later, at the PCR hearing, defense counsel explained that he did not call Dyer to testify because counsel was uncertain as to whether Dyer had improperly coached Nathan.

Moreover, there is no evidence to support a finding that Nathan's testimony was false. Defense counsel was aware that Nathan's story had changed throughout the investigation and cross-examined him accordingly. The jury heard this testimony and was able to evaluate Nathan's credibility based on these inconsistencies.

[19] Simpson also contends that, by not telling defense counsel about the meeting with Nathan at home and at the store, the State withheld exculpatory and impeaching evidence in violation of Brady. We disagree. Simpson was unable to show that there was a reasonable probability that the result of the trial would have been different had the defense known about the meeting. Therefore, we find that the State did not violate Brady. See Sheppard, 357 S.C. at 660, 594 S.E.2d at 470 (withheld evidence must be material to guilt or punishment).

Accordingly, we hold that the PCR court properly found that the State did not engage in prosecutorial conduct.

IV. Expert Witness

[20] Simpson contends that the PCR court erred in finding counsel was not ineffective for failing to call an expert witness to discredit Nathan's testimony. We disagree.

At the PCR hearing, defense counsel testified that he did not think that he needed to call an expert witness to discredit Nathan's testimony. After learning that Nathan's recollection of events had changed, counsel decided that the issue could be addressed on cross-examination, and counsel was in fact able to get Nathan to admit on cross that someone from the solicitor's office "helped" him remember that he saw "a

black man taking money out of the cash register.” Given this admission, counsel concluded that cross-examination “went very well,” and therefore there was no need to consult any sort of expert to discredit Nathan’s testimony.

In response, Simpson presented expert testimony at the PCR hearing from a developmental psychologist who identified*603 a number of factors-including Nathan’s low I.Q., his young age, and the length of time between when the crime occurred and when Nathan was interviewed by investigators-indicating that Nathan would likely remember false details about the shooting.

The PCR court found that counsel “ably, adequately and thoroughly addressed the false memory/suggestion issue at the source, Nathan Scott.” In addition, the court found that the cross-examination of Nathan “clearly exposed his lack of accurate recall and not only his susceptibility to suggestion, but the actual enhancement of his recall by statements to him by others, namely individuals at the Solicitor’s office.” We agree.

On both direct and cross, Nathan’s lack of accurate recall was exposed to the jury. At the PCR hearing, defense counsel explained **710 that he knew Nathan’s story had changed, and that he had planned to address this issue on cross-examination. Therefore, we find that counsel was not deficient in failing to call an expert witness to discredit Nathan’s testimony. See *Ingle v. State*, 348 S.C. 467, 470, 560 S.E.2d 401, 402 (2002) (counsel may avoid a finding of deficiency if he articulates a valid reason for using a certain strategy).^{FN4}

^{FN4} The dissent finds that counsel was deficient in failing to consult and present an expert discrediting Nathan’s testimony. Again, this conclusion is somewhat confounding given that the PCR court’s decisions are reviewed under the “any evidence” standard and there appears to be ample evidence supporting the PCR court’s finding. Second, assuming that counsel was deficient, the dissent presents two statements made by jurors citing their doubts as to the credibility of Nathan’s testimony. While the dissent finds this is evidence of prejudice, we see this as evidence of a lack of prejudice. The jury in

this case returned a unanimous conviction on the armed robbery charge; therefore, it is completely reasonable to assume that any jurors having doubts about Nathan’s testimony relied on other evidence in finding Simpson guilty beyond a reasonable doubt. We further note that Nathan’s testimony was only relevant to the charge of armed robbery, and Nathan will inevitably have to testify again since we are reversing the armed robbery conviction under *Brady*. Nathan’s testimony was not at all relevant to, and had no impact on, Simpson’s murder conviction.

V. Voir Dire

[21] Simpson contends that the PCR court erred in finding counsel was not ineffective for failing to object to the State’s use of peremptory challenges against women. We disagree.

*604 In making this contention, Simpson does not argue that the jury was incompetent or impartial. Instead, Simpson argues that counsel was unaware of the then recent decision of *J.E.B. v. Alabama ex rel T.B.*, 511 U.S. 127, 143, 114 S.Ct. 1419, 128 L.Ed.2d 89 (1994), in which the United States Supreme Court held that the gender-based exercise of peremptory challenges violates the equal protection clause of the Constitution.

At the PCR hearing, defense counsel testified that he did not recall considering the possibility of objecting to the State’s use of peremptory strikes on the basis that they were gender-based. The PCR court ruled that counsel’s failure to challenge the State’s strikes on the basis of gender was consistent with objective standards of reasonableness and not prejudicial to the outcome of Simpson’s trial. We agree.

Simpson did not present any evidence that potential jurors were struck simply on the basis of their gender. In addition, Simpson failed to show that he was prejudiced by the jury selected. See *Palacio v. State*, 333 S.C. 506, 517, 511 S.E.2d 62, 68 (1999) (“a criminal defendant has no right to a trial by any particular jury, but only a right to a trial by a competent and impartial jury”). Therefore, we hold that the PCR court properly denied relief on this basis.

VI. Cumulative-Error Analysis

[22] Simpson contends that the PCR court erred in failing to conduct a cumulative-error analysis. We disagree.

[23] When counsel's deficiency is so pervasive as to render a particularized prejudice inquiry unnecessary, a defendant may be relieved of his burden to show prejudice. Green v. State, 351 S.C. 184, 196, 569 S.E.2d 318, 324 (2002). Whether several errors, which are independently found not to be prejudicial, may cumulatively warrant relief is an unsettled question in South Carolina. Id. at 197, 569 S.E.2d at 324-25.

Because the PCR court found that only one of Simpson's allegations had merit, there was no need to conduct a cumulative-error analysis. The record simply did not contain "several errors" for the judge to cumulatively assess. We hold, therefore, that the PCR court did not err in failing to conduct such an analysis.

***605 ISSUES RAISED BY THE STATE**

I. Mitigation Case

[24] The State argues that the PCR court erred in finding that Simpson was prejudiced by counsel's failure to offer sufficient social history evidence in the mitigation case. We agree.

The United States Supreme Court has held that counsel's failure to conduct a reasonable investigation into mitigating circumstances constitutes ineffective assistance. ****711** Wiggins v. Smith, 539 U.S. 510, 511, 123 S.Ct. 2527, 156 L.Ed.2d 471 (2003). In Wiggins, the Court found that counsel's review of a pre-sentence investigation report and records from the Department of Social Services records did not constitute a reasonable investigation into defendant's background. Id. A more in-depth investigation would have revealed the defendant's "severe privation and abuse in the first six years of his life while in the custody of his alcoholic, absentee mother," the "physical torment, sexual molestation, and repeated rape during his subsequent years in foster care," the time he spent homeless, and his diminished mental capacity. Id. at 535, 123 S.Ct. 2527. Instead, only one significant mitigating factor-Wiggins's lack of a criminal history-was before the jury. Id.

Similarly, this Court has found counsel ineffective for failing to adequately investigate and prepare expert testimony about a defendant's mental condition. Von Dohlen v. State, 360 S.C. 598, 602 S.E.2d 738 (2004). In Von Dohlen, a psychiatrist testified at trial that the defendant suffered from "adjustment reaction disorder," as well as pathological intoxication from the abuse of alcohol and Valium. Id. at 604, 602 S.E.2d at 741. He also testified that the defendant did not have a chronic mental illness and did not dispute the solicitor's assertion that defendant's disorder was "pretty small potatoes." Id. But later, at the PCR hearing, the psychiatrist testified that, had he been provided with additional medical records that existed and were available at trial, he would have diagnosed defendant as suffering from "major depressive episodes with severe symptoms of anxiety and possible psychotic feature," in addition to alcohol and Valium abuse. Id. at 604-05, 602 S.E.2d at 741. The Court held that "[t]he absence of crucial medical records and related information which existed at the time of *606 [the defendant's] trial prevented [the psychiatrist] from conveying an accurate diagnosis and explanation of [the defendant's] mental condition...." Id. at 608, 602 S.E.2d at 743.

At trial in the present case, defense counsel called several witnesses, including three experts, to offer mitigating evidence in the sentencing phase. Witnesses testified that Simpson's mother used heroin while pregnant with him, Simpson grew up in a drug environment, he had trouble in school, and he experienced several personal tragedies. One expert, a clinical social worker, testified that Simpson's mother abused drugs while pregnant with Simpson and after, Simpson was often abandoned as a child, he suffered chronic headaches, and had been exposed to traumatic life events. A second expert, a clinical psychologist, testified that Simpson's IQ was at the lower end of the normal range, and that Simpson tested "highly abnormal" on the scales of paranoia, schizophrenia, and mania. Finally, a forensic psychiatrist, Dr. Dupree, testified that Simpson suffered from a mental illness known as dysthymic disorder, which is basically chronic depression that lasts over a period of more than two years. Dr. Dupree also testified that Simpson experienced symptoms associated with attention deficit disorder and post-traumatic stress disorder, but he could not be diagnosed as having these disorders. She also noted his history of drug and alcohol abuse.

But at the PCR hearing, Simpson's counsel presented the testimony of two experts, who gave a more detailed explanation of the relationship between Simpson's traumatic childhood and the likelihood that he would murder someone. PCR counsel also submitted the affidavit of Dr. Dupree, in which she stated that the opinion she gave at the sentencing hearing was not reliable because she did not know that Simpson's mother had used drugs during her pregnancy with Simpson; that Simpson had been sexually abused; that he had witnessed and experienced several acts of violence; and that he had suffered chronic headaches. Based on this "new" information, Dr. Dupree stated she was prepared to testify that neglected and abandoned children are prone to depression, anxiety disorders, substance abuse disorders, and other psychiatric illnesses, and that people who are exposed to traumatic events are more likely to suffer from PTSD.

607** Based on this evidence, the PCR court found that counsel failed to fully investigate Simpson's medical, mental, social, and familial *712** history, and because of this, the jury did not have the opportunity to consider mitigating factors warranting a life sentence as opposed to the death penalty. We disagree.

Simpson's defense counsel interviewed a number of witnesses about Simpson's childhood and life. Counsel also hired a private investigator to go to New York and gather background information on Simpson. Moreover, counsel called several witnesses, including three experts, to offer mitigating evidence. Counsel testified that information gathered about Simpson's background was available to the experts. Therefore, we find that the PCR judge erred in finding counsel deficient.

[25] Even if the PCR judge correctly found counsel deficient, Simpson failed to show that he was prejudiced during the mitigation case. The jury was aware of Simpson's troubled childhood, traumatic life experiences, and mental condition. Any additional investigation would have merely resulted in a "fancier" mitigation case, having no effect on the outcome of the trial. See *Jones v. State*, 332 S.C. 329, 504 S.E.2d 822 (1998) (holding that a "fancier mitigation case" does not render the prior case inadequate).

Therefore, the PCR court erred in finding that Simpson was prejudiced by deficiencies in the mitigation case.

II. Depositions and Affidavits

[26] The State argues that the PCR court erred by considering numerous depositions and affidavits in lieu of live testimony. We disagree.

[27] At a PCR evidentiary hearing, "[t]he court may receive proof by affidavits, depositions, oral testimony, or other evidence...." S.C.Code Ann. § 17-27-80 (1985). Whether to admit such evidence is within the court's discretion. *Beckett v. State*, 278 S.C. 223, 224, 294 S.E.2d 46, 47 (1982).

In the present case, the PCR court allowed Simpson to introduce over forty depositions and some twenty-two affidavits into evidence in lieu of live testimony. We find that this decision was within the trial judge's discretion, resulting in no ***608** prejudice to the State. Most of the relevant witnesses testified at the PCR hearing and were cross-examined by the State. In addition, the court gave the State the opportunity to submit additional testimony and affidavits countering the evidence presented by Simpson. Therefore, we hold that the PCR court did not err.

CONCLUSION

We affirm the PCR court's decision declining to grant a new trial as to the conviction of murder. As to the conviction of armed robbery, however, we reverse the PCR court's decision declining to grant relief, because we find that the State withheld potentially exculpatory evidence related to the armed robbery charge. Therefore, Simpson is entitled to a new trial on the armed robbery charge. If the State convicts Simpson of armed robbery on retrial, Simpson will also be entitled to a new trial on the penalty phase of the capital murder charge, given that armed robbery served as the sole aggravating circumstance allowing the State to seek the death penalty.^{FN5}

^{FN5.} We fail to see how, as the dissent suggests, *Ring v. Arizona*, 536 U.S. 584, 122 S.Ct. 2428, 153 L.Ed.2d 556 (2002), in any way suggests that this form of relief is improper. *Ring* and its companion cases stand simply for the proposition that a sentence may not be enhanced by considering facts that have not been proved beyond a reason-

able doubt. *Id.* at 602, 609, 122 S.Ct. 2428. In no way can these cases be read to provide that the remedy we grant here is constitutionally deficient.

We are equally unpersuaded that the case of *Oregon v. Guzek*, 336 Or. 424, 86 P.3d 1106 (2004) (scheduled for argument before the United States Supreme Court December 7, 2005), is at all relevant in this matter. *Guzek* deals with the limitations and requirements for mitigation evidence as provided by the due process clause of the Eighth Amendment to the United States Constitution. If Simpson were found guilty of armed robbery on re-trial, it is likely that any "residual doubt" about Simpson's guilt would simply be a collateral attack on the validity of his conviction. Under current Supreme Court jurisprudence, the Eighth Amendment "in no way mandates reconsideration by capital juries, in the sentencing phase, of their 'residual doubts' over a defendant's guilt ... [s]uch lingering doubts are not over any aspect of petitioner's 'character,' 'record,' or 'circumstance of the offense.'" *Franklin v. Lynaugh*, 487 U.S. 164, 174, 108 S.Ct. 2320, 2327, 101 L.Ed.2d 155 (1988). Until the Supreme Court directs otherwise, we will continue to apply what appears to be well-reasoned and well-settled precedent.

****713** We also reverse the PCR court's decision finding that the mitigation case was not fully developed. We find that defense ***609** counsel presented a thorough mitigation case on Simpson's behalf.

Finally, we affirm the PCR court's decision to consider certain depositions and affidavits in lieu of live testimony.

Therefore, the PCR court's decision is affirmed in part and reversed in part.

MOORE, WALLER, and BURNETT, JJ., concur.
PLEICONES, J., dissenting in a separate opinion.
Justice PLEICONES, dissenting:

The majority holds the State's *Brady*^{FN1} violation entitles Simpson to a new trial on the armed robbery

charge, with capital resentencing contingent on the outcome of that trial. In my opinion, such a limited remedy would violate Simpson's constitutional rights.

FN1. *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963).

In finding a *Brady* violation, we have necessarily found the nondisclosed evidence was material. In determining materiality for *Brady* purposes,

The question is not whether the defendant would more likely than not have received a different verdict with the evidence, but whether in its absence he received a fair trial, understood as a trial resulting in a verdict worthy of confidence.

Kyles v. Whitley, 514 U.S. 419, 434, 115 S.Ct. 1555, 131 L.Ed.2d 490 (1995).

I would hold that when, as here, the *Brady* violation in the guilt phase of a capital trial relates to the aggravating circumstances relied upon by the State in the penalty phase,^{FN2} fundamental fairness requires a new trial.

FN2. Murder during the commission of armed robbery, S.C.Code Ann. § 16-3-20(c)(a)(1)(d) (2003) and murder for the purpose of receiving money or any thing of value. § 16-3-20(c)(a)(4) (2003).

I am also concerned that to deny Simpson a new sentencing proceeding under these circumstances would violate his Sixth Amendment right to trial by jury. In *Ring v. Arizona*, 536 U.S. 584, 122 S.Ct. 2428, 153 L.Ed.2d 556 (2002), the United ***610** States Supreme Court held that this right entitles the capital defendant to "a jury determination of any fact on which the legislature conditions an increase in [his] maximum punishment." *Id.* at 589, 122 S.Ct. 2428. The original jury which sentenced Simpson to death was deprived, by the State's unconstitutional act, of hearing all of the evidence relevant to the aggravating factors. To deny Simpson the right to have his sentence determined by a jury which has heard all the facts, including those which exculpate him, would violate his Sixth Amendment right to a jury trial. *Ring v. Arizona, supra*; cf. *State v. Riddle*, 301 S.C. 68, 389 S.E.2d 665 (1990) (capital resentencing reversed where state

permitted to prove statutory aggravators merely by introducing defendant's convictions for burglary and armed robbery from the first trial; these convictions were in no way binding on resentencing jury, which had to determine appropriate penalty from the evidence presented to it).

I therefore concur in the majority's determination that the State committed a *Brady* violation, but dissent from its holding that the error may be remedied by a retrial on the armed robbery charge alone with a contingent new sentencing proceeding. In any case, as explained below, I would hold that counsel were ineffective in failing to present expert testimony to impeach Nathan's credibility, and to dispute the State's forensic evidence.^{FN3}

FN3. I would also find that trial counsel were deficient in failing to be aware of *J.E.B. v. Alabama*, 511 U.S. 127, 114 S.Ct. 1419, 128 L.Ed.2d 89 (1994), which was decided five months before the capital trial. See *Hill v. State*, 350 S.C. 465, 567 S.E.2d 847 (2002) (trial counsel rendered deficient performance in failing to be aware of three month old decision). I agree, however, that Simpson failed to demonstrate the requisite prejudice stemming from this deficient performance and thus did not meet his burden of proving this allegation ineffective assistance of counsel. See *Williams v. State*, 363 S.C. 341, 611 S.E.2d 232 (2005).

****714** At trial, Nathan acknowledged that 'someone' had told him what to say, and agreed on cross-examination that the solicitor's office had "helped" him remember. At the PCR hearing, Simpson presented expert testimony that Nathan's low I.Q.^{FN4} ***611** and learning disability^{FN5} made him especially susceptible to suggestions about past events, a situation compounded by his young age (nine at the time of the events). Simpson's expert pointed to specific parts of Nathan's testimony that were consistent with false memories. One of Simpson's trial attorneys admitted that while they were aware of the changes in Nathan's testimony, they felt they could deal with it through cross-examination. Simpson's lead counsel echoed this sentiment. Trial counsel did not consult with a memory expert.

FN4. Nathan's full scale I.Q. was 71 while his

performance I.Q. was 69, placing him in the lowest 3% of children in the United States.

FN5. His learning disability included an inability to recall the details of a story while grasping the main theme.

The PCR judge found that the attorneys were fully aware before trial of Nathan's belated recollection of having seen Simpson with cash in hand, and was not ineffective in relying only on cross-examination to call Nathan's credibility into question. The majority upholds this ruling. I would reverse.

A PCR applicant claiming trial counsel was ineffective must establish both that counsel's performance was deficient, that is, that it fell below an objective standard of reasonableness, and that the deficient performance prejudiced the applicant's case, that is, but for counsel's deficient performance there is a reasonable probability that the outcome of the proceeding would have been different. *Williams v. State*, 363 S.C. 341, 611 S.E.2d 232 (2005); *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). On certiorari, this Court will uphold the PCR judge's findings if they are supported by any probative evidence in the record. *Williams, supra*.

The PCR judge found counsel was not ineffective in relying solely on cross-examination to impeach Nathan's credibility. In support of this finding, the PCR judge referred to a juror's affidavit which stated:

I was concerned about the testimony of the little boy who was in the store. I suspected that he might have some memory problems because I was not sure that I could rely on the boy's testimony about Mr. Simpson taking money out of the register and although I signed the verdict form in the end, I was never certain the [sic] Mr. Simpson really committed armed robbery.

***612** The majority affirms the PCR judge's denial of relief to Simpson on this ground, finding the decision to rely on cross-examination of Nathan was "a valid trial strategy." I disagree. Counsel were well aware of the weakness of the State's armed robbery case, and the letter sent shortly before trial alerted them that Nathan 'may' have suddenly remembered a crucial fact. Without exploring the issue of Nathan's back-

ground, trial counsel were not in a position to make a strategic decision. Had counsel conducted even a cursory review of Nathan's school records, they would have been aware of his low I.Q. and learning disability. Surely knowledge of these facts, combined with Nathan's critical new recollection, would have sufficient to put trial counsel on notice that Nathan's memory was suspect. In my opinion, counsel were deficient in failing to pursue the credibility of Nathan's recalled memory and in relying on cross-examination of a child witness/victim upon whose testimony the armed robbery case largely turned.

As Simpson demonstrated at the PCR hearing, expert testimony would have allowed the jury to understand the special vulnerability of Nathan to suggestions regarding the crucial events. In my opinion, Simpson produced evidence not only of deficient performance in counsels' reliance solely on cross-examination to impeach Nathan's testimony, but also of prejudice. One juror admitted she "suspected that [Nathan] might have some memory problems." While the PCR judge viewed this statement as evidence of counsel's adequate cross-examination performance, I find it is evidence of prejudice. In my opinion, there is a reasonable probability that expert testimony would have confirmed this juror's "suspicion" and resulted ***715** in Simpson's acquittal of armed robbery. A finding of 'not guilty' on the armed robbery charge would have negated both aggravators relied upon by the State.

Further, as explained below, if the jury were to find Nathan's story less credible, then the credibility of Simpson's explanation of the events is enhanced. A jury finding Simpson's story credible might return a manslaughter verdict.^{FN6}

^{FN6}. The trial judge charged the jury on voluntary manslaughter based on Simpson's testimony.

***613** Simpson testified that he had decided to withdraw from the planned armed robbery, and that the first shots were fired as he and Harrison struggled over the gun. Simpson explained that he shot at Harrison as Harrison moved rapidly away from the cash register, presumably to use the phone to summon help, only in an attempt to disable him. In contrast, the State theorized that there was no struggle and no shots fired during such, and that Harrison was shot in the back while prostrate on the ground. The State presented

testimony from a pathologist that Harrison's hand wound was 'distant,' and that Harrison had been lying on the ground when he was shot twice in the back.^{FN7}

^{FN7}. I note this theory is in part contradicted by the store employee's testimony that he saw Simpson shoot Harrison as Harrison walked rapidly towards the store phone.

At trial, counsel relied solely on Simpson's testimony and counsel's own "reenactment" during closing argument to support Simpson's version of events.

At the PCR hearing, Simpson presented three forensic experts. All disputed the State's expert's trial testimony, and opined that the evidence was consistent with the first shots having been fired during a struggle. They testified that Harrison's hand wound was not distant, and that the other wounds indicated Harrison was shot while standing, not while prostrate as the pathologist had testified at trial.

The PCR judge agreed that Simpson's PCR experts supported Simpson's story, but held their evidence was merely cumulative to trial counsel's reenactment in closing argument. I disagree.

Counsel's closing argument is not evidence. *E.g., State v. Charping*, 333 S.C. 124, 508 S.E.2d 851 (1998). I would hold, therefore, that there is no evidence in the record to support the PCR judge's holding that trial counsel were not deficient in failing to present forensic evidence to support Simpson's version of events.

The PCR judge held that, in any case, Simpson could not establish prejudice in that there was no reasonable probability that the forensic evidence would have changed the result since the jury could still have returned a murder verdict even if a ***614** struggle preceded the upright shooting of Harrison. I disagree. Had the jury heard the expert evidence concerning false memories and found that no money was taken, and had it heard forensic evidence that supported Simpson's story of a struggle followed by the shooting of Harrison while he was running away, the jury may have found Simpson's story credible and returned a manslaughter verdict. While it is true Simpson entered the store intending to rob it, he claimed to have changed his mind once there. Further, Simpson's testimony indicated that Harrison lunged for the gun after seeing it in Simpson's waistband, which is one ex-

planation "how and why the gun was initially pulled from Simpson's waistband." Finally, Simpson acknowledges shooting Harrison twice after the struggle ended, but claimed it was in a panicked attempt to stop Harrison from getting help. In my opinion, Simpson demonstrated both deficient performance and prejudice stemming from trial counsels' decision not to present expert testimony supporting Simpson's version of events.

CONCLUSION

The State's *Brady* violation denied Simpson a fair trial. *Kyles v. Whitley, supra*. Further, Simpson demonstrated both deficient performance on the part of his trial attorneys and resulting prejudice from their failure to pursue and present expert testimony. I would reverse Simpson's murder and **716 armed robbery convictions and sentences, and remand for a new trial.

FN8

FN8. Even if the new jury were to convict Simpson of murder and armed robbery, it is conceivable that Simpson would be entitled to argue and/or have his sentencing jury charged on residual doubt. The United States Supreme Court has on its docket for December 7, 2005, *Oregon v. Guzek*, No. 04-928. The issue in *Guzek* is:

Does a capital defendant have a right under the Eighth and Fourteenth Amendments to the United States Constitution to offer evidence and argument in support of a residual-doubt claim—that is, that the jury in a penalty-phase proceeding should consider doubt about the defendant's guilt in deciding whether to impose the death penalty?

Even without a *Guzek* argument or charge, it is entirely possible that a weaker guilt case would result in a life sentence.

S.C.,2006.
Simpson v. Moore
367 S.C. 587, 627 S.E.2d 701, 56 A.L.R.6th 767

END OF DOCUMENT

DSS
Serving Children and Families
KIM S. AYDLETTE, STATE DIRECTOR

June 03, 2004

James A. Mabry, Esq.
402 Fernwood Drive
Simpsonville, SC 29681

Melanie Howard
105 Abraham Drive
Greenville, SC 29605

Kenneth Broome
1008 White Horse Road, Apt. E-3
Greenville, SC 29605

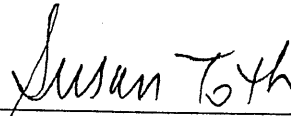
Re: DSS vs. Melanie Howard, *et al*
File No.: 2002-DR-23-3895

Dear All:

Enclosed herewith, please find a clocked copy of the Judicial/Court Ordered Review Order signed by the Honorable R. Kinard Johnson, Jr., on May 19, 2004, in the above-entitled matter along with my Certificate of Service by Mail for the same.

Respectfully yours,

GREENVILLE COUNTY DEPARTMENT
OF SOCIAL SERVICES



Susan T. Toth
Legal Secretary
467-4894

/stt
Enclosure

ORIGINAL

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

South Carolina Department
Of Social Services,

Plaintiff, vs.

Melanie Howard, Kenneth Broome,
Janelle Jordan (deceased),
Defendants, IN THE INTEREST
OF

18, 2004

TRIAL JUDGE:

PLAINTIFFS ATTORNEY:

CASEWORKER:

GUARDIAN'S ATTORNEY:

COURT REPORTER:

' L r l j F A y f ,Y COURT
) c « N ! ' ' i 1 Z ~ ' JUDICIAL CIRCUIT) C.
A. No.: 2002-DR-23-3895

)
filly {9 3 43 NI 'Q14
) JUDICAL/COURT ORDERED

A M
) (Child(ren) not in Foster Care)

))
))
)

DATE OF HEARING: May

))
The Honorable R. Kinard Johnson Jr.

Rebecca Wray for Allison P. Dunham

Tracy Cobb DEFENDANTS ATTORNEY: DEFENDANT'S
) GUARDIAN AD LITEM:

)
James Mabry, Esq.

n/a

Maria Smith

Court ordered review to be held on _____, 200_ at _____ a. / p. m. at
the Greenville County Family Courthouse located at 301 University Ridge, Greenville, South
Carolina.

Contested hearing to be held on _____, 2 0 0 _ at 9:00 a.m. at the
Greenville County Family Courthouse located at 301 University Ridge, Greenville, S.C. as the
_____(A,B,C) case.

This matter is before the Court for a court ordered or judicial review as provided for in
S.C. Code Section 20-7-762(C) (1976), as amended. This matter is before the Court by virtue of a
previous action. Therefore, this Court has jurisdiction of both the parties and the subject matter
of this action.

TREATMENT PLAN

May 18, 2004

Case Name: Department of Social Services -vs.- Melanie Howard, Kenneth Broome, and
Jamelle Jordan (deceased)

Case Number: 2002-DR-23-3 895

- A. PLACEMENT OF CHILDREN: That the minor children shall remain *in the legal custody of* the Defendant, Melanie Howard.
- B. TREATMENT GOALS FOR DEFENDANTS: Treatment *goals* have been *successfully* completed.
- C. REQUIRED SERVICES FOR CHILDREN: Not applicable.
- D. VISITATION:- N/A
- E. REVIEW: Not applicable.
- F. ACCESS TO INFORMATION/AUTHORIZATION: Not applicable.
- G. ADDITIONAL PROVISIONS:
1. That this case shall automatically close.
 2. That the Department of Social Services shall be *relieved of offering* services to the Defendants.
 3. That *the* Guardian-ad-Litem and any counsel shall be relieved at this time.
- H. TYPE OF HEARING: That this hearing shall serve as a court ordered review.

Respectfully submitted, .

Tracy Cobb

Human
Services



Specialist II May 18, 2004

It appears that all of the Defendant(s) and other interested parties have been served with notice of this review. The Defendant(s) and other interested parties have been notified of the date, time and place of the hearing by personally delivering written notice to them or sending written notice to their last know address, unless noted below.

The following persons were present for the hearing: Melanie Howard and the caseworker. Mr. Kenneth Broome signed the green card for acceptance of service but he failed to appear. Mr. James Mabry was noticed but did not appear.

All parties have been given the opportunity to speak regarding the facts as presented in the judicial review summary and proposed treatment plan by the Department of Social Services.

The parties ☒ were/ ☐ were not in agreement with the proposed treatment plan presented by the Plaintiff. If the parties were not in agreement, they were no in agreement regarding the following issues: n/a

_____. The parties were in agreement regarding all other issues before the Court unless noted above. With regards to those issues on which the parties were in agreement, all parties stated to the Court that they fully understood the agreement, felt it to be fair, equitable and reasonable and in the best interests of the minor children. With regards to those issues, which were contested, the Court finds the following:

n/a Issues not agreed upon are continued for a contested trial and set as the ____ (A,B,C) case on _____, 200__ at 9:00 a.m. at the Greenville Family Court;

OR

n/a Testimony was taken regarding the contested issues by the Court and all parties were given the opportunity to present testimony and evidence to the Court.

RKGJ.
#2

Based upon an examination of all pleadings, consideration of the testimony presented and the recommendation of the Guardian ad Litem, this Court finds that the treatment plan presented by the Plaintiff dated May 18, 2004, with any amendments noted on the placement plan and supplemental pages, if any, which are attached hereto, is supported by clear and convincing evidence, is fair and equitable and in the best interest of the minor child(ren) and therefore adopts it as the Order of the Court. The Court further finds that court jurisdiction in this case shall end automatically on May 18, 2004, a date no later than eighteen months after the initial intervention unless the Court extends this jurisdiction upon review of the case.

The attorney for the Guardian *ad litem* Program shall be compensated \$ 50.00 pursuant to the Program's fee schedule.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the treatment plan proposed by the Plaintiff, with any amendments and supplemental pages attached or noted, is attached hereto and incorporated as the Order of this Court. ~~this is a final order~~
~~subject to the objection with the~~
AND IT IS SO ORDERED.

R. Kinard Johnson, Jr.
Judge, Family Court
Thirteenth Judicial Circuit

Date: 5-19-04

Greenville, South Carolina.

R/KJg
The guardian ad litem indicated his consent to this order after the hearing. He did this in a phone conversation with the Court.

DIRECTIONS FOR PAYMENT OF CHILD SUPPORT

- ☐ I. Support ordered is NOT to be paid through the Clerk's office - remainder of form not applicable.
- ☐ II. Support payable through Clerk's office - complete remainder of form.

A. Total amount of arrearage, if any \$ _____

B. Payments _____

CHILD SUPPORT

Base Amount \$ _____

Arrearage _____

5% Fee _____

ALIMONY

Base Amount \$ _____

Arrearage _____

5% Fee _____

Child Support
Not Ordered o
Changed by 4th
Order.

C. Frequency (check one)

☐ Weekly

☐ Bi-Weekly

☐ Monthly

☐ semi-monthly (1st and 16th)

☐ semi monthly (15th and 30th)

D. Date of first payment: _____

E. Paid by: Name: _____

P.O. Box: _____

DOB: _____

Height: _____

Weight: _____

Eye Color: _____

Hair Color: _____

Race: _____

Street: _____

City: _____

State: _____

SSN: _____

Telephone No.: _____

Employer: _____

Employer Address: _____

ZIP: _____

Driver's License No.: _____

Telephone No.: _____

F. Paid to: Name: _____

P.O. Box: _____

Street: _____

City: _____

State: _____

SSN: _____

Telephone No.: _____

Employer: _____

Employer Address: _____

ZIP: _____

Driver's License No.: _____

Telephone No.: _____

G. Wage Withholding ordered:

☐ required by Code §20-7-1315(B)

☐ ordered ☐ not ordered

Prepared By: SC DSS

Date: 5-18-04

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

South Carolina Department of
Social Services,)

Plaintiff)

vs.)

Melanie Howard, Kenneth Broome,
Janelle Jordan (deceased))

Defendants)

IN THE FAMILY COURT
THIRTEENTH JUDICIAL CIRCUIT

CERTIFICATE OF SERVICE
BY MAIL

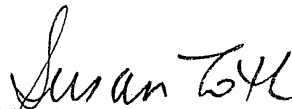
C.A. No.: 2002-DR-23-3895

I, the undersigned, hereby certify that I have served the Judicial/Court Ordered Review Order signed by the Honorable R. Kinard Johnson, Jr., on May 19, 2004, upon James A. Mabry Guardian ad Litem for children, and Melanie Howard pro se defendant, by depositing a copy of same in the United States Mail, proper postage attached. I further certify that I have served the Judicial/Court Ordered Review Order signed by the Honorable R. Kinard Johnson, Jr., on May 19, 2004, upon Kenneth Broome pro se defendant, by depositing a copy of same in the United States Mail, certified, return receipt requested, proper postage attached, on June 03, 2004 to the following address(es):

James A. Mabry, Esq.
402 Fernwood Drive
Simpsonville, SC 29681

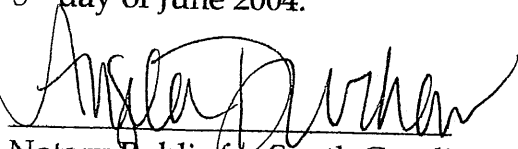
Melanie Howard
105 Abraham Drive
Greenville, SC 29605

Kenneth Broome
1008 White Horse Road, Apt. E-3
Greenville, SC 29605
7001 1940 0002 9969 2348



Susan Toth, Legal Secretary

SWORN to before me this
3rd day of June 2004.



Notary Public for South Carolina

My Commission Expires: 12/31/10

JUDICIAL MERIT SELECTION COMMISSION
PERSONAL DATA QUESTIONNAIRE

Court, Position, and Seat # for which you are applying:

Circuit Court, Thirteenth Judicial Circuit, Seat 2

1. NAME: Andrew Ross Mackenzie
BUSINESS ADDRESS: Barrett-Mackenzie, LLC
100 Mills Ave.
Greenville, S.C. 29605
E-MAIL ADDRESS: andrewmackenzie@barrettmackenzie.com
TELEPHONE NUMBER: (office): 864-232-6247
2. Date of Birth: 1966
Place of Birth: Wilmington, Delaware
3. Are you a citizen of South Carolina? Yes
Have you been a resident of this state for at least the immediate past five years? Yes
5. Family Status: Married to Gwendolynn Wamble Barrett on April 11, 1997.
Never divorced. Two children.
6. Have you served in the military? I have never served in the military.
7. List each college and law school you attended, including the dates of your attendance, the degrees you received, and if you left an institution without receiving a degree, the reason for your departure.
 - (a) Washington and Lee University, 1985-89, B.A. in American History;
 - (b) Cumberland School of Law, 1990-93, J.D.
8. List the states in which you have been admitted to practice law and the year of each admission. Also list any states in which you took the bar exam but were never admitted to the practice of law. If you took the bar exam more than once in any of the states listed, please indicate the number of times you took the exam in each state.

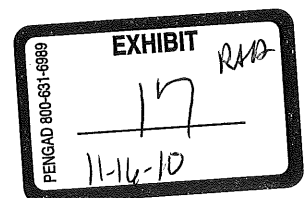
I have been admitted to practice law in the state of South Carolina. I was admitted to practice in 1993. I took the bar exam one time and passed. I am not admitted to practice in any other state. I have not taken the bar exam in any other state.
9. List the significant activities in which you took part during your attendance at college, graduate, and law school. Give the dates you were involved in these activities and list any leadership positions you held.

Washington and Lee University

 - (a) Washington and Lee University Mock Convention, 1988;
 - (b) Pi Kappa Alpha Fraternity (Alumni Secretary), 1985-89;
 - (c) Dean's List.

Cumberland School of Law

 - (a) Trial Advocacy Board, 1992-93;
 - (b) Judge James O. Haley Federal Court Trial Competition;
 - (c) Dean's List;



(d) Summer Program in International and Comparative Law, University of Victoria, Victoria, British Columbia, August 1991.

10. Describe your continuing legal or judicial education during the past five years. Include only the title and date of any continuing legal or judicial education course completed.

<u>Conference/CLE Name</u>	<u>Date(s)</u>
(a) Legal Ethics in South Carolina	2/11/05;
(b) 15th Annual Criminal Law Practice in South Carolina	11/18/05;
(c) South Carolina Family Court Bench Bar	12/2/05;
(d) 5th Annual Federal Criminal Practice in S.C.	.9/8/06;
(e) 22nd Annual S.C. Criminal Law Update	1/26/07;
(f) S.C. Civil Procedure Update	2/16/07;
(g) Divorce Mediation Training for Professionals	11/29-12/3/07;
(h) Ethical Issues for Lawyers in Electronic Age	2/20/08;
(i) Federal Criminal Practice Seminar	10/16/08;
(j) Family Law Intensive Workshop	11/21/08;
(k) 6th Annual Federal Practice	12/16/08;
(l) Federal Rules of Evidence (Tangled Web)	12/17/08;
(m) 2009 Hot Tips from the Coolest (Family Law)	9/18/09;
(n) Federal Criminal Practice Fall 2009	10/29/09.

11. Have you taught law-related courses or lectured at bar association conferences, educational institutions, or continuing legal or judicial education programs?

(a) I once spoke at a C.L.E. seminar in approximately 1996. I was still an assistant solicitor at the time. The seminar was held in Columbia and broadcast live throughout the state. The seminar was held to help launch the publication of the new treatise Handling Traffic Cases in South Carolina (South Carolina Bar CLE Division, copyright 1996). I was a contributing author to the treatise. I spoke on the subject of Driving Under the Influence at the seminar.

(b) On March 19, 2010, I participated in the Christ Church Episcopal School Alumni Career Program Panel Discussion in Greenville. This is a program held each year at the school to inform high school students about what it is like to work in different vocations. I spoke about the practice of law especially criminal law.

12. List all published books and articles you have written and give citations and the dates of publication for each.

Handling Traffic Cases in South Carolina (S.C. Bar CLE Division, copyright 1996), contributing author.

13. List all courts in which you have been admitted to practice and list the dates of your admission. Give the same information for administrative bodies that require a special admission to practice.

(a) U.S. Court of Appeals for the Fourth Circuit, September 9, 1998.

(b) U.S. District Court for the District of South Carolina, June 13, 1994.

(c) S.C. Bar, November 15, 1993.

14. Describe chronologically your legal experience since graduation from law school and include a list of all law firms with which you have been associated. Describe the general character of your practice and divide it into periods with dates if its character has changed over the years.

I began my legal career as an Assistant Solicitor at the Thirteenth Circuit Solicitor's Office in Greenville. I began working there as an attorney in August of 1993, and I left the office in September of 1998. I was initially assigned to the Traffic Unit where I prosecuted automobile related offenses such as Driving Under the Influence, Felony Driving Under the Influence and Reckless Homicide. I handled hundreds of such cases. I personally tried numerous D.U.I. cases before a jury. I personally tried one felony D.U.I. case to a jury and obtained a guilty verdict. I was eventually promoted to be the head of the Traffic Unit.

After a couple of years, I was promoted to the Violent Crimes section of the Solicitor's Office. There I prosecuted felonies such as murder, manslaughter, arson, armed robbery and burglary, etc. I handled hundreds of these kinds of cases. Most of them resulted in guilty pleas. I personally tried two murder cases before a jury and obtained guilty verdicts in both. I also personally tried armed robbery and burglary cases before juries and obtained guilty verdicts. Three of these cases resulted in sentences of life without parole. As an Assistant Solicitor, I personally participated in numerous jury trials in circuit court. I also assisted in a death penalty prosecution.

During my latter years at the solicitor's office, I was one of two Team Leaders for the office. All of the attorneys in the office were assigned to one of the two teams. As team leader, it was my duty to ensure that the members of my team were prepared to conduct jury trials and guilty pleas in circuit court. It was also my duty to oversee the General Sessions jury trial and guilty plea dockets. I generated the jury trial docket and published it. I then coordinated it with the circuit court judges and made sure that court remained in session and ran smoothly from one jury trial to the next. I also oversaw the guilty pleas docket to make sure that criminal cases moved efficiently through circuit court.

While working at the solicitor's office, I was also appointed to be a Special Assistant United States Attorney during the years 1994 through 1998. I was a member of the Upstate Violent Crimes Task Force which was focused on the investigation and prosecution of firearms offenses in federal court. I personally tried one Felon in Possession of a Firearm case before a jury in United States District Court and obtained a guilty verdict. While working as a Special Assistant United States Attorney, I underwent and passed a Full Field F.B.I. Background Investigation and Security Clearance.

I went into private practice in 1998. I worked as an associate for the firm of Brown, Massey, Evans, McCleod and Haynsworth from September through December 1998. There I practiced general civil litigation, some probate matters and criminal defense.

I have been a partner with the firm of Barrett-Mackenzie, LLC since December, 1998. My business partner is my wife, Lynn Barrett. Lynn practices exclusively in the area of domestic relations/family court. My practice is about fifty per cent criminal defense and fifty per cent family court. I practice before the following courts: The United States Court of Appeals for the Fourth Circuit, United States District Court for the District of South Carolina, General Sessions Court, The Court of Common Pleas, Family Court, and various magistrate courts.

If you are a judge and are not seeking a different type of judgeship, the following questions are inapplicable:

- (a) If you are a candidate for Circuit Court, please provide a brief written description of your experience in criminal matters, including any cases handled over the past five years and include a brief description of the issues involved. Further, please provide a brief written description of your experience in civil matters, including any cases handled over the past five years and include a brief description of the types of matters handled, issues involved, and procedural history. Please include information such as the primary areas in civil court in which you practice, whether you represent plaintiffs or defendants, or both. You may go back further than five years if you feel it would assist the Commission with its assessment of your experience. If you lack experience in an area, describe how your background has prepared you to preside over such matters as a Circuit Court Judge, or how you would compensate for your lack of experience in this area.

I have extensive experience in criminal matters. I was a prosecutor for five years. I prosecuted a wide variety of cases in both circuit and magistrate court. This included violent crimes, drug crimes, traffic offenses, burglaries, larcenies, shoplifting, etc. When I first went into private practice, I worked as a contract attorney through the Greenville office of Indigent Defense. Criminal Defense remains about fifty percent of my practice today. I believe that at one time or another I have handled every kind of General Sessions Court case. These cases have involved a multitude of legal issues. I have handled thousands of cases in General Sessions Court. Most of these cases were resolved prior to trial. However, I have also personally tried numerous cases before a jury.

I have some experience with death penalty cases. I was certified to be lead counsel for death penalty defense by the South Carolina Supreme Court on July 7, 2000. A few years ago I served as second chair in a death penalty case in Greenville. In that case the solicitor eventually withdrew the death penalty notice and the defendant pled guilty to voluntary manslaughter.

I also have a lot of experience in federal criminal cases both at the trial and appellate levels. I have twice orally argued cases before the

Fourth Circuit Court of Appeals in Richmond, Virginia. I won both of these cases by published opinion. I have been appointed by the Fourth Circuit to both its CJA Appellate Panel and Capital Appellate Panel of Attorneys.

I have handled numerous cases in federal district court. Most of these cases have related to drugs or unlawful possession of firearms.

Since 1998, I have also practiced extensively in family court. I have handled a wide variety of cases involving a multitude of legal issues. I have handled cases involving divorce, child custody, child visitation, child support, decrees of separate maintenance and support, alimony, asset and debt division, adoption, child abuse and neglect, and termination of parental rights. I have handled hundreds of family court cases. I have participated in a wide variety of motions and merits hearings. With these cases, I have become very experienced in the rules of civil procedure.

In December 2007, I completed a 42-hour training course in Divorce and Family Mediation conducted by Atlanta Divorce Mediators, Inc. For the last few years I have served on a volunteer basis as a mediator at the Upstate Mediation Center in Greenville. I mediate family court cases about once or twice a month.

I have also handled some cases in the Court of Common Pleas. My experience in Common Pleas is not as extensive. However, I have handled some cases such as cases under the Sexually Violent Predator Act, appeals from magistrate court cases, actions for Post Conviction Relief and a couple of mortgage foreclosures before the Master in Equity. I believe that I represented the accused in the first Sexually Violent Predator case that went to trial in Greenville County. The accused was committed under the Act, but his commitment was reversed on appeal.

I believe that my extensive experience in General Sessions Court has prepared me to preside over circuit court including the Court of Common Pleas. I have personally participated in numerous jury trials. The rules of evidence are the same in both General Sessions and Common Pleas Courts. I have also become quite experienced with the rules of civil procedure through my experience with hundreds of cases in family court. Although I do not have much experience in jury trials in Common Pleas Court, the breadth of my legal experience easily compensates for this.

15. What is your rating in Martindale-Hubbell? BV
16. What was the frequency of your court appearances during the past five years?
 - (a) federal: about once every few months;
 - (b) state: about 10 times per month.

17. What percentage of your practice involved civil, criminal, domestic, and other matters during the past five years?
- (a) civil: 5%;
 - (b) criminal: 50%;
 - (c) domestic: 45%;
 - (d) other: 0%.
18. What percentage of your practice in trial court during the past five years involved matters that went to a jury, including those that settled prior to trial?
- (a) jury: 10%;
 - (b) non-jury: 90%.
- Did you most often serve as sole counsel, chief counsel, or associate counsel in these matters? Sole counsel
19. List five of the most significant litigated matters you have personally handled in either trial or appellate court or before a state or federal agency. Give citations if the cases were reported and describe why these matters were significant.
- (a) State v. Lowell J. Washington, 338 S.C. 392, 526 S.E.2d 709 (2000).
In this case, the defendant was charged with Burglary First Degree in Greenville Circuit Court. I was the assistant solicitor who conducted the jury trial. The jury found the defendant guilty, and he was sentenced to life in prison without parole. He appealed. I did not handle the appeal. The Supreme Court of South Carolina affirmed the conviction by published opinion. The court held that the defendant's prior common-law burglary conviction could be used to seek a life sentence without parole under South Carolina's "repeat offender statute" even though common-law burglary was not specifically listed in the statute as a qualifying prior conviction.
 - (b) David Jackson, Jr. v. State, 355 S.C. 568, 586 S.E.2d 562 (2003).
This was a murder case from Greenville Circuit Court. I was the assistant solicitor who conducted the jury trial. The jury convicted the defendant of murder, and he was sentenced to life in prison. I was not involved in any of the post conviction proceedings. I am not sure whether the defendant filed a direct appeal. However, he did apply for Post Conviction Relief. His application was initially granted at the circuit court level. Nevertheless, the Supreme Court of South Carolina reversed. The Supreme Court held that although the evidence at the defendant's trial warranted giving the jury a self-defense instruction, his lawyer's failure to request such an instruction did amount to ineffective assistance of counsel. The conviction survived.
 - (c) United States v. Carlos Lopez, 219 F.3d 343, (4th Cir. 2000). Lopez was convicted in federal court of distribution of marijuana. He was sentenced to 188 months in prison. I was not involved in the jury trial or sentencing. I represented Lopez in his appeal to the Fourth Circuit in Richmond, Virginia and his resentencing in district court. We appealed his sentence. I orally argued the case before the Fourth Circuit. The

Fourth Circuit vacated the sentence and remanded the case to district court for resentencing by published opinion. The Fourth Circuit held that the government had agreed that statements in Lopez's proffer agreement with the government would not be used against him, except to cross-examine him, and then, only if he gave testimony materially different from what was in the proffer. Although Lopez actively participated in his defense (for example, cross-examining government witnesses, giving the closing argument, and arguing at sentencing), no condition precedent to the use of the proffered statements was satisfied in the case. Absent a condition precedent, use of the statements in the proffer to determine drug quantity for purposes of sentencing was held to be reversible error. At resentencing in district court, Lopez's sentence was reduced from 188 months to 60 months in prison.

- (d) United States v. Baseem Shakir Williams, 326 F.3d 535 (4th Cir. 2003). Williams pled guilty in federal district court to being a felon in possession of a firearm. He was sentenced to 180 months in prison under the federal Armed Career Criminal Act. I did not represent Williams at his guilty plea and initial sentencing. I represented Williams in his appeal to the Fourth Circuit in Richmond, Virginia and his resentencing in district court. We appealed his sentence. I orally argued the case before the Fourth Circuit. The Fourth Circuit vacated the sentence and remanded the case to district court for resentencing by published opinion. To qualify as a "serious drug offense" for Armed Career Criminal purposes, a prior conviction must carry a maximum term of imprisonment of ten years or more. The issue in Williams' case was whether two New Jersey convictions, one for possession with intent to distribute cocaine and heroin and the other for possession with intent to distribute heroin within 1000 feet of school property, met this requirement where the statutory maximum depended on drug quantity and/or other prior convictions. Noting that the quantity charged in one case only carried a five year maximum and that no quantity was alleged in the other, the Fourth Circuit rejected the government's alternative arguments that: (1) the state court prosecutors *could have* sought enhancement of the prior sentence to a ten year maximum based on another prior conviction; and/or (2) if the New Jersey offenses had been charged federally, they would have carried the required maximums. At resentencing in district court, Williams' sentence was reduced from 180 months to 84 months in prison.
- (e) State v. Octavius Louis Nelson, 2005-GS-23-1953 and 1951. This is the latest case that I have had go to jury trial in circuit court. I represented Nelson who was charged with Trafficking Cocaine and Crack. If convicted, he was facing a mandatory minimum sentence of 25 years. We tried the case from October 12 through 15, 2009 before Judge Pyle. The jury returned a verdict of not guilty.

20. List up to five civil appeals you have personally handled. Give the case name, the court, the date of decision, and the citation if the case was reported.
I have not handled a civil appeal.
21. List up to five criminal appeals that you have personally handled. Give the case name, the court, the date of decision and the citation if the case was reported.
- (a) United States v. Lopez, 219 F.3d 343 (4th Cir. 2000), July 17, 2000.
 - (b) United States v. Williams, 326 F.3d 535 (4th Cir. 2003), April 17, 2003.
 - (c) United States v. Cline, 169 Fed.Appx. 759 (4th Cir. 2006), March 1, 2006.
 - (d) I have also handled several federal appeals wherein I submitted a brief pursuant to the dictates of Anders v. California, 386 U.S. 738 (1967).
22. Have you ever held judicial office? I have never held a judicial office.
24. Have you ever held public office other than judicial office?
I have never held a public office other than Assistant Solicitor and Special Assistant United States Attorney.
25. List all employment you had while serving as a judge (whether full-time or part-time, contractual or at will, consulting or otherwise) other than elected judicial office. Specify your dates of employment, employer, major job responsibilities, and supervisor. None
26. Have you ever been an unsuccessful candidate for elective, judicial, or other public office? I have never been a candidate for public office.
27. Have you ever been engaged in any occupation, business, or profession other than the practice of law, teaching of law, or holding judicial or other public office?
I have never been engaged in such an occupation, business or profession.
28. Are you now an officer or director or involved in the management of any business enterprise?
I am a partner in the law firm of Barrett-Mackenzie, LLC. My business partner is my wife, Gwendolynn Wamble Barrett. She handles most of the management of the office.
29. A complete, current financial net worth statement was provided to the Commission.
30. Describe any financial arrangements or business relationships you have, or have had in the past, that could constitute or result in a possible conflict of interest in the position you seek. Explain how you would resolve any potential conflict of interest.
I do not believe there is any such potential conflict of interest.
31. Have you ever been arrested, charged, or held by federal, state, or other law enforcement authorities for violation or for suspicion of violation of any federal law or regulation, state law or regulation, or county or municipal law, regulation, or ordinance, or any other law, including another country's law?

In 1984, when I was 17 years old I was charged with Petty Larceny in Greenville, S.C. I never actually stole anything. However, I was present with others who were stealing things, and I was aware of what they were doing. I agreed to perform 40 hours of community service, and the charge was dismissed. All records of the incident have been expunged.

In 1988, I received a ticket for Open of Container of Alcohol in Public in Lexington, VA. I was drinking a beer at a public park. I didn't realize this was illegal at the time. I paid a fine of about \$30.00.

In 1988, I received a ticket for Open Container of Alcohol in Public in Chapel Hill, NC. I was drinking a beer in the front yard of a fraternity house which was legal. I stepped onto the sidewalk for a second and was immediately written a ticket by an officer who was standing nearby. I paid a fine of about \$30.00.

On December 18, 1990, I was charged with D.U.I. and Driving in the Wrong Lane in Mountain Brook, AL. I pled not guilty to the D.U.I. charge. The D.U.I. charge was dismissed (nolle prosequi) at the recommendation of the Mountain Brook Police Department. The Driving in the Wrong Lane charge was amended to Reckless Driving to which I pled guilty and paid a fine of \$500.00.

32. Have you, to your knowledge, ever been under federal, state, or local investigation for possible violation of a criminal statute?

I do not believe I ever been under any such investigation.

33. Has a tax lien or other collection procedure ever been instituted against you by federal, state, or local authorities? Have you ever defaulted on a student loan? Have you ever filed for bankruptcy? No
34. Have you ever been sued, either personally or professionally, that is, have you ever been named as defendant or respondent in any court of law?

In January 2010, I was named as a defendant in a mortgage foreclosure action in Pickens County in the case of Chase Home Finance v. George Dalton under case number 2009-CP-39-17. Mr. Dalton had apparently defaulted on his home mortgage. A few years back, I represented Dalton's wife in their divorce. The divorce case resulted in a judgment against Mr. Dalton for my client's attorney's fees and costs in the amount of \$3,000.00. This divorce judgment was recorded as a judgment against Mr. Dalton's property in the clerk's office. This is a normal and routine procedure. Therefore, the bank was required to name me as a defendant in the case. I made no appearance in the foreclosure case as Dalton eventually did make satisfactory arrangements to pay what he had owed.

36. Have you ever been investigated by the Department of Social Services? Has your name ever been enrolled on the Central Registry of Child Abuse and Neglect?

I have never been investigated by D.S.S., and my name has never been enrolled on the Central Registry of Child Abuse and Neglect.

37. Are you now or have you ever been employed as a "lobbyist," as defined by S.C. Code § 2-17-10(13), or have you acted in the capacity of a "lobbyist's principal," as defined by S.C. Code § 2-17-10(14)?

I am not now, nor have I ever been employed as a lobbyist.

38. Since filing with the Commission your letter of intent to run for judicial office, have you accepted lodging, transportation, entertainment, food, meals, beverages, money, or any other thing of value as defined by S.C. Code § 2-17-10(1) from a lobbyist or lobbyist's principal? No

39. S.C. Code § 8-13-700 provides, in part, that "[n]o public official, public member, or public employee may knowingly use his official office, membership, or employment to obtain an economic interest for himself, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated." Please detail any knowledge you have of any formal charges or informal allegations against you or any other candidate for violations of these provisions.

I have no knowledge of any such charges or allegations.

40. S.C. Code § 8-13-765 provides, in part, that "[n]o person may use government personnel, equipment, materials, or an office building in an election campaign." Please detail any knowledge you have of any formal charges or informal allegations against you or any other candidate for violations of these provisions.

I have no knowledge of any such charges or allegations.

41. Itemize (by amount, type, and date) all expenditures, other than those for travel and room and board, made by you, or on your behalf in furtherance of your candidacy for the position you seek.

Neither I nor anyone else has made any expenditures in furtherance of my candidacy.

42. List the amount and recipient of all contributions made by you or on your behalf to members of the General Assembly since the announcement of your intent to seek election to a judgeship.

Neither I nor anyone else on my behalf has made any contributions to any member of the General Assembly since the announcement of my intent to seek election to a judgeship.

43. Have you directly or indirectly requested the pledge of any member of the General Assembly as to your election for the position for which you are being screened? Have you received the assurance of any public official or public employee that they will seek the pledge of any member of the General Assembly as to your election for the position for which you are being screened?

I have not requested any pledges from anyone in the General Assembly. I have neither sought nor received the assurance of any public official or employee that they will seek a pledge for me.

44. Have you requested a friend or colleague to contact members of the General Assembly on your behalf? Are you aware of any friends or colleagues contacting members of the General Assembly on your behalf? No
45. Have you or has anyone acting on your behalf solicited or collected funds to aid in the promotion of your candidacy? No
46. Have you or has anyone acting on your behalf contacted members of the Judicial Merit Selection Commission about your candidacy or intention to become a candidate? No
47. List all bar associations and professional organizations of which you are a member and give the titles and dates of any offices you have held in such groups.
- (a) S.C. Bar Association;
 - (b) National Association of Criminal Defense Lawyers;
 - (c) S.C. Association of Criminal Defense Lawyers;
 - (d) Greenville Association of Criminal Defense Lawyers (past president);
 - (e) Greenville County Bar Association.
48. List all civic, charitable, educational, social, and fraternal organizations of which you are or have been a member during the past five years and include any offices held in such a group, any professional honors, awards, or other forms of recognition received and not listed elsewhere.
- (a) Saint Andrew's Society of Upper South Carolina;
 - (b) Earle Street Baptist Church (Public Relations Committee and Boy Scout Liaison);
 - (c) Boy Scouts of America (parent);
 - (d) North Main Community Association;
 - (e) Washington and Lee University Alumni Association.
49. Provide any other information that may reflect positively or negatively on your candidacy, or which you believe should be disclosed in connection with consideration of you for nomination for the position you seek.
- I have always been a hard worker. Any success I have had as a lawyer has been the direct result of hard work and dedication.
50. References:
- (a) Robert B. Thompson, III
Senior Vice President
Greenville First Bank
P.O. Box 17465
Greenville, S.C. 29606
864-679-9040
 - (b) James F. Brehm
Attorney at Law
522 N. Church St.
Greenville, S.C. 29601
864-232-6247
 - (c) Andrew McDonald, M.D.

1025 Verdae Blvd.
Greenville, S.C. 29607
864-242-4683

(d) Christopher B. Roberts
Attorney at Law
100 Whitsett St.
Greenville, S.C.
864-313-4049

(e) Thomas Oliver Mobley
Attorney at Law
11 Whitsett St.
Greenville, S.C. 29601
864-233-1657

YOUR SIGNATURE WILL BE HELD TO CONSTITUTE A WAIVER OF THE
CONFIDENTIALITY OF ANY PROCEEDING BEFORE A GRIEVANCE COMMITTEE OR
ANY INFORMATION CONCERNING YOUR CREDIT.

I HEREBY CERTIFY THAT MY ANSWERS ARE TRUE AND COMPLETE TO THE BEST
OF MY KNOWLEDGE.

Signature: Andrew Mackenzie

Date: August 10, 2010

<p style="text-align: center;">JUDICIAL MERIT SELECTION COMMISSION Sworn Statement to be included in Transcript of Public Hearings</p>
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Circuit Court
(New Candidate)

Full Name: Andrew Ross Mackenzie
Business Address: Barrett-Mackenzie, LLC
100 Mills Ave.
Greenville, SC 29605
Business Telephone: 864-232-6247

1. Why do you want to serve as a Circuit Court judge?
Circuit Court is fascinating to me. Circuit Court is where I got my start in the legal profession. I have been involved on thousands of cases in Circuit Court. There I have witnessed the full range of human emotion. It is an experience like no other that I have known. Practicing law in Circuit Court is a distinct privilege. I have strived to perform in Circuit Court with honor and excellence. I would like to have the opportunity to serve the court on a more lasting and permanent basis.
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?
My philosophy regarding *ex parte* communications is to strictly adhere to Rule 3B(7) of the Code of Judicial Conduct. *Ex parte* communications are not to be initiated, permitted or considered. There are some very limited exceptions which are specifically delineated by the rule. The exceptions include communications for administrative purposes, scheduling, emergencies, gaining advice of a disinterested expert, and consultation with court personnel. Nevertheless, *ex parte* communications must be avoided whenever possible and must be discouraged except when the criteria of the rule are clearly met. Full disclosure of the communications must always be made. A special emphasis must be made not to discuss the substantive issues or merits of any particular case. Of course, reasonable efforts must be made to ensure that all members of the judge's staff strictly comply with the rule.
6. What is your philosophy on recusal, especially in situations in which lawyer-legislators, former associates, or law partners are to appear before you?

Canon 3 states that "A judge shall perform the duties of judicial office impartially and diligently". A judge must disqualify himself in a case where his impartiality might reasonably be questioned. Rule 3E(1) then gives examples of instances of when a judge must disqualify himself. However, it is important to note that the Commentary also states that a judge is disqualified whenever his impartiality might reasonably be questioned regardless of whether any of the specific examples of Rule 3E(1) apply. The best practice is for the judge to disclose on the record information that he believes the parties or their lawyers might consider relevant to the question of disqualification, even if the judge believes there is no real basis for disqualification.

Rule 3E(1)(a) states that a judge must disqualify himself if a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter before the court. The rules do not state that a judge must disqualify himself in every case where lawyer-legislators, former associates or law partners are to appear. However, again, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless of whether any of the specific rules apply. Therefore, these situations must be taken on a case by case basis. There may be times when a judge should disqualify himself in situations where lawyer-legislators, former associates or law partners are to appear.

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?

Canon 2 states that "A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities". A judge should disclose anything that has the appearance of bias even if he believes it would not actually prejudice his impartiality. I would give great deference to a party that requested my recusal in this situation. It must be remembered that the Commentary to Rule 3E(1) states that a judge is disqualified whenever the judge's impartiality might reasonably be questioned. Without knowing more, it is difficult to say that I would always grant such a motion. There probably would be times when I would grant such a motion. For example such a motion should be granted if there would otherwise be the appearance of impropriety or if a denial of the motion would cause others to lose faith in the integrity of the judicial system. The system must not be seen to be corruptible or capable of manipulation.

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

This situation is covered by Rule 3E(c) and (d) of the Canons. I would handle the appearance of impropriety by first disclosing the situation to the parties and the lawyers involved on record. If my wife or

close relative had an economic interest or a social involvement in a case before me, I would disqualify myself. If the involvement were only *de minimis*, as defined by the canons, I would ask the parties to comment on the situation. I would give great deference to a motion for recusal just as I explained in my answer to question # 7.

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

My standard would be to avoid impropriety or even the appearance of impropriety. Gifts and invitations to a judge can sometimes be viewed by others as intended to influence the judge and his decision making. Periodic review and strict adherence to Rule 4D5 would be the best policy. Family members must be informed of the ethical constraints on gifts to judges. Of course, certain gifts or invitations are ok. These would include invitations to bar-related functions, appropriate business benefits to family members, ordinary social hospitality, gifts from close friends on special occasions, etc. However, it seems to me that a judge must be very careful not to let any gift or invitation influence his decision making, even gifts or invitations that are permitted by the rules. Inappropriate gifts or invitations must be declined or returned. Full disclosure and reporting must be made.

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

This issue is covered by Rule 3D of the Code of Judicial Conduct.

If I became aware of misconduct by a lawyer or another judge, I would take action. I would begin by talking or otherwise communicating with the person who may have committed an ethical violation. If there was in fact a violation, and the violation raises a substantial question as to whether a fellow judge is fit for office, I would inform the disciplinary authorities. If there was in fact a violation committed by a lawyer, and the violation raises a substantial question as to the lawyer's honesty, trustworthiness or fitness as a lawyer, I would inform the disciplinary 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? No.
13. If elected, how would you handle the drafting of orders?

I would either draft them myself or ask one of the attorneys involved in the case to submit a proposed order. The submission of proposed orders is a common practice in family court. I have drafted numerous proposed orders over the years. The judge contacts both lawyers and asks one of them to prepare a proposed order pursuant to a general outline given by the judge. The chosen lawyer then drafts a formal order according to the judge's outline and submits it to the other

attorneys for comment, corrections, revisions and approval. Then the order is submitted to the judge with notice to all parties for final corrections, revisions and signature. If the lawyers disagree about the terms of the order, the judge determines how the order should be written.

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

I would probably ensure the meeting of deadlines in a way similar to the way I do so now. In my present legal practice, deadlines are a very important issue. Because of the nature of my practice, I appear in court on a regular and frequent basis. There are also other deadlines such as for certain pleadings and discovery responses. We are very careful to make sure that all hearing dates and other deadlines are entered on my calendar. My calendar is on my computer. My computer is integrated with the computers of my two paralegals. As soon as any of us receives notice of a hearing or realizes a deadline, it is immediately entered on my schedule by whoever receives it. If a notice is received by one of my paralegals by mail, fax or email, it is passed on to me. I then double check to see that it is entered on my computer. The procedure is the same for discovery requests we receive or send, and other mailings or filings with deadlines. We work together to double check that everything is entered on my schedule. The entries on the calendar can also be made with a reminder that pops up at a certain pre-designated time. This system works. I do not miss hearing dates and deadlines.

15. 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. I believe that judges must strictly follow legal precedent, especially at the trial court level. Judges should promote public policy as determined by the General Assembly. Social engineering is better left to the legislative and executive branches.

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 would envision speaking at bar association conferences and CLE seminars. I would also be happy to serve on any commissions related to the revision of the law or the justice system. I would be glad to serve on any law school boards or committees.

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 that the pressure of serving as a judge would strain personal relationships with my spouse, children or relatives. Presently, my wife and I are both attorneys who appear in court on a regular and

frequent basis. We already have high pressure jobs. We have gotten along fine by working together and remembering to make time for family. I also do not feel that the pressure of serving as a judge would strain personal relationships with my friends. A lot of my friends are lawyers. I do not believe that any of them would use our friendship to gain an advantage in any legal proceeding. If they did, this would put a strain on our relationship. I would address this by talking with them directly and honestly about the matter.

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:

An offender's criminal history is one of the most important factors to be considered at sentencing. Certainly, an offender with a long criminal history should be subject to a more severe sentence than an offender similarly charged with no prior record. Any sentence imposed in any case should promote respect for the law and impose just punishment. Repeat offenders must also be deterred from future criminal conduct. The protection of the public from further crimes is another concern. With a repeat offender, incarceration must be considered.

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

With juvenile offenders, there should be a greater focus on rehabilitation. In my experience, when a juvenile is waived to circuit court, he is already facing a severe mandatory minimum sentence if convicted. The cases usually involve murder, sexual assault or burglary. Nevertheless, every case is different from the next. Due consideration must be given to the nature of the offense and the particular offender. The sentence imposed should provide the offender with appropriate educational or vocational training, medical or psychological treatment, and other appropriate treatment.

c. White collar criminals:

It seems to me that with white collar criminals, what should drive the severity of the sentence more than anything else is the amount of loss. An offender who cheated his victims out of a million dollars should be sentenced more harshly than an offender who cheated people out of twenty five dollars. It also seems to me that the federal criminal justice system is less timid about sentencing white collar criminals to prison than are most state systems. Another very important consideration in white collar cases is restitution. The State must recoup as much restitution as possible.

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

There should be little or no limit on the kinds of information a judge may consider at sentencing. Every case is truly different from the

next. Due consideration must be given to the nature of the offense and the particular offender. Lack of guidance as a youth and/or a disadvantaged upbringing could be relevant. On the other hand, we must try to avoid sentencing disparities among defendants with similar charges and similar records.

e. Elderly defendants or those with some infirmity:

Old age or infirmity could be relevant where a form of punishment such as home incarceration may be just as appropriate. If the offender suffers from some serious physical impairment, home incarceration might be much less expensive for the State.

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 defines *de minimis* as "an insignificant interest that could not raise reasonable question as to a judge's impartiality". Canon 3 states that "A judge shall perform the duties of judicial office impartially and diligently". Rule 3E(1) states that "a judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned". Rule 3E(1)(c) states that disqualification is not always necessary where the judge or a member of his family holds a *de minimis* financial interest in a party. However, the Commentary to Rule 3E(1) states that "a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless whether any of the specific rules in Section 3E(1) apply". The commentary goes on to say that "a judge should disclose on the record information that the judge believes the parties or their lawyers might consider relevant to the question of disqualification, even if the judge believes there is no real basis for disqualification". Therefore, I may not hear a case where I, or a member of my family, hold a *de minimis* financial interest in a party involved. I would disclose the financial interest on the record because a party or a lawyer might consider it relevant to the question of disqualification. If my impartiality were reasonably questioned, I would disqualify myself.

21. Do you belong to any organizations that discriminate based on race, religion, or gender?

I am not a member of any organization that practices invidious discrimination. I am a member of the Saint Andrew's Society of Upper South Carolina. The by-laws state that the objectives of the society are to dispense charitable and educational assistance to Scotsmen, lineal descendants of Scotsmen, and their widows; and to perpetuate Scottish traditions and culture. Membership in the organization is limited to men who are 18 years or over and who were born in Scotland or who are lineally descended from one or more natives of Scotland by blood or

marriage, or whose spouses meet these specifications. The society does not discriminate on the basis of race or religion, but membership is limited to men. The society is dedicated to the preservation of cultural values of legitimate common interest to the members. It is an intimate and purely private organization. It is a fraternal organization that does not stigmatize excluded persons as inferior and unworthy of membership. I therefore believe that membership in the society does not violate Rule 2C of the Code of Judicial Conduct.

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 must keep an open mind. He must listen carefully to all parties and their attorneys before rendering a decision. He must be courteous to all persons present in the courtroom. He must ensure that there is order in the court at all times and exhibit a professional attitude. He must administer justice dispassionately and fairly. Rule 3B(4) states that "A judge, shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, and of staff, court officials and others subject to the judge's direction and control". Canon 2 states that "A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities." The Commentary states that "Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety."

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?

The rules would apply at all times. Rule 2A states that "A judge ... shall act at all times in a manner that promotes public confidence in the integrity ... of the judiciary". The commentary states that a judge must accept restrictions on his conduct that could be viewed as burdensome by ordinary citizens, and he should do so freely and willingly.

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, anger is not appropriate in the court. It is not appropriate with a member of the public, a criminal defendant, an attorney, a pro se litigant or anyone else.

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 not spent any money on my campaign.

27. If you are a sitting judge, have you used judicial letterhead or the

- services of your staff while campaigning for this office?
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?
- I have not asked third parties to contact members of the General Assembly on my behalf at any time. I am not aware of any friends or colleagues contacting members of the General Assembly on my behalf.
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/Andrew Mackenzie

Sworn to before me this 6th day of August, 2010.

Notary Public for S.C.

My Commission Expires: 3-26-2018_____

November 2, 2010
67 Sweetgum Road
Greenville, SC 29617

Jane O. Shuler
Chief Counsel
Judicial Merit Selection Commission
Post Office Box 142
Columbia, SC 29202

Dear Ms. Shuler:

This letter is to request that I be allowed to amend Question 50 of my Personal Data Questionnaire submitted in support of my candidacy seeking Seat 2, Thirteenth Judicial Circuit Court. I would like to remove The Honorable Steve Loftis as a personal reference and substitute the following person as a reference on my questionnaire.

Reverend Marc Mason
Pastor, Trinity Presbyterian Church
405 Wilhelm Winter Street
Travelers Rest, SC 29690
(864) 834-9897

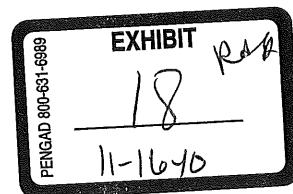
Reverend Mason has sent a recommendation letter on my behalf to your attention.

Thank you for your assistance in this matter, and please do not hesitate to contact me should you have any questions or require further information.

Sincerely,



Letitia H. Verdin



JUDICIAL MERIT SELECTION COMMISSION
PERSONAL DATA QUESTIONNAIRE

Court, Position, and Seat # for which you are applying:

Circuit Court, Thirteenth Judicial Circuit, Seat 2

1. NAME: Letitia H. Verdin
BUSINESS ADDRESS: Greenville County Family Court
Post Office Box 757
Greenville, S.C. 29602
E-MAIL ADDRESS: lhverdin@charter.net
TELEPHONE NUMBER: (office): (864)467-5843
2. Date of Birth: 1970
Place of Birth: Seneca, S.C.
3. Are you a citizen of South Carolina? Yes
Have you been a resident of this state for at least the immediate past five years? Yes
5. Family Status: Married on August 16, 1997, to Charles Smith Verdin, IV.
Never divorced. Two children.
6. Have you served in the military? No
7. List each college and law school you attended, including the dates of your attendance, the degrees you received, and if you left an institution without receiving a degree, the reason for your departure.
 - (a) Furman University, 1988-92, B.S., Biology
 - (b) Clemson University 1992-93, Withdrew to pursue Law School
 - (b) University of South Carolina School of Law, 1994-97, J.D.
8. List the states in which you have been admitted to practice law and the year of each admission. South Carolina, 1997. Are you a member in good standing in the states in which you are admitted? Yes. Has there ever been a time in which you were not a member in good standing? No. List the date(s) and reason(s) why you were not considered a member in good standing. Not applicable. Also list any states in which you took the bar exam, but were never admitted to the practice of law. Not applicable. If you took the bar exam more than once in any of the states listed, please indicate the number of times you took the exam in each state. Not applicable.
9. List the significant activities in which you took part during your attendance at college, graduate, and law school. Give the dates you were involved in these activities and list any leadership positions you held.
 - (a) Collegiate Educational Student Corps;
 - (b) Resident Assistant;
 - (c) Chi Omega Sorority;
 - (d) Student Bar Association;
 - (e) John Belton O'Neal Inn of Court;
 - (f) Moot Court Bar;
 - (g) National Moot Court Team.

10. Describe your continuing legal or judicial education during the past five years. Include only the title and date of any continuing legal or judicial education course completed.

<u>Conference/CLE Name</u>	<u>Date(s)</u>
(a) Thirteenth Circuit Solicitor's Conference	05/08-10/05;
(b) Fifteenth Annual Criminal Practice in South Carolina Update	11/18/05;
(c) Thirteenth Circuit Solicitor's Conference	05/06-08/06;
(d) Auto Torts XXIX	12/01/06;
(e) 7th Annual Meeting Thirteenth Circuit Solicitor's Conference	05/13-15/07;
(f) Hot Tips from the Coolest Domestic Law Practitioners	09/21/07;
(g) 2007 Annual Solicitor's Conference	09/23/07;
(h) Family Court Bench/Bar	12/07/07;
(i) 2008 South Carolina Bar Convention Family Law Section Meeting – Bits, Bytes, and Clips: The Brave New World of EDiscovery and Evidence	01/25/08;
(j) 2008 South Carolina Bar Convention Children's Law Committee Meeting Child Advocacy: It's Not For Babies – Emerging Issues in Children's Law	01/26/08;
(k) Technology in Prosecution	05/11/08;
(l) 2008 Orientation for New Judges	06/04/08;
(m) 2008 Judicial Conference	08/20/08;
(n) 2008 S.C. Family Court Bench/Bar	12/05/08;
(o) 2009 S.C. Bar Convention	01/23/09;
(p) Family Court Judges' Conference	04/22/09;
(q) 2009 Annual Judicial Conference	08/19/09;
(r) 2009 Annual S.C. Solicitor's Conference	09/28/09;
(s) 2009 S.C. Family Court Bench/Bar	12/04/09;
(t) 2009 S.C. Bar Convention	01/22/10;
(u) Family Court Judges' Conference	04/22/10.

11. Have you taught law-related courses or lectured at bar association conferences, educational institutions, or continuing legal or judicial education programs?

- (a) Effective Direct Examination of Witnesses, Thirteenth Circuit Solicitor's Conference, Pawley's Island, S.C.;
- (b) Appellate Practice in South Carolina, Lecture to the Greenville Technical College Paralegal Program;
- (c) Presiding Judge, American Mock Trial Association Regional Tournament, Furman University, Greenville, S.C.;
- (d) Striking a Balance in the Practice of Law, Women in Law Seminar, Greenville, S.C.;
- (e) Family Court Interaction with General Sessions Prosecution, Thirteenth Circuit Solicitor's Conference, Clemson, S.C.;
- (f) Careers in the Legal Field, Furman University, Greenville, S.C.;

- (g) How Family Court Can Make You a Better Prosecutor, South Carolina Solicitor's Conference, Myrtle Beach, S.C.;
 - (h) Civility in the Practice of Law, Thirteenth Circuit Solicitor's Conference, Clemson, S.C.;
 - (i) Judges' Panel Discussion, Women in Law, Greenville, S.C.;
 - (j) What Makes an Attorney Great, Greenville County Bar Association Luncheon, Greenville, S.C.;
 - (k) What Judges Really Expect, Guardian *ad litem* Training, Greenville, S.C.
12. List all published books and articles you have written and give citations and the dates of publication for each. None
13. List all courts in which you have been admitted to practice and list the dates of your admission. Give the same information for administrative bodies that require a special admission to practice.
- (a) South Carolina Supreme Court, November 1997;
 - (b) United States District Court, June 2001;
 - (c) United States Court of Appeals, September 2003.
14. Describe chronologically your legal experience since graduation from law school and include a list of all law firms with which you have been associated. Describe the general character of your practice and divide it into periods with dates if its character has changed over the years.
- If you are a judge and are not seeking a different type of judgeship, the following questions are inapplicable:
- (b) If you are a candidate for Circuit Court, please provide a brief written description of your experience in criminal matters, including any cases handled over the past five years and include a brief description of the issues involved. Further, please provide a brief written description of your experience in civil matters, including any cases handled over the past five years and include a brief description of the types of matters handled, issues involved, and procedural history. Please include information such as the primary areas in civil court in which you practice, whether you represent plaintiffs or defendants, or both. You may go back further than five years if you feel it would assist the Commission with its assessment of your experience. If you lack experience in an area, describe how your background has prepared you to preside over such matters as a Circuit Court Judge, or how you would compensate for your lack of experience in this area.

I believe that my experience for the Circuit Court bench is unique and encompasses all areas of Circuit Court. Before being elected to the Family Court bench, my legal experience was evenly divided between criminal and civil law. I practiced for five years in the Solicitor's Offices in the Thirteenth and Eighth Circuits. During that time, I prosecuted cases in every unit of the office, with my final years there spent prosecuting violent crimes. Furthermore, while at the Greenville County Solicitor's Office, I participated in a death penalty trial.

I also practiced for five years with the law firm of Clarkson, Walsh, Rheney and Terrell, P.A., focusing mainly the in areas of government liability defense and insurance defense. I did at times represent Plaintiffs in lawsuits and also represented criminal defendants. My practice was varied, encompassing probate, real estate, general corporate, and family law, as well.

I have had the privilege of serving my state in the capacity of Family Court for two years. During that time, I sat with the South Carolina Supreme Court as an Acting Justice on a probate case. I have also served as the Chief Administrative Judge in Greenville County for the past year. During that time, I have worked closely with all agencies involved with Family Court, the Sheriff's Office, the Detention Center director, and the Clerk of Court to develop policies and administer cases more efficiently and effectively for all involved.

15. What is your rating in Martindale-Hubbell?

I was not listed in Martindale-Hubbell prior to my election, and my understanding was because I was employed by a government agency and did not request a listing.

16. What was the frequency of your court appearances during the past five years?

- (a) federal: Rarely;
- (b) state: While a practicing attorney, approximately two times per week.

17. What percentage of your practice involved civil, criminal, domestic, and other matters during the past five years?

- (a) civil: 35%;
- (b) criminal: 50%;
- (c) domestic: 10%;
- (d) other: 5%.

18. What percentage of your practice in trial court during the past five years involved matters that went to a jury, including those that settled prior to trial?

- (a) jury: 5%;
- (b) non-jury: 95%.

Did you most often serve as sole counsel, chief counsel, or associate counsel in these matters? Sole Counsel.

19. List five of the most significant litigated matters you have personally handled in either trial or appellate court or before a state or federal agency. Give citations if the cases were reported and describe why these matters were significant.

- (a) Barnes v. Kevin Matheson, Anderson County Sheriff's Department, the City of Clayton Police Department, and the Rabun County Sheriff's Department – This was a case while I was in civil practice that alleged excessive use of force and other Section 1983 claims against law enforcement officials. I represented Deputy Kevin Matheson and the Anderson County Sheriff's Department. The case involved an escapee, who when eventually surrounded by officers, attempted to run over an

officer. Deputy Matheson shot and killed the woman in order to save the officer's life. The case involved numerous constitutional law issues, including that of extra-jurisdictional pursuits. Our motion for summary judgment was granted as to all claims against Deputy Matheson and the Anderson County Sheriff's Department.

- (b) John Bednar v. Helene Riley, et al - In this civil litigation, a professor at Clemson University sued fellow professors for defamation. We represented the five defendant professors and successfully defended this action at trial.
 - (c) State of South Carolina v. Ricky Sanders – This defendant was charged with Criminal Sexual Conduct with a Minor 1st Degree for sexually abusing his girlfriend's daughter. This case was significant for me because it was the first time our office was successful in having a Forensic Interviewer qualified as an expert witness in the Court of General Sessions. The interviewer's testimony, coupled with the testimony of the child, was instrumental in securing a guilty plea from the defendant during trial.
 - (d) State of South Carolina v. Shad Shepherd – This case concerned a father who shook his four month old baby violently causing permanent brain damage and partial blindness. This matter was not only significant because of its facts, but also because it was one of the earlier shaken baby syndrome cases successfully prosecuted by our office. The case also necessitated very sophisticated medical evidence and expert testimony in order to establish that the child had not been accidentally dropped thereby causing her injuries.
 - (e) State of South Carolina v. Freddie Owens – This sentencing phase of a death penalty case was tried on remand from the South Carolina Supreme Court. I assisted the Solicitor in the prosecution of this matter and participated in the trial. The jury recommended that Mr. Owens be given the death penalty for brutally killing a mother of two during a robbery of a convenience store.
20. List up to five civil appeals you have personally handled. Give the case name, the court, the date of decision, and the citation if the case was reported.
Cox and Rider v. City of Charleston, Rueben Greenberg, Joseph Riley, Captain Chin, Charleston Police Department, Officer Davis, City of Travelers Rest, Mann Batson, and Timothy Christy, Fourth Circuit Court of Appeals, July 26, 2005, 416 F.3d 281.
21. List up to five criminal appeals that you have personally handled. Give the case name, the court, the date of decision and the citation if the case was reported. None
22. Have you ever held judicial office?
Seat 3, Greenville County Family Court; June 2008-present.

23. If the answer to question 22 is yes, describe or list five of your most significant orders or opinions and give the citations if they were reported. Also list citations to any appellate review of these orders or opinions.
- (a) In re Campbell, 379 S.C. 593, 666 S.E.2d 908 (2008) (as Acting Justice with the South Carolina Supreme Court);
 - (b) Michael P. v. Greenville County Dept. of Social Services, 385 S.C. 407, 684 S.E.2d 211 (Ct. App. 2009).
24. Have you ever held public office other than judicial office?
I have never held any public office other than Family Court Judge. I have always timely filed my reports with the State Ethics Commission.
25. List all employment you had while serving as a judge (whether full-time or part-time, contractual or at will, consulting or otherwise) other than elected judicial office. Specify your dates of employment, employer, major job responsibilities, and supervisor. None
26. Have you ever been an unsuccessful candidate for elective, judicial, or other public office? No
27. Have you ever been engaged in any occupation, business, or profession other than the practice of law, teaching of law, or holding judicial or other public office?
- (a) 1995-97 – Law Clerk, Childs & Duff, P.A., Columbia, S.C. -- Performed legal research and prepared memoranda in the areas of education and government liability law;
 - (b) 1993-95 -- Human Resources Assistant, Wangner Systems, Greenville, S.C. – Assisted Human Resources Director in personnel matters and benefits administration;
 - (c) 1992-93 – Laboratory Researcher, Clemson University, Clemson, S.C. Performed research in a grant-funded position while in graduate school in the Department of Biochemistry;
 - (d) 1991 – Laboratory Assistant, Medical University of South Carolina, Charleston, S.C. – Assisted in grant-funded research in the Department of Pharmacology for course credit while a student at Furman University;
 - (e) 1988-90 – Summer Intern, Wangner Systems, Greenville, S.C. – Performed administrative assistant, receptionist, and human resources assistant duties during summers while in college.
28. Are you now an officer or director or involved in the management of any business enterprise? No
29. A complete, current financial net worth statement was provided to the Commission.
30. Describe any financial arrangements or business relationships you have, or have had in the past, that could constitute or result in a possible conflict of interest in the position you seek. Explain how you would resolve any potential conflict of interest.

While I have no business relationships which present a conflict or a potential conflict, my husband is a partner in a law firm in Greenville, S.C. He

has partners or associates that might appear before me. In such circumstances, I will disclose to all attorneys and litigants involved my husband's relationship to the attorney, and although recusal may not be specifically required under the rules, I would recuse myself in order to avoid any appearance of bias or impropriety.

31. Have you ever been arrested, charged, or held by federal, state, or other law enforcement authorities for violation or for suspicion of violation of any federal law or regulation, state law or regulation, or county or municipal law, regulation, or ordinance, or any other law, including another country's law? No
32. Have you, to your knowledge, ever been under federal, state, or local investigation for possible violation of a criminal statute? No
33. Has a tax lien or other collection procedure ever been instituted against you by federal, state, or local authorities? Have you ever defaulted on a student loan? Have you ever filed for bankruptcy? No
34. Have you ever been sued, either personally or professionally, that is, have you ever been named as defendant or respondent in any court of law? No
36. Have you ever been investigated by the Department of Social Services? Has your name ever been enrolled on the Central Registry of Child Abuse and Neglect? No
37. Are you now or have you ever been employed as a "lobbyist," as defined by S.C. Code § 2-17-10(13), or have you acted in the capacity of a "lobbyist's principal," as defined by S.C. Code § 2-17-10(14)? No
38. Since filing with the Commission your letter of intent to run for judicial office, have you accepted lodging, transportation, entertainment, food, meals, beverages, money, or any other thing of value as defined by S.C. Code § 2-17-10(1) from a lobbyist or lobbyist's principal? No
39. S.C. Code § 8-13-700 provides, in part, that "[n]o public official, public member, or public employee may knowingly use his official office, membership, or employment to obtain an economic interest for himself, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated." Please detail any knowledge you have of any formal charges or informal allegations against you or any other candidate for violations of these provisions. None
40. S.C. Code § 8-13-765 provides, in part, that "[n]o person may use government personnel, equipment, materials, or an office building in an election campaign." Please detail any knowledge you have of any formal charges or informal allegations against you or any other candidate for violations of these provisions. None
41. Itemize (by amount, type, and date) all expenditures, other than those for travel and room and board, made by you, or on your behalf in furtherance of your candidacy for the position you seek. None
42. List the amount and recipient of all contributions made by you or on your behalf to members of the General Assembly since the announcement of your intent to seek election to a judgeship. None

43. Have you directly or indirectly requested the pledge of any member of the General Assembly as to your election for the position for which you are being screened? Have you received the assurance of any public official or public employee that they will seek the pledge of any member of the General Assembly as to your election for the position for which you are being screened? No
44. Have you requested a friend or colleague to contact members of the General Assembly on your behalf? Are you aware of any friends or colleagues contacting members of the General Assembly on your behalf? No
45. Have you or has anyone acting on your behalf solicited or collected funds to aid in the promotion of your candidacy? No
46. Have you or has anyone acting on your behalf contacted members of the Judicial Merit Selection Commission about your candidacy or intention to become a candidate? No
47. List all bar associations and professional organizations of which you are a member and give the titles and dates of any offices you have held in such groups.
- (a) Greenville County Bar Association;
 - (b) S.C. Bar Association
 - 1. Criminal Law Section
 - 2. Family Law Section.
48. List all civic, charitable, educational, social, and fraternal organizations of which you are or have been a member during the past five years and include any offices held in such a group, any professional honors, awards, or other forms of recognition received and not listed elsewhere.
- (a) Safe Harbor, Board Member;
 - (b) United Way, Young Philanthropist Board Member;
 - (c) United Way Strengthening Families and Neighborhoods Allocation Committee;
 - (d) Trinity Presbyterian Church, Sunday School Teacher;
 - (e) Greenville County Juvenile Drug Court, Presiding Judge.
49. Provide any other information that may reflect positively or negatively on your candidacy, or which you believe should be disclosed in connection with consideration of you for nomination for the position you seek.

I appreciate the Legislature giving me the opportunity to serve as a Family Court judge for the past two years. My experience as a Family Court judge has been the most rewarding of my professional life. I have been faced with what may be some of the toughest decisions in the legal field, but I have attempted to approach these matters with an open, and hopefully, fair mind. I have endeavored to deal with matters before me efficiently and justly. I would like to bring to the Circuit Court bench the knowledge that I have gained as a Family Court judge. I also believe that my legal experience, equally divided between civil and criminal law, would give me a broad base of knowledge to effectively carry out my duties as a Circuit Court Judge.

50. References:

- (a) John Tucker
Office of the Thirteenth Solicitor
305 E. North Street
Greenville, S.C. 29601
- (b) The Honorable Steve Loftis
Greenville County Sheriff
4 McGee Street
Greenville, S.C. 29601
- (c) R. Kinard Johnson, Jr.
12 Rivoli Lane
Greenville, S.C. 29615
- (e) Anne Culbreath
Greenville Technical College
Post Office Box 5616
Greenville, S.C. 29606
- (f) Shields Cochran
Senior Vice President
South Carolina Bank and Trust
200 East Broad Street
Suite 100
Greenville, S.C. 29601

YOUR SIGNATURE WILL BE HELD TO CONSTITUTE A WAIVER OF THE CONFIDENTIALITY OF ANY PROCEEDING BEFORE A GRIEVANCE COMMITTEE OR ANY INFORMATION CONCERNING YOUR CREDIT.

I HEREBY CERTIFY THAT MY ANSWERS ARE TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

Signature: Letitia H. Verdin

Date: August 4, 2010

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

Circuit Court
(New Candidate)

Full Name: Letitia Hamilton Verdin
Business Address: Post Office Box 757
Greenville, SC 29602
Business Telephone: (864) 467-5843

1. Why do you want to serve as a Circuit Court judge?

I have enjoyed serving my state as an assistant solicitor and as a Family Court judge. I believe that I am uniquely qualified to continue to serve my state as a Circuit Court judge and that I would enjoy serving in that capacity if I am honored to be elected. I would bring with me to the Circuit Court bench experience that includes prosecution of the most serious of criminal cases, including a death penalty case, as well as representing clients in the most complex of civil matters as well. While at the Eighth and Thirteenth Circuit Solicitor's Offices, I prosecuted all types of cases, and in my last several years there, my practice focused on the most violent of crimes.

While in private practice at the law firm of Clarkson, Walsh, Rheney, and Terrell, P.A., I was a trial lawyer practicing in the areas of insurance defense, with a specialty in governmental liability defense and cases arising pursuant to the South Carolina Tort Claims Act. During that same time, I practiced in the areas of probate, real estate, family, general corporate, and criminal law. I have both prosecuted and defended criminal defendants, and I have represented both plaintiffs and defendants in Common Pleas matters.

My experience as a Family Court judge has been the most rewarding of my professional life. I have been faced with what may be some of the toughest decisions in the legal field, but I have attempted to approach these matters with an open, and hopefully, fair mind. I have endeavored to deal with matters before me efficiently and justly. The administrative portion of the judicial system often takes as much time as traditional judges' duties. I have served as the chief administrative judge in one of the busiest counties for Family Court in the state. Before assuming those duties, I met with the directors or representatives of every agency involved in Family Court. I requested that each agency representative give me suggestions that would allow their agency to more efficiently carry out its responsibilities. Their suggestions have allowed us to become more efficient and more cost-conscious in our administration of Family Court. I would like to bring

my legal background, coupled with the same commitment to fairness and efficiency, to Circuit Court.

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 avoided; however, in certain matters where such communication is allowed, such as in motions for emergency relief or in strictly administrative matters where no party could gain an advantage, I would allow *ex parte* communication where absolutely necessary. I would require that all parties be notified of the substance of the communication immediately.

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 order to uphold the integrity of the judiciary, I would recuse myself in any situation that any litigant, any attorney, or I believed that I could not be unbiased or that there was the appearance of impropriety, whether any actual bias existed or not.

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 such a request and I would grant the motion for recusal because trust in the legal system and the judiciary should be of the highest importance.

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 inform the parties of the relationship on the record, and if any litigant, after discussion with his or her counsel privately, any attorney, or I believed that the relationship gave the appearance of impropriety, I would recuse myself.

9. What standards would you set for yourself regarding the acceptance of gifts or social hospitality? I would not accept any gift or hospitality that I believed was in any way intended, or could be construed to be intended, to influence any matter or possible matter before me.

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

I would inform the appropriate authority immediately.

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?
- If appropriate, at times, I would instruct the prevailing party to draft a proposed order pursuant to my instructions to be reviewed by all counsel, including self-represented litigants, before submission to me for final approval. With all other orders, I would instruct my clerk to draft an order for my approval or I would draft the order myself.
14. If elected, what methods would you use to ensure that you and your staff meet deadlines?
- As a Family Court judge, my administrative assistant and I calendar orders that are due to my office at the end of each day. We review outstanding orders weekly, and if any order has been outstanding for three weeks, we contact the attorneys by facsimile to request that the order be sent to my office immediately. This system has worked extremely well for me.
15. What is your philosophy on "judicial activism," and what effect should judges have in setting or promoting public policy?
- I believe that a judge's job is to interpret the law as given to him or her by the Legislature. Any attempt to rule based on what I may believe our law should be would be to circumvent our highly successful system of checks and balances and would be a violation of my judicial oath.
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 attempt to serve in any capacity allowed to contribute to the fair and efficient administration of our court system. I have made and would continue to make myself available to speak at CLE seminars or other speaking engagements so long as those engagements did not interfere with my judicial responsibilities.
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 am blessed to have an extremely supportive spouse, Chuck Verdin, who is also an attorney. We have always supported one another throughout our thirteen-year marriage and have learned to deal well with the demands of a two-career family. We divide the responsibility of twin sons equally. We are also blessed to have two large, extended, and involved families that live nearby. While I understand that the demands of being a judge are great, I believe that our support system is very strong and that we have dealt with those demands well.
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 sentence repeat offenders more harshly than I do similarly-situated first time offenders. If previous punishments for actions that violate the law have been unsuccessful as deterrent measures, harsher punishment must be imposed.

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

If a Family Court judge determines that an offender should be tried and sentenced as an adult, I would do so. While sentence determination might necessarily include a consideration of rehabilitation, and thus, would take into account any offender's age, I would also have to consider the factors such as the impact on the victim, the seriousness of the crime, and the offender's debt to society, which would not be influenced by age.

c. White collar criminals:

I am and would be bound by the sentence guidelines given to me by the Legislature. I do not consider white collar criminals, on the whole, to be less culpable than those that are not afforded that classification. I would impose the sentence guidelines mandated, taking into consideration all relevant factors, and I do not consider a white collar classification to be a relevant sentencing factor.

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

While I believe that certain social or economic aspects of an offender's life do have some bearing on his or her actions, I would not normally consider those aspects to be mitigating factors in sentencing.

e. Elderly defendants or those with some infirmity:

As I stated in my answer concerning juvenile offenders, I do believe that age might be a consideration in determining a sentence that would serve to rehabilitate the offender. Additionally, I understand that elderly defendants or those with infirmities might incur additional cost for the State to house. Therefore, sentencing such defendants might require practical considerations to be balanced with other sentencing factors in determining the appropriate punishment.

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? No.

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 should be punctual, courteous, open-minded, and respectful of all parties and attorneys. He or she should be decisive

and clear in making rulings and must maintain control of the courtroom at all times.

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?

At all times.

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?

Although some situations may evoke angry feelings, I do not believe that it would be appropriate to express that anger to a member of the public, an attorney, or a pro se litigant. To do so would be to put my feelings above the need to conduct proceedings in an orderly and civil manner and might cast doubt on my ability to be impartial in a matter.

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 not spent any money so far on my campaign, but I will report any expenditures over \$100 to the House and Senate Ethics Committees if I do.

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.

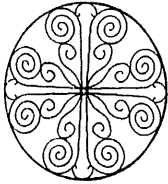
I HEREBY CERTIFY THAT THE ANSWERS TO THE ABOVE QUESTIONS ARE TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

s/Letitia Verdin

Sworn to before me this 5th day of August, 2010.

Notary Public for S.C.

My Commission Expires: 8-31-2019



AMEIKA
DEVANE
MACK
ATTORNEYS AT LAW

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SUMMERVILLE, SC 29483
843-285-7100
FAX 843-285-7199

BEN F. MACK
Attorney at Law
Family Court Mediator
bmacklaw@aol.com

October 26, 2010

Jane O. Shuler, Chief Counsel
Judicial Merit Selection Commission and
Attorney, Senate Judiciary Committee
Gressette Building, Room 104
P.O. Box 142
Columbia, SC 29202

Re: Amendment to Personal Data Questionnaire

Dear Ms. Shuler:

Please accept the following statements as amendments to my previously filed Personal Data Questionnaire.

Question 11: Charleston Southern University, Adjunct Professor, Business Law, Dates: 2004 - 2005

Question 26: a. Candidate for Ninth Circuit Family Court Seat: Fall 2000
b. Candidate for Ninth Circuit Family Court Seat: Fall 2001

Should you require further information, please do not hesitate to call upon me.

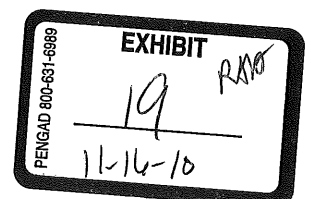
With kindest regards I remain

Sincerely Yours,

Ben F. Mack

Ben F. Mack

BFM/lb



JUDICIAL MERIT SELECTION COMMISSION
PERSONAL DATA QUESTIONNAIRE

Court, Position, and Seat # for which you are applying:

Family Court, Ninth Judicial Circuit, Seat 1

1. NAME: Bernard Frank Mack
BUSINESS ADDRESS: 110 N. Main Street
Summerville, S.C. 29483
E-MAIL ADDRESS: BMacklaw@aol.com
TELEPHONE NUMBER: (office): 843-285-7100
2. Date of Birth: 1952
Place of Birth: Niagara Falls, N.Y.
3. Are you a citizen of South Carolina? Yes
Have you been a resident of this state for at least the immediate past five years? Yes
5. Family Status: Married on June 25, 1977, to Angela D. Mack. Never divorced. Three children.
6. Have you served in the military? No
7. List each college and law school you attended, including the dates of your attendance, the degrees you received, and if you left an institution without receiving a degree, the reason for your departure.
 - (a) Syracuse University, 1970-74, B.A.
 - (b) Georgetown University, 1975-77, completed course work for Masters. Did not complete thesis for M.A., left to attend law school.
 - (c) Tulane University School of Law, 1977-80, J.D.
8. List the states in which you have been admitted to practice law and the year of each admission. Also list any states in which you took the bar exam but were never admitted to the practice of law. If you took the bar exam more than once in any of the states listed, please indicate the number of times you took the exam in each state.

South Carolina, 1980
9. List the significant activities in which you took part during your attendance at college, graduate, and law school. Give the dates you were involved in these activities and list any leadership positions you held.
 - (a) Tulane University Moot Court Team, 1980;
 - (b) Tulane Law School Criminal Law Clinic, 1980.
10. Describe your continuing legal or judicial education during the past five years. Include only the title and date of any continuing legal or judicial education course completed.

<u>Conference/CLE Name</u>	<u>Date(s)</u>
(a) S.C. Bar Domestic Hot Tip	09/19/03;
(b) Charleston County Bar Annual Review	12/12/03;
(c) Notre Dame Univ. Law School Lawyers & Accounting Recent Attacks on Confidentiality	10/18/03;

- (d) Charleston County Family Court Bar CLE 11/19/04;
- (e) Charleston Cty. Bar Association, What Works for Me, Pt.II 02/17/04;
- (f) Charleston Cty. Family Law, Family Law 11/18/05;
- (g) S.C. Bar, Family Court Bench/Bar 12/02/05;
- (h) Charleston Cty. Bar, What Works for Me 10/09/05;
- (i) Side Bar S.C., Criminal Law – Gregory Harris 12/27/05;
- (j) CCFC, Family Law CLE 11/17/06;
- (k) CCBA, What Works for You 12/15/06;
- (l) S.C. Bar, S.C. Civil Process Update 02/16/07;
- (m) Charleston Bar, Child Custody & GAL 01/30/09;
- (n) Charleston Bar, What Works for Me 02/13/09;
- (o) Fed. Ct. Law Review, Ethics in the E-Discovery Age 02/27/09.

11. Have you taught law-related courses or lectured at bar association conferences, educational institutions, or continuing legal or judicial education programs?

Charleston Southern University, Adjunct Professor, Business Law Course

12. List all published books and articles you have written and give citations and the dates of publication for each. None

13. List all courts in which you have been admitted to practice and list the dates of your admission. Give the same information for administrative bodies that require a special admission to practice.

(a) Admitted to practice before the State Courts of South Carolina in 1980;

(b) Also admitted to practice before the Federal District Court in 1984 and Fourth Circuit Court of Appeals in 1993.

14. Describe chronologically your legal experience since graduation from law school and include a list of all law firms with which you have been associated. Describe the general character of your practice and divide it into periods with dates if its character has changed over the years.

(a) 1980: Charleston County Public Defender's Office, Assistant Public Defender;

(b) 1981-84: Ninth Circuit Solicitor's Office, Assistant Solicitor, Family Court Division; Assistant Solicitor, General Sessions Division;

(c) 1984- Present: Ameika, DeVane and Mack, Attorneys at Law, General Practice, 75% devoted to Family Court matters.

If you are a judge and are not seeking a different type of judgeship, the following questions are inapplicable:

(a) If you are a candidate for Family Court, please provide a brief written description of your experience within each of the following Family Court practice areas: divorce and equitable division of property, child custody, adoption, abuse and neglect, and juvenile justice. Include information about cases you have handled in each of these practice areas, or if you have not practiced in an area, describe how your background has prepared you to preside over such matters as a Family Court Judge.

From 1984 to present I have practiced in all areas of Family Court litigation. I represented DSS as assistant solicitor in the early 1980's in abuse and neglect cases. I have represented hundreds of parties in divorce proceedings, custody litigation and juvenile justice matters.

I have negotiated, mediated and litigated numerous divorce matters that included alimony issues, equitable division of property and child custody. I have served as counsel for adoptive parents and as Guardian ad Litem in numerous adoption proceedings including adoptions under the Interstate Compact.

I have represented numerous juvenile clients in both pleas and trials in the Family Court since 1980.

15. What is your rating in Martindale-Hubbell?

Not rated in Martindale-Hubbell. Reason unknown. I have not participated in rating process

16. What was the frequency of your court appearances during the last five years?

(a) federal: one federal trial

(b) state: appearance in Family Court on average of 2–3 times per week

17. What percentage of your practice involved civil, criminal, domestic, and other matters during the last five years?

(a) civil: 10%;

(b) criminal: 10%;

(c) domestic: 75%;

(d) other: 5%.

18. What percentage of your practice in trial court during the last five years involved matters that went to a jury, including those that settled prior to trial?

(a) jury: 10%;

(b) non-jury: 90%.

Did you most often serve as sole counsel, chief counsel, or associate counsel in these matters? Sole Counsel

19. List five of the most significant litigated matters you have personally handled in either trial or appellate court or before a state or federal agency. Give citations if the cases were reported and describe why these matters were significant.

(a) South Carolina v. Deavero D. Green, 2009 Charleston County Court of General Sessions. Three indictments for Lewd Act on Minor. Two separate trials in which first trial resulted in not guilty verdict. Second trial resulted in conviction of defendant.

(b) United States v. Gregory Overton, 2000 United States District Court for South Carolina. Multi week trial involving ten co-defendants on charges of Conspiracy to Distribute Crack Cocaine. Involved participation with numerous co-counsel in coordination of defense and complicated plea negotiations with US attorney.

(c) True v. True, 00-DR-10-5189 Charleston County Family Court. Multiple day trial following a year of discovery and depositions in divorce action involving complicated issues of equitable division of marital

property. Identification of marital property complicated by the use of trusts by client in ownership of real property assets.

(d) DSS v. Rigney, Baldwin and Loveless, 08-DR-08-1258; Loveless v. Rigney, 08-DR-08-1195. Berkeley County Family Court. Companion cases involving DSS abuse and neglect action against mother and boyfriend. I represented biological father in DSS proceeding and brought separate private action seeking custody of child. DSS action proceeded to trial following multiple depositions and discovery proceedings. Separate private custody action resulted in settlement following mediation of case.

(e) DSS v. Stewart 01-DR-08-1448 Charleston County Family Court. Abuse and neglect action brought by DSS. Involved jurisdiction issues with regard to alleged acts occurring in another jurisdiction. Trial held on issues of abuse that resulted in an Alford admission. Numerous follow-up hearing on treatment plan for father and his compliance with requirements of Final Order.

20. List up to five civil appeals you have personally handled. Give the case name, the court, the date of decision, and the citation if the case was reported.

(a) Durden v. Durden, 06-DR-18-1348. Dorchester County Family Court appeal to S.C. Court of Appeals. Date of Decision Ruling without precedential value

(b) Ward v. Ward, 98-DR-26-2911. Horry County Family Court appeal to South Carolina Court of Appeals. May 2000

(c) Jenkins v. Jenkins, 98-DR-10-686. Charleston County Family Court appeal to South Carolina Court of Appeals September 2000. Ruling without precedential value.

(d) Spreeuw v. Barker, 01-DR-10-1046. Charleston County Family Court appeal to South Carolina Court of Appeals. Attorney for the Guardian *ad Litem*.

21. List up to five criminal appeals that you have personally handled. Give the case name, the court, the date of decision and the citation if the case was reported.

United States v. Gregory Overton, 2000. Appeal from the United States District Court of South Carolina to the United States Court of Appeals for the Fourth Circuit, Richmond, Virginia. Oral arguments held in Baltimore, Maryland. Appeal of Conviction for Distribution of Crack Cocaine. Case not reported.

22. Have you ever held judicial office? No

24. Have you ever held public office other than judicial office? No

25. List all employment you had while serving as a judge (whether full-time or part-time, contractual or at will, consulting or otherwise) other than elected judicial office. Specify your dates of employment, employer, major job responsibilities, and supervisor. NA

26. Have you ever been an unsuccessful candidate for elective, judicial, or other public office?
- (a) Candidate for Ninth Circuit Family Court Seat 1995;
 - (b) Candidate for Ninth Circuit Family Court Seat 2002.
27. Have you ever been engaged in any occupation, business, or profession other than the practice of law, teaching of law, or holding judicial or other public office? No
28. Are you now an officer or director or involved in the management of any business enterprise? No
29. A complete, current financial net worth statement was provided to the Commission.
30. Describe any financial arrangements or business relationships you have, or have had in the past, that could constitute or result in a possible conflict of interest in the position you seek. Explain how you would resolve any potential conflict of interest.
- Joint owner with attorneys David L. DeVane and Walter S. Ameika of 110 N. Main LLC, which is the owner of the building where we practice law. Also have two tenants at 110 N. Main Street, Summerville, S.C., i.e.: Attorney Robert Robbins and attorney Margie Pizzaro. Conflict of interest would be resolved by recusal from all matters with any association with the named attorneys.
31. Have you ever been arrested, charged, or held by federal, state, or other law enforcement authorities for violation or for suspicion of violation of any federal law or regulation, state law or regulation, or county or municipal law, regulation, or ordinance, or any other law, including another country's law? No
32. Have you, to your knowledge, ever been under federal, state, or local investigation for possible violation of a criminal statute? No
33. Has a tax lien or other collection procedure ever been instituted against you by federal, state, or local authorities? Have you ever defaulted on a student loan? Have you ever filed for bankruptcy? No
34. Have you ever been sued, either personally or professionally, that is, have you ever been named as defendant or respondent in any court of law?
- 110 N. Main Street LLC was sued for a slip and fall occurring on our law office premises. This case was settled by our insurance carrier in 2009.
36. Have you ever been investigated by the Department of Social Services? If so, give the details and the resolution. Has your name ever been enrolled on the Central Registry of Child Abuse and Neglect? No
37. Are you now or have you ever been employed as a "lobbyist," as defined by S.C. Code § 2-17-10(13), or have you acted in the capacity of a "lobbyist's principal," as defined by S.C. Code § 2-17-10(14)? No
38. Since filing with the Commission your letter of intent to run for judicial office, have you accepted lodging, transportation, entertainment, food, meals, beverages, money, or any other thing of value as defined by S.C. Code § 2-17-10(1) from a lobbyist or lobbyist's principal? No

39. S.C. Code § 8-13-700 provides, in part, that "[n]o public official, public member, or public employee may knowingly use his official office, membership, or employment to obtain an economic interest for himself, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated." Please detail any knowledge you have of any formal charges or informal allegations against you or any other candidate for violations of these provisions. None
40. S.C. Code § 8-13-765 provides, in part, that "[n]o person may use government personnel, equipment, materials, or an office building in an election campaign." Please detail any knowledge you have of any formal charges or informal allegations against you or any other candidate for violations of these provisions. None
41. Itemize (by amount, type, and date) all expenditures, other than those for travel and room and board, made by you, or on your behalf in furtherance of your candidacy for the position you seek. None
42. List the amount and recipient of all contributions made by you or on your behalf to members of the General Assembly since the announcement of your intent to seek election to a judgeship. None
43. Have you directly or indirectly requested the pledge of any member of the General Assembly as to your election for the position for which you are being screened? Have you received the assurance of any public official or public employee that they will seek the pledge of any member of the General Assembly as to your election for the position for which you are being screened? None
44. Have you requested a friend or colleague to contact members of the General Assembly on your behalf? Are you aware of any friends or colleagues contacting members of the General Assembly on your behalf? None
45. Have you or has anyone acting on your behalf solicited or collected funds to aid in the promotion of your candidacy? None
46. Have you or has anyone acting on your behalf contacted members of the Judicial Merit Selection Commission about your candidacy or intention to become a candidate? No
47. List all bar associations and professional organizations of which you are a member and give the titles and dates of any offices you have held in such groups.
- (a) S.C. Bar
 - (b) Charleston County Bar Association
48. List all civic, charitable, educational, social, and fraternal organizations of which you are or have been a member during the past five years and include any offices held in such a group, any professional honors, awards, or other forms of recognition received and not listed elsewhere.
- (a) St. Stephens Episcopal Church Vestry Member;
 - (b) Gibbes Museum of Art, Charleston, S.C. Harleston Fellow.

49. Provide any other information that may reflect positively or negatively on your candidacy, or which you believe should be disclosed in connection with consideration of you for nomination for the position you seek.
50. References:
- (a) David L. DeVane
110 N. Main Street
Summerville, S.C.
843-285-7100
 - (b) Rev. David Williams, DD
67 Anson St.
Charleston, S.C.
843-722-0038
 - (c) Dr. Avrum Silver Ph.D.
2151 B Ashley Phosphate Rd.
N. Charleston, S.C. 29406
843-572-8900
 - (d) Dennis Baars, CPA
471 Wallace Dr.
Charleston, S.C. 29412
843-795-6632
 - (e) Hugh Lane, President, Bank of South Carolina
256 Meeting Street
Charleston, S.C. 29401
843-724-1500

YOUR SIGNATURE WILL BE HELD TO CONSTITUTE A WAIVER OF THE CONFIDENTIALITY OF ANY PROCEEDING BEFORE A GRIEVANCE COMMITTEE OR ANY INFORMATION CONCERNING YOUR CREDIT.

I HEREBY CERTIFY THAT MY ANSWERS ARE TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

Signature: Ben Mack

Date: August 10, 2010

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

Family Court
(New Candidate)

Full Name: Bernard Frank Mack
Business Address: 110 N. Main Street
Summerville, SC 29483
Business Telephone: 843-285-7100

1. Why do you want to serve as a Family Court Judge?

I have practiced in the Family Court for thirty years. My practice has included work as: 1) a Public Defender; 2) Assistant Solicitor for criminal prosecutions; 3) Assistant Solicitor for DSS matters; 4) representation of clients in all facets of domestic litigation; 5) representation of juvenile criminal defendants; 6) service as Guardian *ad Litem*; 7) attorney for Guardian *ad Litem*s and 8) Family Court mediator. My desire to serve as a Family Court judge is the culmination of a professional life of work in the Family Court and my hope to contribute to my community in diligent service as a Family Court Judge.

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 statutory 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 is strictly avoided. *Ex parte* Orders are very rarely issued by the Court in emergency situations that may effect the safety of a child.

6. What is your philosophy on recusal, especially in situations in which lawyer-legislators, former associates, or law partners are to appear before you?

Recusal is required in each of these situations

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?

The appearance of bias requires the granting of a request for recusal. Information acquired in a judicial proceeding may not require recusal.

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

This situation requires recusal.

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

A judge should not accept gifts. Social hospitality offered by attorneys or litigants cannot be accepted.

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

Misconduct requires reporting to the appropriate authority.

11. Are you affiliated with any political parties, boards or commissions that, if you were elected, would need to be evaluated? No

12. Do you have any business activities that you would envision remaining involved with if elected to the bench? No

13. Since family court judges do not have law clerks, how would you handle the drafting of orders?

Orders are drafted by an attorney in the case subject to the approval of the opposing attorney as to form and content.

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

This requires creation of computer and hard copy docketing lists to insure the meeting of deadlines.

15. If elected, what specific actions or steps would you take to ensure that the guidelines of the Guardian Ad Litem statutes are followed during the pendency of a case?

The role of the Guardian *ad Litem* in all appropriate proceedings must be protected and promoted by strict judicial adherence to the relevant statutes.

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

Judges should not have a role in setting or promoting public policy. Policy is a legislative function.

17. 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?

Involve in speaking requests as to these issues. Participation in Drug Court and DSS mediation.

18. 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 have a strong marriage of thirty-three years. Two of my children are grown and my third child is completing her last year of high school. This leaves greater freedom to devote to judicial service.

19. Would you give any special considerations to a *pro se* litigant in family court?

Pro se litigants must be treated with respect by the Court but are required to be held to the rules and standards of all litigants.

20. Are you involved in any active investments from which you derive additional income that might impair your appearance of impartiality?
No

21. Would you hear a case where you or a member of your family held a *de minimis* financial interest in a party involved? No

22. Do you belong to any organizations that discriminate based on race, religion, or gender? No

23. Have you met the mandatory minimum hours requirement for continuing legal education courses? Yes

24. What percentage of your legal experience (including experience as a special appointed judge or referee) concerns the following areas? If you do not have experience in one of these areas, can you suggest how you would compensate for that particular area of practice?

- a. Divorce and equitable distribution: 40%
- b. Child custody: 30%
- c. Adoption: 10%
- d. Abuse and neglect: 10%
- e. Juvenile cases: 10%

25. What do you feel is the appropriate demeanor for a judge?

Judicial demeanor requires impartiality, good listening and fairness to all parties.

26. 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?

These should be applied at all times.

27. Do you feel that it is ever appropriate to be angry with a member of the public who would appear before you, especially with a criminal defendant? Is anger ever appropriate in dealing with attorneys or a *pro se* litigant?

Anger is not an appropriate response for a judge with a litigant or criminal defendant. A judge can express the collective sense of the community as to the inappropriateness of criminal conduct

28. How much money have you spent on your campaign? If the amount is over \$100, has that been reported to the House and Senate Ethics Committees? None

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

30. Have you sought or received the pledge of any legislator prior to this date? No

31. Have you sought or been offered a conditional pledge of support by any legislator pending the outcome of your screening? No
32. 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
33. Have you contacted any members of the Judicial Merit Selection Commission? No
34. 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/Ben F. Mack

Sworn to before me this 10th day of August, 2010.

Notary Public for South Carolina

My commission expires: 1-16-2018

MARTIN & MARTIN
ATTORNEYS AND COUNSELLORS AT LAW
61 MORRIS STREET • P. O. BOX 21830
CHARLESTON, SOUTH CAROLINA 29413-1830



TELEPHONE
(843) 723-1686
FAX 723-0838

DANIEL E. MARTIN, SR.
DANIEL E. MARTIN, JR.

November 4, 2010

Judicial Merit Selection Committee
Ms. Jane O. Shuler
Post Office Box 142
Columbia, S.C. 29202

**RE: DANIEL E. MARTIN, JR.
CANDIDATE FOR SEAT No.: 1
CHARLESTON COUNTY FAMILY COURT
NINTH JUDICIAL CIRCUIT**

Dear Ms. Shuler:

Please find my amended answer to question 28 of my Sworn Statement.

28. How much money have you spent on your campaign?

Postage \$ 71.28

If the amount is over \$100, has that been reported to the House and Senate Ethics Committees?

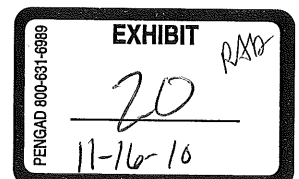
Not Applicable

Thanking you for the usual courtesies extended in these matters, I remain,

Yours very truly,


DANIEL E. MARTIN, JR., ESQUIRE

DEM/dem



JUDICIAL MERIT SELECTION COMMISSION
PERSONAL DATA QUESTIONNAIRE

Court, Position and Seat #:

Family Court, Ninth Judicial Circuit, Seat 1

1. NAME: Daniel E. Martin, Jr.
BUSINESS ADDRESS: 61 Morris Street
Charleston, S.C. 29403
E-MAIL ADDRESS: dannymartinlaw@bellsouth.net
TELEPHONE NUMBER: (office):843-723-1686
2. Date of Birth: 1963
Place of Birth: Charleston, S.C.
3. Are you a citizen of South Carolina? Yes
Have you been a resident of this state for at least the immediate past five years? Yes
5. Family Status: Married on April 29, 1989, to Reba Zealena Hough-Martin.
Never divorced. Two children.
6. Have you served in the military? No
7. List each college and law school you attended, including the dates of your attendance, the degrees you received, and if you left an institution without receiving a degree, the reason for your departure.
(a) Howard University (1980-84) B.A.
(b) University of S.C. School of Law (1985-88) J.D.
8. List the states in which you have been admitted to practice law and the year of each admission. Also list any states in which you took the bar exam but were never admitted to the practice of law. If you took the bar exam more than once in any of the states listed, please indicate the number of times you took the exam in each state.
South Carolina – admitted 1989 – I took the bar twice.
9. List the significant activities in which you took part during your attendance at college, graduate, and law school. Give the dates you were involved in these activities and list any leadership positions you held.
(a) Campus Pals (1982-84)
(b) Political Science Club (1982-84)
(c) Alpha Phi Alpha Fraternity (1983–present)
(d) Inns of Court (1987-88)
10. Describe your continuing legal or judicial education during the past five years. Include only the title and date of any continuing legal or judicial education course completed.

- | | <u>Conference/CLE Name</u> | <u>Date(s)</u> |
|--|--|----------------|
| | (a) Ethics in Digital Communications | 02/18/10; |
| | (b) Estate Planning for the Elderly | 02/10/10; |
| | (c) SCAJ Auto Torts XXXII | 12/04/09; |
| | (d) Criminal Law Update | 01/25/08; |
| | (e) SCTL Auto Torts XXX | 11/30/07; |
| | (f) Pretrial Skills: Thinking on Your feet | 11/28/06; |
| | (g) Practice Before the Master | 11/09/06; |
| | (h) Advance Cross Examination | 12/15/06; |
| | (i) SCTL Auto Torts XXVIII | 12/02/05; |
| | (j) Attorney ECF Training | 09/28/05; |
| | (k) Real Estate Seminar at Carolina's | 09/23/05; |
| | (l) S.C. Family Court Bench Bar | 12/03/04; |
| | (m) Revised Lawyer's Oath | 07/22/04; |
| | (n) SCLSA Heirs Property Training | 04/02/04. |
11. Have you taught law-related courses or lectured at bar association conferences, educational institutions, or continuing legal or judicial education programs?
- I was a presenter at a Seminar sponsored by the Heirs Property Law Center and discussed the procedure for initiating quiet title and partition actions.
12. List all published books and articles you have written and give citations and the dates of publication for each. Not Applicable
13. List all courts in which you have been admitted to practice and list the dates of your admission. Give the same information for administrative bodies that require a special admission to practice.
- (a) Admitted to practice before the State Courts of South Carolina on May 17, 1989;
- (b) Also admitted to practice before the U.S. District Court for the District of South Carolina on May 4, 1990;
- (c) Also admitted to practice before the U.S. Court of Appeals for the Fourth Circuit Court on December 29, 1990.
14. Describe chronologically your legal experience since graduation from law school and include a list of all law firms with which you have been associated. Describe the general character of your practice and divide it into periods with dates if its character has changed over the years.
- Since graduating from law school, I served for nearly four (4) years as a Magistrate for Charleston County (part-time) and presided over Small Claims Court, land lord tenant disputes, and claim and deliveries. I held that position from 1989–93 and resigned to dedicate myself to the full time practice of law. I have practiced law at 61 Morris Street with my father, Daniel E. Martin, Sr., since 1989.
- I have been engaged in the general practice of law with a concentration in domestic relations and real estate. I have also had substantial experience in

wrongful death cases, medical malpractice, excessive use of force, personal injury, wills and estates, general tort law, criminal defense and land disputes. I also served a town council for the Town of Lincolnton from 1991–98 and served as Grand Legal Advisor for the Prince Hall Affiliated Grand Lodge of the state of South Carolina. I am currently handling all title work for the Charleston County Roadwise Project and am responsible for real estate closings involving the purchase right-of-ways and land acquisitions. I also represent South Carolina State University in several lawsuits now pending in the Orangeburg County Court of Common Pleas.

If you are a judge and are not seeking a different type of judgeship, the following questions are inapplicable

- (a) If you are a candidate for Family Court, please provide a brief written description of your experience within each of the following Family Court practice areas: divorce and equitable division of property, child custody, adoption, abuse and neglect, and juvenile justice. Include information about cases you have handled in each of these practice areas, or if you have not practiced in an area, describe how your background has prepared you to preside over such matters as a Family Court Judge.

For the past twenty (20) years, I have had an extensive family law practice which has included me handling hundreds of divorces, legal separations, child custody and support actions. While many cases are resolved through negotiation, mediation and by agreement of the litigants, a large percentage is contested and requires resolution at trial. My years of experience have helped me to gain a good understanding of the law of equitable distribution of property and the award of spouse support. The knowledge I have gained over these years has enabled me to be a good advocate for my client.

DIVORCE AND EQUITABLE DIVISION

My practice has involved representing clients in actions where the grounds for divorce include physical abuse, habitual drunkenness, adultery, abandonment and separation for a period of not less than one (1) year. I have also handled a number of annulments. The issue of equitable division of property is often disputed, especially where the litigants have accumulated substantial assets. I have gained experience by advocating for my clients, researching case and statutory law, participating in mediation and litigating the issues at trial. Equitable division requires consideration of many factors guided most importantly by fairness. In the matter of Rawlins v. Rawlins (Case No.: 05-DR-10-1220), the parties litigated a divorce involving issues of drug use, child custody, equitable distribution involving business assets. The represented the Defendant father. The parties presented motion prior to the trial including a motion to enforce a settlement which my client won. However, the parties' failure to reach an agreement resulted in a trial over several days which did not

end in a result that either party wanted to accept. The ordeal was rather emotional for all but allowed me an opportunity to zealously represent my client while displaying sensitivity to the fragile feelings that the parties held towards each other.

CHILD CUSTODY

Peterson v. Jenkins (Case No.: 2008-DR-10-3848)

In this case, my client sought custody of his teenage son who was formerly in the custody of his mother. The parties were never married to one another. The mother's continued drug use and failure to adequately care for the minor was the basis of the Plaintiff's pursuit. The case was vigorously defended. The Plaintiff won custody of his son; however, the mother has filed a motion for reconsideration of part of the judge's ruling. Despite the aggressive defense of the mother, the Plaintiff was able to present his case in a professional manner without the need for destroying the character of the Defendant.

ADOPTION

I handled a number of adoptions over the years. I have also participated as the attorney and also the guardian ad litem in termination of parental rights actions. While the adoption actions are rarely controversial, the same may not often be true of termination of parental rights actions. In the matter of Charleston County Department of Social Services, et. al. vs. Christian Hoskins, et. al., (Case No. 04-DR-10-2887), the Defendant was a minor child who became a mother while she herself was in the custody of DSS. I served as the guardian for the oldest of her three children. The child was placed in the custody of a foster parent who would ultimately seek to adopt the child. However, when Ms. Hoskins became an adult and was no longer in the custody of DSS, she pursued an action for custody of her minor children. Her education, employment and limited contact with the children were among many other issues raised by the Department in seeking a termination of Ms. Hoskins' parental rights. As guardian, my investigation led to me a decision opposite to that of DSS. I felt as though Ms. Hoskins had demonstrated that she was able to care for her children. Nonetheless, the Court determined that too much time had passed since the children's placement with the foster parents and that termination of Ms. Hoskins' parental rights was in their best interest. The decision was appealed but was upheld by the Court of Appeals.

ABUSE AND NEGLECT

SCDSS v. JUPITER

In this case, my client was accused of being physically abusive towards her teenage daughter. While the facts ultimately proved that the child was not abused, the intervention by DSS into the situation

proved to be necessary and beneficial to all of the parties. While the initial action taken against my client was very emotional and therefore the response predictable, it was the treatment plan that reunited this family and has helped mother and child to build a stronger relationship. DSS v. Cherette Jupiter (Case No.: 09-DR-10-446). This case, like many others that I handled in the past, made me appreciate the hard work of the social workers and legal staff of the Department of Social Services and their indispensable contribution to the fabric of the community.

JUVENILE JUSTICE

In the Matter of Joe Baggett (2008-JU-08-582-583)

My client was accused of burglary after entering a closed pharmacy along with several acquaintances. Mr. Baggett was involved with the wrong crowd and failed to exercise good judgment. It was ultimately a co-defendant who named Mr. Baggett as a suspect. While Mr. Baggett ultimately pled guilty, it was the personal contact that I had with him and his family that seemed to touch him the most. I understand that Joe now works construction with his step father. This case has helped me become sensitive to the cause of bad behavior and yet the need for accountability and rehabilitation.

15. What is your rating in Martindale-Hubbell? Unknown
16. What was the frequency of your court appearances during the past five years?
 - (a) federal: 1 four day trial in 2008;
 - (b) state: I have had at least 2 jury trials in the past five years, at least 5 bench trials, perhaps a dozen or more motions and non-jury hearings in the Court of Common Pleas. Also, I've had at least 2 jury trials and 10 bench trials in municipal/magistrate's courts. I argued a case before the South Carolina Supreme Court in 2009 and appeared before the South Carolina Election Commission in 2009 and the Administrative Court in Columbia for a trial in May, 2010. My appearances in the Charleston County Probate Court and Master-in-Equity Court are much more frequent. I have had scores of hearings in probate courts for formal appointment of personal representatives, conservators and guardians, determination of heirs actions, and will contests. My appearances in the tri-county family courts normally average between 3 to 8 times per week. It is not unusual for me to have 3 hearings in one day in more than one family court.
17. What percentage of your practice involved civil, criminal, domestic, and other matters during the past five years?
 - (a) civil: 15%;
 - (b) criminal: 5%;
 - (c) domestic: 50%;
 - (d) other: 30%.

18. What percentage of your practice in trial court during the past five years involved matters that went to a jury, including those that settled prior to trial?

(a) jury: 10%;

(b) non-jury: 90%.

Did you most often serve as sole counsel, chief counsel, or associate counsel in these matters? Sole Counsel

19. List five of the most significant litigated matters you have personally handled in either trial or appellate court or before a state or federal agency. Give citations if the cases were reported and describe why these matters were significant.

(a) USA v. Larry Blanding (Operation Lost Trust)

Case No.: CR-90-434-CHH

In this case, Larry Blanding, a member of the General Assembly, was charged with violating the Hobbs Act. Mr. Blanding was accused of accepting a cash bribe from a lobbyist working under cover with the FBI in exchange for supporting a para-mutual betting bill. This criminal trial was tried in federal court in Columbia. Although Mr. Blanding was found guilty, my law partner and I appealed his conviction to the Fourth Circuit Court of Appeals. The conviction was over turned. This case was significant because it allowed me to experience the federal criminal process at an early stage in my legal career. It also exposed me to the criminal appeals process and allowed me to witness oral argument before the US Court of Appeals. The case itself was significant because it involved the alleged corruption of a state official and is credited with making the South Carolina General Assembly more ethical and the lobbying process more transparent.

(b) Connell Brown and Illya Brown v. Adolpho Cofino, Joseph Gabe and the City of Charleston

Case No.: 2:92-1745-2 and 2:92-1744-2

This case involved the shooting of a citizen in his own home by a member of the Charleston Police Department. Illya Borwn, while walking home carrying his family's typewriter, was followed onto his front porch by two officers of the Charleston Police Department. Mr. Brown was immediately attacked by the officers while they attempted to place him in handcuffs. His brother, Connell Brown, came to the front door and was in the doorway shot. He survived his injuries but suffered permanent damages. Both brothers filed actions in the United States District Court claiming violation of their civil rights and certain state torts claims. I, along with to other attorney's, represented him. The case received substantial press. The case was tried over the course of a week before Judge Westin Court. Verdicts were returned in favor of the Defendants. However, the state court claims were preserved and were litigated in the Charleston County Court of Common Pleas. The case involving Illya Brown resulted in a settlement after several days of testimony where I served as lead counsel. This case was significant

because it challenged the over aggressive behavior of the Charleston Police Department. After the heavy publicity, claims of police brutality were reduced. I believe that the department subsequently placed more emphasis on the training of its officers.

- (c) Julia T. Gregory v. vs. Chief John R. Zumult and the City of North Charleston

2:05-CV-0306-DCV

In this case, Asberry Wilder, a mentally ill adult, was shot to death by a member of the North Charleston Police Department after he was surrounded by officers on Rivers Avenue. It was alleged by the officers that Mr. Wilder had a screw driver and posed a threat to one of the officers. This case was tried over the course of several days and ended when the presiding judge reconsidered his prior decision to deny a directed verdict. During the trial, testimony revealed that the officer who claimed to suffer an injury at the hands of Mr. Wilder was actually struck by a fellow officer. Also, the Defendant's expert witness confirmed that the Defendant's fatal wounds were inflicted while the Defendant was already on the ground. Despite this significant development, the trial judge reversed his earlier ruling to deny the Defendant's motion for a directed verdict just prior to submitting the case to the jury for deliberation. Although the lost was a painful result for the family of Asberry Wilder, the North Charleston Police equipped all of their officers with taser guns after the filing of the lawsuit. The use of such a gun would have prevented the death of Asberry Wilder and has perhaps save the lives of other mentally challenged people since. I feel that the case was significant for this reason and benefitted me in my experience with the family and understanding the mentally ill and the struggles of law enforcement in dealing with them.

- (d) Dana E. Winters and Daniella C. Winters v. Joyce Fiddie, C.W. Burbage, Barbara Daniels and Prudential Carolina Real Estate

Case No. 07-CP-08-0973

S.C. Court of Appeal No.: 2009115366

Vol 7, Issue 10 of Verdict Search National, October 2008

In this case, the Dana and Daniella Winters purchased a house shown to them by a real estate agent who acted as a dual agent for the sellers and the buyers. The sellers and their agent had prior knowledge that the home contained toxic mold yet failed to disclose this information to the buyers. After learning about the dangerous conditions in the home, the buyers sued the sellers, the agent and Prudential Carolina for failure to disclose and violating other provision of the state code. The jury returned a verdict in favor of the Plaintiff's for \$125,000.00 in actual and punitive damages. The case is significant because it is the first verdict in the country against a real estate agent and real estate company for failure to disclose the presence of mold. The case has

been published in several national publications including Verdict Search. The Defendants have appealed the decision. The appeal is pending before the South Carolina Court of Appeals.

- (e) Fred Hamilton, Jr., and Allyne Mitchell v. Jeff Fulgham, Norman Thomas and the Beaufort County Board of Elections and Voter Registration

South Carolina Supreme Court Opinion No.: 26747

Fred Hamilton and Allyne Mitchell, the won the most votes for the two open seats on the Bluffton town council in the November, 2008 election. The town of Bluffton had no board of elections and commissioned the Beaufort County election board to conduct the election. Jeff Fulgham and Norman Thomas, the other two candidates, failed to win enough votes in the election. They filed a protest before the Beaufort County Board of Elections and a new election was ordered. Fred Hamilton and Alleyne Mitchell retained the service of my firm and appealed the decision to the South Carolina State Election Commission. The commission reversed the decision. Fulgham and Thomas filed an appeal to the State Supreme Court. I presented the oral argument on behalf of Hamilton and Mitchell before the South Carolina Supreme Court on May 13, 2009. Because the Bluffton township had not clarified the procedure for appeals in contest of elections, the Supreme Court remanded the case to the Beaufort County Circuit Court. Both Allyne Mitchell and Fred Hamilton, Jr., were sworn in and both are serving as duly qualified members of Bluffton town council. This case is significant because it allowed me to make an oral argument before the state's highest court. Also, but for the challenge, the town of Bluffton may have been deprived two very deserving member of town council.

20. List up to five civil appeals you have personally handled. Give the case name, the court, the date of decision, and the citation if the case was reported. If you are a candidate for an appellate court judgeship (please attach one copy of briefs filed by you in each matter).

- (a) Dana E. Winters and Daniella C. Winters v. Joyce Fiddie, C.W. Burbage, Barbara Daniels and Prudential Carolina Real Estate

S.C. Court of Appeal No.: 2009115366

The appeal in this case is currently pending before the South Carolina Court of Appeals.

- (b) Fred Hamilton, Jr., and Alleyne Mitchell v. Jeff Fulgham, Norman Thomas and the Beaufort County Board of Elections and Voter Registration

Decision issued on December 7, 2009

South Carolina Supreme Court Opinion No.: 26747

21. List up to five criminal appeals that you have personally handled. Give the case name, the court, the date of decision and the citation if the case was

reported. If you are a candidate for an appellate court judgeship (please attach one copy of briefs filed by you in each matter). None

22. Have you ever held judicial office?

Yes. I served as a Magistrate for Charleston County from 1989-1993. I was appointed to this position after being recommended by the Charleston County Delegation. The Court handled landlord-tenant disputes, claim and deliveries and small claims up to \$5,000.00. As magistrate, I also issued arrest warrants, search warrants and presided over bond court as well as preliminary hearings.

23. If the answer to question 22 is yes, describe or list five of your most significant orders or opinions and give the citations if they were reported. Also list citations to any appellate review of these orders or opinions.

I would not consider any of the decisions that I recall being particularly significant. They were all summary court matters which resolved small disputes. I don't believe any of my decisions were appealed beyond the Court of Common Pleas or were reversed.

24. Have you ever held public office other than judicial office? If so, list the periods of your service, the office or offices involved, and whether you were elected or appointed. Also, state whether or not you have timely filed your report with the State Ethics Commission during the period you held public office. If not, were you ever subject to a penalty? No

25. List all employment you had while serving as a judge (whether full-time or part-time, contractual or at will, consulting or otherwise) other than elected judicial office. Specify your dates of employment, employer, major job responsibilities, and supervisor.

I was self-employed as a lawyer while also serving as a part-time Magistrate from 1989-92.

26. Have you ever been an unsuccessful candidate for elective, judicial, or other public office? No

27. Have you ever been engaged in any occupation, business, or profession other than the practice of law, teaching of law, or holding judicial or other public office?

I did have an interest in a restaurant known as Porgy's Other Place that lasted about a year. The business dissolved in 2008.

28. Are you now an officer or director or involved in the management of any business enterprise? No

29. A complete, current financial net worth statement was provided to the Commission.

30. Describe any financial arrangements or business relationships you have, or have had in the past, that could constitute or result in a possible conflict of interest in the position you seek. Explain how you would resolve any potential conflict of interest. Not Applicable

31. Have you ever been arrested, charged, or held by federal, state, or other law enforcement authorities for violation or for suspicion of violation of any federal

- law or regulation, state law or regulation, or county or municipal law, regulation, or ordinance, or any other law, including another country's law? No
32. Have you, to your knowledge, ever been under federal, state, or local investigation for possible violation of a criminal statute? No
33. Has a tax lien or other collection procedure ever been instituted against you by federal, state, or local authorities? No Have you ever defaulted on a student loan? No Have you ever filed for bankruptcy? No
34. Have you ever been sued, either personally or professionally, that is, have you ever been named as defendant or respondent in any court of law?

In 2001, I was named as a co-Defendant as a result of an error in drafting a deed during a real estate transaction. The seller of a parcel of land initiated the action after our office incorrectly failed to use the correct legal description. As a result, the purchaser inadvertently acquired an undeveloped lot owned by the seller which was situated adjacent to the lot he intended to buy. After the mistake was discovered, the buyer refused to voluntarily return the lot. The seller filed an action against the buyer and me since I was responsible for preparing the deed. I consented to the entry of a judgment which was satisfied through my professional liability insurance company. I was represented by Attorney John Massalon. Dotson vs. Smith, et. al. (Case No.: 2002-CP-10-1729)

36. Have you ever been investigated by the Department of Social Services? If so, give the details and the resolution. Has your name ever been enrolled on the Central Registry of Child Abuse and Neglect? No
37. Are you now or have you ever been employed as a "lobbyist," as defined by S.C. Code § 2-17-10(13), or have you acted in the capacity of a "lobbyist's principal," as defined by S.C. Code § 2-17-10(14)? No
38. Since filing with the Commission your letter of intent to run for judicial office, have you accepted lodging, transportation, entertainment, food, meals, beverages, money, or any other thing of value as defined by S.C. Code § 2-17-10(1) from a lobbyist or lobbyist's principal? No
39. S.C. Code § 8-13-700 provides, in part, that "[n]o public official, public member, or public employee may knowingly use his official office, membership, or employment to obtain an economic interest for himself, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated." Please detail any knowledge you have of any formal charges or informal allegations against you or any other candidate for violations of these provisions. None
40. S.C. Code § 8-13-765 provides, in part, that "[n]o person may use government personnel, equipment, materials, or an office building in an election campaign." Please detail any knowledge you have of any formal charges or informal allegations against you or any other candidate for violations of these provisions. None

41. Itemize (by amount, type, and date) all expenditures, other than those for travel and room and board, made by you, or on your behalf in furtherance of your candidacy for the position you seek. None
42. List the amount and recipient of all contributions made by you or on your behalf to members of the General Assembly since the announcement of your intent to seek election to a judgeship. None
43. Have you directly or indirectly requested the pledge of any member of the General Assembly as to your election for the position for which you are being screened? Have you received the assurance of any public official or public employee that they will seek the pledge of any member of the General Assembly as to your election for the position for which you are being screened? No
44. Have you requested a friend or colleague to contact members of the General Assembly on your behalf? Are you aware of any friends or colleagues contacting members of the General Assembly on your behalf? No
45. Have you or has anyone acting on your behalf solicited or collected funds to aid in the promotion of your candidacy? No
46. Have you or has anyone acting on your behalf contacted members of the Judicial Merit Selection Commission about your candidacy or intention to become a candidate? No
47. List all bar associations and professional organizations of which you are a member and give the titles and dates of any offices you have held in such groups.
- (a) S.C. Bar Association;
 - (b) Charleston County Bar Association
I served on the Executive Board (1994-95);
 - (c) Former member of the Fee Resolution Dispute Committee for the Ninth Judicial Circuit (2000-05);
 - (d) S.C. Black Lawyers Association, (former Treasurer);
 - (e) Former member of the House of Delegates for the S.C. Bar Association;
 - (f) Bench-Bar committee for the Charleston County Probate Court from 2007-09;
 - (g) Bench-Bar Committee for Charleston County Master-in-Equity Court from 2008 – present.
48. List all civic, charitable, educational, social, and fraternal organizations of which you are or have been a member during the past five years and include any offices held in such a group, any professional honors, awards, or other forms of recognition received and not listed elsewhere.
- (a) Alpha Phi Alpha Fraternity, Inc.;
 - (b) Prince Hall Masons, Nehemiah Lodge No. 51;
 - (c) AAONMS, (Shriners) Arabian Temple No. 139, Past Potentate;
 - (d) George Washington Consistory No. 162;
 - (e) Untied Supreme Council of 33° masons;

(f) Owl's Whist Club.

49. Provide any other information that may reflect positively or negatively on your candidacy, or which you believe should be disclosed in connection with consideration of you for nomination for the position you seek.

During my life as a member of the bar, I have participated in many activities which have made me a well-rounded individual. In addition to the activities already mentioned, I have served as a member of the board of trustees of my church, served as a board member of the Cannon Street YMCA, and a board member for the Avery Center for African American History and Culture. I have served as a commissioner for Mayor Joseph Riley's Commission for Children and currently serve on the City of Charleston Community Development Advisory Committee. I currently serve as the legal adviser for the Prince Hall Affiliated Grand Lodge of the State of South Carolina. As a husband and father, I have taken an active role in the rearing of my two children. My son enters Howard University this August as a freshman and my daughter will begin the seventh grade at Charleston Catholic. I have attended and participated in their parent-teacher conferences, extra curricular activities and sporting events through the years. I have been fortunate enough to travel with them out-of-the country and to have them exposed to different cultures. My wife of 21 years has been supportive of my career and she has established herself as an advocate for the needy as deputy director of the Charleston County Human Services Commission, a community action service organization.

Additionally, my training as a lawyer and a successfully businessman is due in no small part to guidance and inspiration of my father, Daniel E. Martin, Sr. My father's experience as a lawyer, prosecutor, member of the General Assembly and Circuit Court Judge exposed me to the highest standards of ethics and judicial temperament. Most importantly, he has dedicated his life to service of the community and has demonstrated by example that sacrifice is required of all who have been afforded opportunities not available to others. It is for that reason that our office has remained consistent in offering quality legal service at fees we believe are below average for lawyers in the Charleston area.

50. References:

- (a) Anthony B. O'Neill, Sr., Esquire
1846 Ashley River Rd., Ste. 200
Charleston, S.C. 29407
(843) 763-3900
- (b) J. Corbitt Hinson, III, Esquire
492 Dolphin Drive
Summerville, S.C. 29485
(843) 832-1184
- (c) Joseph P. Cerato, Esquire
215 East Bay Street, Suite 501

- Charleston, S.C. 29402
(843) 577-4725
- (d) Jon Mersereau, Esquire
234 Seven Farm Drive
Ste. 201 B
Charleston, S.C. 29492
(843) 884-5753
- (e) Antoine Saunders, Vice President
Wachovia Bank
177 Meeting Street
Charleston, S.C. 29401
843-727-1052

YOUR SIGNATURE WILL BE HELD TO CONSTITUTE A WAIVER OF THE CONFIDENTIALITY OF ANY PROCEEDING BEFORE A GRIEVANCE COMMITTEE OR ANY INFORMATION CONCERNING YOUR CREDIT.

I HEREBY CERTIFY THAT MY ANSWERS ARE TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

Signature: Daniel E. Martin, Jr.

Date: August 9, 2010

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

Family Court
(New Candidate)

Full Name: Daniel E. Martin, Jr.
Business Address: 61 Morris Street,
Charleston, SC 29403
Business Telephone: (843) 723-1686

1. Why do you want to serve as a Family Court Judge?
I would like to serve as a Family Court Judge to be of service to my community and to add my knowledge and experience to the bench.
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 statutory 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 that *ex parte* communications between litigants, attorneys and members of the judiciary are inappropriate and unethical. I can think of no circumstance where such communications should be tolerated. However, when the life or safety of an individual, especially a minor child is involved, I believe that it would be appropriate for the Court to receive motions and exhibits properly filed and issue certain emergency relief in an *ex parte* order.

6. What is your philosophy on recusal, especially in situations in which lawyer-legislators, former associates, or law partners are to appear before you?

I don't believe that judges must recuse themselves in every case where a lawyer-legislator may appear before her/him. This would essentially prevent the lawyer-legislator from practicing law in any state court. However, in some cases, recusal might be necessary. As a general rule, presiding over cases where former law associates or law partner may appear, the judge should avoid such cases because of the appearance of impropriety. In my case, I have essentially practiced law as a sole practitioner and have no former associates or law partners who are now active members of the bar.

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 grant the motion.

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

In such cases, I would recuse myself as the judge and refer the matter to another judge.

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

I would not accept gifts or social hospitality and would hold myself accountable under the highest standard of scrutiny in such cases.

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

I would report such misconduct to the appropriate authorities for investigation.

11. Are you affiliated with any political parties, boards or commissions that, if you were elected, would need to be evaluated? No

12. Do you have any business activities that you would envision remaining involved with if elected to the bench? No

13. Since family court judges do not have law clerks, how would you handle the drafting of orders?

In most cases, the lawyers appearing before the Court would be expected to prepare orders. Those orders would be reviewed by the judge and cross-checked to make certain that they were consistent with any oral rulings made in Court. However, there would be many times that it would be necessary for the judge to prepare orders. I would be prepared to draft all such orders.

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

I would use whatever computer program is provided for judges as reminders and also make notations on written calendars as a back up. I would expect that the clerk of court has a monitoring system in place proven to be useful as well.

15. If elected, what specific actions or steps would you take to ensure that the guidelines of the Guardian Ad Litem statutes are followed during the pendency of a case?

I believe that each Guardian Ad item, upon appointment and/or acceptance of the responsibility, execute a written instrument acknowledging his/her understanding of the guidelines and his/her obligation to the protected person and to the Court.

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

I believe that family court judges are expected to interpret and uphold the law, not to create law. Judicial activism, as that term is often used in politics, has no place on the bench.

17. 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 would like to see the time that a case sits on a docket before it is set for a final hearing reduced. I believe this could happen with the implementation of a universal scheduling order that the lawyers would voluntarily agree to after the filing of responsive pleadings. I would also like to see drug court continue.

18. 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?

No. My current work schedule is much more demanding and I seem to have balanced it well with my family life.

19. Would you give any special considerations to a *pro se* litigant in family court?

Pro se litigants are required to follow the same rules as all litigants represented by counsel. However, I believe that there are times when the Court should be less rigid in applying those rules when the ends of justice suggest that such accommodations would not be harmful to the other side.

20. Are you involved in any active investments from which you derive additional income that might impair your appearance of impartiality?

No

21. Would you hear a case where you or a member of your family held a *de minimis* financial interest in a party involved? No

22. Do you belong to any organizations that discriminate based on race, religion, or gender? No

23. Have you met the mandatory minimum hours requirement for continuing legal education courses? Yes

24. What percentage of your legal experience (including experience as a special appointed judge or referee) concerns the following areas? If you do not have experience in one of these areas, can you suggest how you would compensate for that particular area of practice?

- a. Divorce and equitable distribution: 20%
- b. Child custody: 20%
- c. Adoption: 5%
- d. Abuse and neglect: 10%
- e. Juvenile cases: 10%

25. What do you feel is the appropriate demeanor for a judge?

I believe that a judge should display firmness and control of the courtroom yet maintain an even temperament showing courtesy, respect and fairness to all of the litigants and their legal representatives.

26. 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?
They would apply at all times, 7 days a week, 24 hours a day.
27. Do you feel that it is ever appropriate to be angry with a member of the public who would appear before you, especially with a criminal defendant? Is anger ever appropriate in dealing with attorneys or a pro se litigant? No
28. How much money have you spent on your campaign? If the amount is over \$100, has that been reported to the House and Senate Ethics Committees? Zero (0)
29. If you are a sitting judge, have you used judicial letterhead or the services of your staff while campaigning for this office? N/A
30. Have you sought or received the pledge of any legislator prior to this date? No
31. Have you sought or been offered a conditional pledge of support by any legislator pending the outcome of your screening? No
32. 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
33. Have you contacted any members of the Judicial Merit Selection Commission? No
34. 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 E. Martin, Jr.

Sworn to before me this 9th day of August, 2010.

Notary Public for South Carolina

My commission expires: 4-5-2020

Rita J. Roache, Esquire
1989 Shields Lane
Mount Pleasant, SC 29466
843-971-4180

4 November 2010

Judicial Merit Selection Commission
P. O. Box 142
Columbia, SC 29202

RE: PDQ

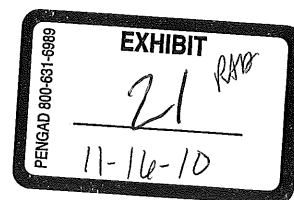
Dear Commission:

This letter shall serve as an addendum to the Personal Data Questionnaire.


With respect to Question 34, which reads: Have you been sued, either personally or professionally, that is, have you ever been named as a defendant or respondent in any court of law? If so, give details, including, but not limited to dates and resolution.

Answer: I was appointed by the Charleston County Probate Court as the Personal representative of the Estate of James Watson, Sr. This was a very contentious estate wherein part of the family requested removal of the then Personal Representative. The Wife (who had served as the P.R.) and her children and the children of the prior marriage could not reach a resolution. Each "side" believed that there were hidden assets. The mortgage was behind when I was appointed in this matter. Thereafter, since there were not sufficient assets to pay the mortgage and the other debts of the estate, the mortgage holder filed a foreclosure action on April, 9, 1997 styled Associates Financial Services of South Carolina, Inc. v. Estate of James Watson, et. al., 1997-CP-10-248. As the Personal Representative, I was one of many named Defendants. The matter was disposed of by the Master In Equity on August 30, 1999 and the property was sold in a Master's Sale on September 7, 1999. No judgment was rendered against me.

I did not remember this when I completed the application, as it occurred more than 13 years ago.



Sincerely,


Rita J. Roache

JUDICIAL MERIT SELECTION COMMISSION
PERSONAL DATA QUESTIONNAIRE

Court, Position, and Seat # for which you are applying:

Family Court, Ninth Judicial Circuit, Seat 1

1. NAME: Rita J. Roache
BUSINESS ADDRESS: 2803 Carner Avenue
North Charleston, S.C. 29466
E-MAIL ADDRESS: ritaroache@sclegal.org
TELEPHONE NUMBER: (office): 843-266-2172
2. Date of Birth: 1960
Place of Birth: Washington, D.C.
3. Are you a citizen of South Carolina? Yes
Have you been a resident of this state for at least the immediate past five years? Yes
5. Family Status: Married on August 9, 1997, to John Perry Buncum, Jr. Never divorced. Two children.
6. Have you served in the military? No
7. List each college and law school you attended, including the dates of your attendance, the degrees you received, and if you left an institution without receiving a degree, the reason for your departure.
 - (a) Hampton Institute, 1978-82, B.A., Political Science, *magna cum laude*;
 - (b) George Washington University, School of Public and International Affairs, 1982-84 ended studies to attend law school; and
 - (c) George Washington University, The National Law Center 1984-87, J.D.
8. List the states in which you have been admitted to practice law and the year of each admission. Also list any states in which you took the bar exam but were never admitted to the practice of law. If you took the bar exam more than once in any of the states listed, please indicate the number of times you took the exam in each state.
South Carolina, 1988.
9. List the significant activities in which you took part during your attendance at college, graduate, and law school. Give the dates you were involved in these activities and list any leadership positions you held.
 - (a) Alpha Kappa Alpha Sorority, Inc., 1980-Present, President, Leadership Fellow;
 - (b) Swim Team, 1978-81, Women's Captain;
 - (c) Student Leadership Program, 1979-82;
 - (d) Alpha Kappa Mu Honor Society, National Vice President, 1980-82;
 - (e) Peace Corps Intern, 1981;
 - (f) Student Recruitment and Admissions Chair, 1985-87;
 - (g) Moot Court, 1985;
 - (h) American Bar Association, Law Student Division, 1984-87, Circuit Representative;

- (i) Black Law Students Association, 1984-1987, Secretary; and
- (j) National Bar Association, 1984-87, Women's Law Association 1985-87.

10. Describe your continuing legal or judicial education during the past five years. Include only the title and date of any continuing legal or judicial education course completed.

<u>Conference/CLE Name</u>	<u>Date(s)</u>
(a) Family Law Training	3/4/05;
(b) Legal Issues Affecting the Legal Services Practitioner	10/21/05;
(c) 2006 Education Law Training	2/24/06;
(d) Complex Issues In Family Law	3/31/06;
(e) Nuts and Bolts of Family Court	4/28/06;
(f) Retreat- assorted topics, including Family Law	9/29/06;
(g) NLADA Annual Conference	11/8/06;
(h) S.C. Legal Services Statewide Meeting	12/11/07;
(i) Family Law	3/28/08;
(j) Statewide Legal Services Meeting	11/12/08;
(k) Houston Intensive Family Law Trial Institute	5/16/09;
(l) Appleseed Family Law Training	3/26/10;
(m) Training for Attorneys Appointed in Abuse and Neglect Cases	4/30/10.

11. Have you taught law-related courses or lectured at bar association conferences, educational institutions, or continuing legal or judicial education programs? If so, briefly describe each course or lecture.

- (a) I participated in a panel discussion for a S.C. Bar CLE;
- (b) I have made presentations for the S.C. Appleseed Legal Justice Family Law CLE on the topics of Discovery Tips, The Trial Notebook, and Adoption;
- (c) I presented on Handling a DSS case for the S.C. Black Lawyers Association Retreat;
- (d) For a CLE sponsored by the Children's Law Center, I made a presentation on Frequently Asked Questions for Defense Attorneys;
- (e) I made a presentation on family law for a CLE sponsored by the Charleston County Bar Association;
- (f) I have made numerous presentations on family law issues for S.C. Legal Services and Neighborhood Legal Services;
- (g) I taught a seminar for students at Charleston School of Law on representing clients in order of protection hearings;
- (h) As a part of my duties at S.C. Legal Services, I conduct Self-Represented Litigant clinics on divorce and child support modification. I also have participated in community education in a variety of family law issues for many very diverse groups. I cannot recall all of the presentations over the years of my employment with the organization; and

- (i) With the Center for Legal Aid Education, I was a presenter and facilitator for Legal Aid University.
- 12. List all published books and articles you have written and give citations and the dates of publication for each. None
- 13. List all courts in which you have been admitted to practice and list the dates of your admission. Give the same information for administrative bodies that require a special admission to practice.
 - (a) Admitted to practice before the State Courts of South Carolina in 1988; and
 - (b) Also admitted to practice before the U.S. Supreme Court.
- 14. Describe chronologically your legal experience since graduation from law school and include a list of all law firms with which you have been associated. Describe the general character of your practice and divide it into periods with dates if its character has changed over the years.
 - (a) 1988-91, S.C. Department of Social Services, Office of Child Support Enforcement: State Attorney;
 - (b) 1991-2000, Brown & Roache Law Firm: Partner: handled family, tort and Social;
 - (c) Security matters mainly, some other matters in the general practice;
 - (d) 2001-Present, Neighborhood Legal Assistance Program and South Carolina Legal;
 - (e) Services: Staff Attorney and Family Law Unit Head, provided legal services to low; and
 - (f) Income South Carolinians, primarily in the areas of family and education law.

If you are a judge and are not seeking a different type of judgeship, the following questions are inapplicable:

- (a) If you are a candidate for Family Court, please provide a brief written description of your experience within each of the following Family Court practice areas: divorce and equitable division of property, child custody, adoption, abuse and neglect, and juvenile justice. Include information about cases you have handled in each of these practice areas, or if you have not practiced in an area, describe how your background has prepared you to preside over such matters as a Family Court Judge.

My practice has mainly been in the Family Court. I have handled cases on each of the grounds of divorce, both as the attorney for the Plaintiff and the Defendant, involving complex and simple issues of equitable division, including military retirements, real property and businesses.

I have represented parents, grandparents and third parties in custody matters. My cases have involved multi-day trials.

I have represented clients in adoptions and am familiar with the laws in this area. I have presented on the topic and also organized a CLE on Adoption Issues for S.C. Legal Services.

I have represented clients and served as a Guardian ad Litem in abuse and neglect cases in Charleston, Berkeley, and Dorchester counties.

I have also provided services for juveniles and their parents in juvenile matters.

15. What is your rating in Martindale-Hubbell?
Previously I had a BV rating in Martindale-Hubbell when I was in private practice. I searched and could not find a rating in preparing this application.
16. What was the frequency of your court appearances during the past five years?
- (a) federal: No appearances;
 - (b) state: I maintained an active trial practice and appeared frequently in the Family Court in Charleston, Berkeley and Dorchester Counties. I also appeared in Magistrate and Municipal Courts in those counties occasionally.
17. What percentage of your practice involved civil, criminal, domestic, and other matters during the past five years?
- (a) civil:
 - (b) criminal: 0
 - (c) domestic: 90%
 - (d) other: 10% %
18. What percentage of your practice in trial court during the past five years involved matters that went to a jury, including those that settled prior to trial?
- (a) jury: 2%
 - (b) non-jury: 98%
- Did you most often serve as sole counsel, chief counsel, or associate counsel in these matters? Sole counsel
19. List five of the most significant litigated matters you have personally handled in either trial or appellate court or before a state or federal agency. Give citations if the cases were reported and describe why these matters were significant.
- (a) Gabrish v. Gabrish. This case involved complex divorce, custody and visitation issues and also the division of a business and other assets. We engaged in protracted litigation, also discovery and mediation. Ultimately, on the day the matter was scheduled to start a two day trial, we settled the case favorably for my client. A very detailed settlement agreement was prepared and filed with the court.
 - (b) Cooper v. Brown. This matter was a custody case that involved relocation issues. We conducted significant discovery. An *in camera* meeting with the children was required during the trial. The case was tried over the course of 3-4 days and then reconvened for 2 more days. It provided significant trial and litigation experience.
 - (c) DSS v. Footman and Berkeley County DSS, et. al. This was a TPR and adoption matter that was tried for 6 days. Five attorneys litigated the case, including myself: the DSS attorney, the attorney for the Plaintiffs, the Guardian *ad Litem* and the attorney for the Guardian. Two sets of

foster parents sought to terminate the rights of the natural parents and separately adopt twin children. The matters were consolidated for trial. It provided litigation and trial experience and more familiarity with DSS procedures and practices.

- (d) Loe #1 and Loe #2 v. Mother, Father and Berkeley County DSS, 675 S.E.2d 807, 382 S.C. 457(S.C. App. 2009). I appealed the termination of parental rights and adoption in the above listed case. It was significant for the appellate experience it provided. The two cases were consolidated as at trial. The Records on Appeal were in excess of 1800 pages each. The Court of Appeals reversed and remanded the matter.
- (e) Milligan v. Johnson. This case was filed to obtain custody of two minor children and have them returned from the State of Texas back to the mother in South Carolina. We obtained emergency relief, which included the return of the children. Meanwhile the opposing party pursued actions in Georgia and Texas for which we provided *pro se assistance* for the Mother and obtained representation from the legal aid office in Texas. We were able to come to an agreement which provided for custody and an increased amount of child support.

20. List up to five civil appeals you have personally handled. Give the case name, the court, the date of decision, and the citation if the case was reported. If you are a candidate for an appellate court judgeship (please attach one copy of briefs filed by you in each matter).
- (a) Loe #1 and Loe #2 v. Mother, Father and Berkeley County DSS, 675 S.E.2d 807, 382 S.C. 457(S.C. App. 2009)
 - (b) Loe#1 and Loe #2 v. Mother, Father and Berkeley County DSS, Opinion No. 4518, The Respondents filed a petition for certiorari and a decision has not yet been made.
21. List up to five criminal appeals that you have personally handled. Give the case name, the court, the date of decision and the citation if the case was reported. If you are a candidate for an appellate court judgeship (please attach one copy of briefs filed by you in each matter). N/A
22. Have you ever held judicial office? No
24. Have you ever held public office other than judicial office? If so, list the periods of your service, the office or offices involved, and whether you were elected or appointed. Also, state whether or not you have timely filed your report with the State Ethics Commission during the period you held public office. If not, were you ever subject to a penalty? No
25. List all employment you had while serving as a judge (whether full-time or part-time, contractual or at will, consulting or otherwise) other than elected judicial office. Specify your dates of employment, employer, major job responsibilities, and supervisor. N/A
26. Have you ever been an unsuccessful candidate for elective, judicial, or other public office?

I was a candidate for the Family Court, Ninth Judicial Circuit in 2002. I emerged as one of the three candidates from screening, but ultimately was not elected.

27. Have you ever been engaged in any occupation, business, or profession other than the practice of law, teaching of law, or holding judicial or other public office? No
28. Are you now an officer or director or involved in the management of any business enterprise? No
29. A complete, current financial net worth statement was provided to the Commission.
30. Describe any financial arrangements or business relationships you have, or have had in the past, that could constitute or result in a possible conflict of interest in the position you seek. Explain how you would resolve any potential conflict of interest. None
31. Have you ever been arrested, charged, or held by federal, state, or other law enforcement authorities for violation or for suspicion of violation of any federal law or regulation, state law or regulation, or county or municipal law, regulation, or ordinance, or any other law, including another country's law? No
32. Have you, to your knowledge, ever been under federal, state, or local investigation for possible violation of a criminal statute? No
33. Has a tax lien or other collection procedure ever been instituted against you by federal, state, or local authorities? Have you ever defaulted on a student loan? Have you ever filed for bankruptcy? No to all questions
34. Have you ever been sued, either personally or professionally, that is, have you ever been named as defendant or respondent in any court of law? No
36. Have you ever been investigated by the Department of Social Services? If so, give the details and the resolution. Has your name ever been enrolled on the Central Registry of Child Abuse and Neglect? No
37. Are you now or have you ever been employed as a "lobbyist," as defined by S.C. Code § 2-17-10(13), or have you acted in the capacity of a "lobbyist's principal," as defined by S.C. Code § 2-17-10(14)? No
38. Since filing with the Commission your letter of intent to run for judicial office, have you accepted lodging, transportation, entertainment, food, meals, beverages, money, or any other thing of value as defined by S.C. Code § 2-17-10(1) from a lobbyist or lobbyist's principal? No
39. S.C. Code § 8-13-700 provides, in part, that "[n]o public official, public member, or public employee may knowingly use his official office, membership, or employment to obtain an economic interest for himself, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated." Please detail any knowledge you have of any formal charges or informal allegations against you or any other candidate for violations of these provisions. None

40. S.C. Code § 8-13-765 provides, in part, that "[n]o person may use government personnel, equipment, materials, or an office building in an election campaign." Please detail any knowledge you have of any formal charges or informal allegations against you or any other candidate for violations of these provisions. None
41. Itemize (by amount, type, and date) all expenditures, other than those for travel and room and board, made by you, or on your behalf in furtherance of your candidacy for the position you seek. None
42. List the amount and recipient of all contributions made by you or on your behalf to members of the General Assembly since the announcement of your intent to seek election to a judgeship. None
43. Have you directly or indirectly requested the pledge of any member of the General Assembly as to your election for the position for which you are being screened? Have you received the assurance of any public official or public employee that they will seek the pledge of any member of the General Assembly as to your election for the position for which you are being screened? No
44. Have you requested a friend or colleague to contact members of the General Assembly on your behalf? If so, give details. Are you aware of any friends or colleagues contacting members of the General Assembly on your behalf? No
45. Have you or has anyone acting on your behalf solicited or collected funds to aid in the promotion of your candidacy? If so, please specify the amount, solicitor, donor, and date of the solicitation. No
46. Have you or has anyone acting on your behalf contacted members of the Judicial Merit Selection Commission about your candidacy or intention to become a candidate? No
47. List all bar associations and professional organizations of which you are a member and give the titles and dates of any offices you have held in such groups.
- (a) South Carolina Bar;
 - (b) S.C. Black Lawyers Association, Assistant Secretary, approximately 1999;
 - (c) Formerly a member of the S.C. Women Lawyers Association, the American Bar Association, the National Bar Association and the Thurgood Marshall Law Society.
48. List all civic, charitable, educational, social, and fraternal organizations of which you are or have been a member during the past five years and include any offices held in such a group, any professional honors, awards, or other forms of recognition received and not listed elsewhere.
- (a) Alpha Kappa Alpha Sorority, Inc., Reporter and Graduate Advisor;
 - (b) The Junior League of Charleston, Inc., Member at Large to Board of Directors;
 - (c) National Hampton Alumni Association, S.C. Vice President, Board of Directors, National Nominating Chair;

- (d) The Charleston Chapter of Links, Inc., Journalist and Parliamentarian;
 - (e) Jack and Jill of America, Inc., Parliamentarian and Group Advisor;
 - (f) Outstanding Twenty Year Alumnus Award, Hampton University;
 - (g) Most Promising New Soror, Alpha Kappa Alpha Sorority, Inc.;
 - (h) Mentoring Award from Charleston School of Law BLSA;
 - (i) Woman of the Millenium, Sigma Gamma Rho Sorority, Inc.;
 - (k) Board of Directors, My Sister's House;
 - (l) Board of Directors, South Carolina Coalition Against Domestic Violence and Sexual Assault.
49. Provide any other information that may reflect positively or negatively on your candidacy, or which you believe should be disclosed in connection with consideration of you for nomination for the position you seek.
50. References:
- (a) Bernard R. Fielding, Sr.
122 Logan Street
Charleston, S.C. 29402
843-577-4760
 - (b) Leigh Hunter, Esq.
4476 Leeds Place West, Suite B
Charleston, S.C. 29405
843-554-6363
 - (c) Tiffany Spann-Wilder, Esq.
2131 Dorchester Road
North Charleston, S.C. 29405
843-266-7792
 - (d) Dr. Maxine Smith Martin
21 Devereaux Avenue
Charleston, S.C. 29403
843-577-2546
 - (e) Andreana Valicenti
Southcoast Community Bank
P. O. Box 1561
Mount Pleasant, S.C. 29464
843-216-3028

YOUR SIGNATURE WILL BE HELD TO CONSTITUTE A WAIVER OF THE CONFIDENTIALITY OF ANY PROCEEDING BEFORE A GRIEVANCE COMMITTEE OR ANY INFORMATION CONCERNING YOUR CREDIT.

I HEREBY CERTIFY THAT MY ANSWERS ARE TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

Signature: Rita J. Roache

Date: August 11, 2010

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

Family Court
(New Candidate)

Full Name: Rita Joye Roache
Business Address: 2803 Carner Avenue
North Charleston, SC 29405
Business Telephone: 843-266-2172

1. Why do you want to serve as a Family Court Judge?
I believe that my knowledge, expertise and demeanor would enable me to be an effective Family Court Judge.
2. Do you plan to serve your full term if elected? Yes, I do
3. Do you have any plans to return to private practice one day?
No, not at this time.
4. Have you met the statutory requirements for this position regarding age, residence, and years of practice? Yes, I have.
5. What is your philosophy regarding *ex parte* communications? Are there circumstances under which you could envision *ex parte* communications being tolerated?
Ex parte communications should be avoided. The rules of our court should be carefully followed. However, I could envision circumstances under which *ex parte* communications could be tolerated, e.g. to grant emergency relief to protect the well-being of a minor child. This would only be an extreme emergency situation and an emergency hearing must be held immediately to allow all parties to be heard on the matter.
6. What is your philosophy on recusal, especially in situations in which lawyer-legislators, former associates, or law partners are to appear before you?
Personal relationships must be disclosed on the record to avoid the appearance of impropriety. If any party requests recusal or expresses any reservation about my capacity to be fair and equitable, I would grant the request for recusal. In some matters, I would recuse myself to avoid the appearance of impropriety.
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?
If a party believed that I was biased and requested recusal, I would grant the motion to avoid the appearance of impropriety.

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

The appearance of impropriety should be avoided in any matter. If my fairness or impartiality could be questioned, I would recuse myself.

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

Gifts are not appropriate under any circumstances. I would accept ordinary social hospitality under strictly limited circumstances, if it is still acceptable according to the rules. If a litigant has a pending matter, no social hospitality would be accepted.

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

The rules require that knowledge of misconduct must be reported.

11. Are you affiliated with any political parties, boards or commissions that, if you were elected, would need to be evaluated?

No, I am not.

12. Do you have any business activities that you would envision remaining involved with if elected to the bench? No, I do not.

13. Since family court judges do not have law clerks, how would you handle the drafting of orders?

I would follow the common practice in the Family Court of assigning the preparation of an order to one of the attorneys or record in the case. The attorney drafting the order would be informed of the deadline for submission. The proposed order would have to be approved by both attorneys prior to submission. Thereafter, the notes made from the matter would be compared to the proposed order. If it were ever necessary, I would draft the order.

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

An efficient filing system and also calendar and computer reminders would be used to ensure that deadlines were met.

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

I have no personal philosophy on judicial activism, but believe that Family Court Judges in South Carolina are sworn to uphold the laws of South Carolina.

17. 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 cannot state what exact activities I would undertake to improve the law, legal system and administration of justice. The laws and legal system are prescribed by our Legislature, Judges are charged

with applying the laws and to working within the legal system that exists. I can firmly state that I would carefully consider the merits of each matter and also treat parties and attorneys with respect and dignity.

18. 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 do not feel that the pressure of serving as a judge would strain personal relationships.

19. Would you give any special considerations to a *pro se* litigant in family court? No, I would not.

20. Are you involved in any active investments from which you derive additional income that might impair your appearance of impartiality? No, I am not.

21. Would you hear a case where you or a member of your family held a *de minimis* financial interest in a party involved? No, I would not.

22. Do you belong to any organizations that discriminate based on race, religion, or gender? No, I do not.

23. Have you met the mandatory minimum hours requirement for continuing legal education courses?

Yes, I have. The five years of reporting that were required in the application indicate that I have exceeded the requirements each year.

24. What percentage of your legal experience (including experience as a special appointed judge or referee) concerns the following areas? If you do not have experience in one of these areas, can you suggest how you would compensate for that particular area of practice?

a. Divorce and equitable distribution: 40%

b. Child custody: 50%

c. Adoption: 5%

d. Abuse and neglect: 10%

e. Juvenile cases: 5%

25. What do you feel is the appropriate demeanor for a judge?

A judge should exhibit courtesy and respect toward each person who enters the court. A judge should be open-minded and an active listener; not be predisposed about any issue. A judge should avoid the appearance of impropriety.

26. 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?

These rules would apply at all times.

27. Do you feel that it is ever appropriate to be angry with a member of the public who would appear before you, especially with a criminal

defendant? Is anger ever appropriate in dealing with attorneys or a pro se litigant?

It is never appropriate to be angry or to show anger to a member of the public, although there are circumstances, i.e. perjury, that may cause a Judge to be stern in handling the situation. Likewise, the conduct of attorneys may cause a Judge to be frustrated or stern, but anger should not be the response. It is never appropriate to be angry with a pro se litigant.

28. How much money have you spent on your campaign? If the amount is over \$100, has that been reported to the House and Senate Ethics Committees? I have not spent any money at this time.
29. If you are a sitting judge, have you used judicial letterhead or the services of your staff while campaigning for this office? N/A
30. Have you sought or received the pledge of any legislator prior to this date?
No, I have not sought or received the pledge of any legislator.
31. Have you sought or been offered a conditional pledge of support by any legislator pending the outcome of your screening?
I have not sought or been offered a conditional pledge of support by any legislator pending the outcome of my screening.
32. 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?
I have not asked any third parties to contact members of the General Assembly on my behalf before the formal and final screening report has been released. I also am not aware of any of my friends or colleagues contacting members of the General Assembly on my behalf.
33. Have you contacted any members of the Judicial Merit Selection Commission? No, I have not.
34. 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 am familiar with this rule.

I HEREBY CERTIFY THAT THE ANSWERS TO THE ABOVE QUESTIONS ARE TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

s/Rita Joye Roache

Sworn to before me this 11th day of August, 2010.

Notary Public for South Carolina

My commission expires: 8-6-2018

JUDICIAL MERIT SELECTION COMMISSION
PERSONAL DATA QUESTIONNAIRE

Court, Position, and Seat # for which you are applying:

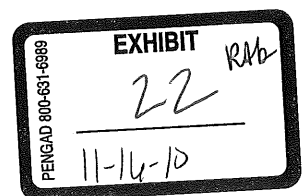
Family Court, Ninth Judicial Circuit, Seat 1

1. NAME: James Turner
BUSINESS ADDRESS: 4045 Bridgeview Drive
North Charleston, S.C. 29405
TELEPHONE NUMBER: (office): 843-202-6650
2. Date of Birth: 1957
Place of Birth: Charleston, S.C.
3. Are you a citizen of South Carolina? Yes
Have you been a resident of this state for at least the immediate past five years? Yes
5. Family Status: Married on June 23, 1996, to Janice Kirshtein Turner. Never divorced. One child.
6. Have you served in the military? N/A
7. List each college and law school you attended, including the dates of your attendance, the degrees you received, and if you left an institution without receiving a degree, the reason for your departure.
 - (a) College of Charleston (1976), transferred;
 - (b) Limestone College (1976-80), B.A. History, Psychology; and
 - (c) University of South Carolina School of Law (1987-90), J.D.
8. List the states in which you have been admitted to practice law and the year of each admission. Also list any states in which you took the bar exam but were never admitted to the practice of law. If you took the bar exam more than once in any of the states listed, please indicate the number of times you took the exam in each state.
South Carolina, admitted 1991
9. List the significant activities in which you took part during your attendance at college, graduate, and law school. Give the dates you were involved in these activities and list any leadership positions you held.
 - (a) Worked at the legislature during law school; and
 - (b) Student Body President and Editor in Chief of the newspaper, Limestone College.
10. Describe your continuing legal or judicial education during the past five years. Include only the title and date of any continuing legal or judicial education course completed.

Conference/CLE Name

Date(s)

- | | |
|---|-----------|
| (a) Magistrate School | 11/14/05; |
| (b) Magistrates Annual Convention | 9/7/05; |
| (c) MUSC Judges and Attorneys Substance Abuse | 12/2/05; |
| (d) Legislative Magistrate CLE | 3/8/2006; |
| (e) Bridge the Gap (presenter) | 3/6/06; |



- (f) Bridge the Gap (presenter) 5/9/06;
 - (g) Magistrate Annual Convention 9/6/07;
 - (h) Magistrate Mandatory School 11/6/07;
 - (i) Magistrate Legislative Seminar 3/5/08;
 - (j) Bridge the Gap (presenter) 3/10/08;
 - (k) Bridge the Gap (presenter) 5/12/08;
 - (l) Magistrates Annual Convention 9/9/09;
 - (m) Bridge the Gap (presenter) 3/9/09;
 - (n) Magistrate Legislative Seminar 3/10/10;
 - (o) Judicial Ethics and Domestic Violence 6/17/10;
 - (p) Bridge the Gap (Presenter) 8/3/10.
11. Have you taught law-related courses or lectured at bar association conferences, educational institutions, or continuing legal or judicial education programs? If so, briefly describe each course or lecture.
- (a) Orientation for new magistrates at the criminal justice academy in the area of conducting preliminary hearings;
 - (b) Presenter at Tips From the Bench seminar sponsored by the S.C. Bar, lecturing in the areas of civil and criminal practice in Magistrate Court;
 - (c) Presenter at College of Charleston CLE for local attorneys on the topic of practice procedure and substantive law in Magistrate Court (civil);
 - (d) Panel participant at yearly seminar on landlord-tenant issues sponsored by local apartment managers; and
 - (e) Bridge the Gap Speaker, March 2005, May 2005, Aug. 2009 & 2010.
12. List all published books and articles you have written and give citations and the dates of publication for each.
- (a) The New Magistrate Court Rules, The Bar Tab 1998;
 - (b) The New Rules, South Carolina Lawyer, November 2008.
13. List all courts in which you have been admitted to practice and list the dates of your admission. Give the same information for administrative bodies that require a special admission to practice.
- (a) S.C.–1991; and
 - (b) U.S. District Court, D.S.C.–1991.
14. Describe chronologically your legal experience since graduation from law school and include a list of all law firms with which you have been associated. Describe the general character of your practice and divide it into periods with dates if its character has changed over the years.
- (a) 1990-91, Stucky and Kobrovsky – general practice, including insurance defense and 1983 actions;
 - (b) 1991, Rosen, Rosen, and Hagood – school voting rights;
 - (c) 1991-94, Private Practice – general practice;
 - (d) 1992-95, Magistrate Preliminary Hearing Court; and
 - (e) 1994–present, Magistrate Small Claims Court.
- If you are a judge and are not seeking a different type of judgeship, the following questions are inapplicable:

- (a) If you are a candidate for Family Court, please provide a brief written description of your experience within each of the following Family Court practice areas: divorce and equitable division of property, child custody, adoption, abuse and neglect, and juvenile justice. Include information about cases you have handled in each of these practice areas, or if you have not practiced in an area, describe how your background has prepared you to preside over such matters as a Family Court Judge.

I was in private practice prior to becoming a summary court Judge and approximately 40% of my work was in Family Law. This allowed me to represent clients whose cases dealt with all these issues with the exception of adoption and somewhat limited in the area of abuse and neglect.

However, I am familiar with the statutory scheme for adoption and do keep current concerning family law issues since it is a rapidly developing field of law.

15. What is your rating in Martindale-Hubbell?
16. What was the frequency of your court appearances during the past five years?
- (a) federal: 20%;
- (b) state: 80%.
17. What percentage of your practice involved civil, criminal, domestic, and other matters during the past five years?
- (a) civil: 40%;
- (b) criminal: 20%;
- (c) domestic: 40%.
18. What percentage of your practice in trial court during the past five years involved matters that went to a jury, including those that settled prior to trial?
- (a) jury: 15%
- (b) non-jury: 85%
- Did you most often serve as sole counsel, chief counsel, or associate counsel in these matters? Both (I handle both jury and non-jury trials as judge)
19. List five of the most significant litigated matters you have personally handled in either trial or appellate court or before a state or federal agency. Give citations if the cases were reported and describe why these matters were significant.
- (a) Passailaigue v. McCants. (Legal issues included Statute of Elizabeth, anti-assignment statute and fraudulent conveyance issues and included appeals;
- (b) Ellis v. S.C. Department of Highways and Public Transportation. (Legal issues included Tort Claims Act and chain of custody issues);
- (c) Lester v. Pasjon. (The case concerned the litigation of a partnership dissolution);
- (d) Cade v. Guerreri. (Breach of contract case which featured technical testimony on construction); and
- (e) State v. In the interest of Eric Milligan. (Defense of a thirteen year old on cocaine charges and other matters).

20. List up to five civil appeals you have personally handled. Give the case name, the court, the date of decision, and the citation if the case was reported. If you are a candidate for an appellate court judgeship (please attach one copy of briefs filed by you in each matter). I did not practice appellate law.
21. List up to five criminal appeals that you have personally handled. Give the case name, the court, the date of decision and the citation if the case was reported. If you are a candidate for an appellate court judgeship (please attach one copy of briefs filed by you in each matter). I did not practice appellate law.
22. Have you ever held judicial office?
- (a) Preliminary Hearing Court, 1992-95, appointed;
 - (b) Small Claims Court, 1994–present, appointed.
23. If the answer to question 22 is yes, describe or list five of your most significant orders or opinions and give the citations if they were reported. Also list citations to any appellate review of these orders or opinions.
- (a) Hadfield v. Gilchrist, 343 S.C. 88, 539 S.E.2d 268 (2000);
 - (b) Herring v. Home Depot, 350 S.C. 373, 565 S.E.2d 773 (2002);
 - (c) Flynt v. Charleston Custom Cycles (unreported);
 - (d) Hendltons v. Benger (unreported);
 - (e) Garcia v. Chase (unreported).
24. Have you ever held public office other than judicial office? Also, state whether or not you have timely filed your report with the State Ethics Commission during the period you held public office. If not, were you ever subject to a penalty? None
25. List all employment you had while serving as a judge (whether full-time or part-time, contractual or at will, consulting or otherwise) other than elected judicial office. Specify your dates of employment, employer, major job responsibilities, and supervisor. None
26. Have you ever been an unsuccessful candidate for elective, judicial, or other public office?
- (a) Circuit Court: 1996, 1998, 1999, 2001; and
 - (b) Family Court 2001; Master in Equity 2002.
27. Have you ever been engaged in any occupation, business, or profession other than the practice of law, teaching of law, or holding judicial or other public office? Charleston County School System, administrator in Adult Education Department, 1981-87
28. Are you now an officer or director or involved in the management of any business enterprise? No
29. A complete, current financial net worth statement was provided to the Commission.
30. Describe any financial arrangements or business relationships you have, or have had in the past, that could constitute or result in a possible conflict of interest in the position you seek. Explain how you would resolve any potential conflict of interest. None known

31. Have you ever been arrested, charged, or held by federal, state, or other law enforcement authorities for violation or for suspicion of violation of any federal law or regulation, state law or regulation, or county or municipal law, regulation, or ordinance, or any other law, including another country's law? No
32. Have you, to your knowledge, ever been under federal, state, or local investigation for possible violation of a criminal statute?
Yes, approximately eleven years ago, a litigant who had complained to me about a witness in a case later unbeknownst to me claimed that I made an improper advance when she delivered a settlement document to the court. I did not make an improper advance. An investigation confirmed that fact and the investigation was terminated favorably and summarily.
33. Has a tax lien or other collection procedure ever been instituted against you by federal, state, or local authorities? Have you ever defaulted on a student loan? Have you ever filed for bankruptcy? None
34. Have you ever been sued, either personally or professionally, that is, have you ever been named as defendant or respondent in any court of law?
None known
36. Have you ever been investigated by the Department of Social Services? Has your name ever been enrolled on the Central Registry of Child Abuse and Neglect?
No investigation known; not enrolled on the Central Registry
37. Are you now or have you ever been employed as a "lobbyist," as defined by S.C. Code § 2-17-10(13), or have you acted in the capacity of a "lobbyist's principal," as defined by S.C. Code § 2-17-10(14)? No
38. Since filing with the Commission your letter of intent to run for judicial office, have you accepted lodging, transportation, entertainment, food, meals, beverages, money, or any other thing of value as defined by S.C. Code § 2-17-10(1) from a lobbyist or lobbyist's principal? No
39. S.C. Code § 8-13-700 provides, in part, that "[n]o public official, public member, or public employee may knowingly use his official office, membership, or employment to obtain an economic interest for himself, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated." None
40. S.C. Code § 8-13-765 provides, in part, that "[n]o person may use government personnel, equipment, materials, or an office building in an election campaign." Please detail any knowledge you have of any formal charges or informal allegations against you or any other candidate for violations of these provisions. None known
41. Itemize (by amount, type, and date) all expenditures, other than those for travel and room and board, made by you, or on your behalf in furtherance of your candidacy for the position you seek. None
42. List the amount and recipient of all contributions made by you or on your behalf to members of the General Assembly since the announcement of your intent to seek election to a judgeship. None known

43. Have you directly or indirectly requested the pledge of any member of the General Assembly as to your election for the position for which you are being screened? Have you received the assurance of any public official or public employee that they will seek the pledge of any member of the General Assembly as to your election for the position for which you are being screened? No
44. Have you requested a friend or colleague to contact members of the General Assembly on your behalf? Are you aware of any friends or colleagues contacting members of the General Assembly on your behalf? No
45. Have you or has anyone acting on your behalf solicited or collected funds to aid in the promotion of your candidacy? None known
46. Have you or has anyone acting on your behalf contacted members of the Judicial Merit Selection Commission about your candidacy or intention to become a candidate? None known
47. List all bar associations and professional organizations of which you are a member and give the titles and dates of any offices you have held in such groups. South Carolina Bar
48. List all civic, charitable, educational, social, and fraternal organizations of which you are or have been a member during the past five years and include any offices held in such a group, any professional honors, awards, or other forms of recognition received and not listed elsewhere.
I do not belong to these organizations because I have been a judicial officer for the past five years to avoid any potential conflict, except for being on the board of my religious institution.
49. Provide any other information that may reflect positively or negatively on your candidacy, or which you believe should be disclosed in connection with consideration of you for nomination for the position you seek.
I have been recommended to serve as a special circuit court judge for our circuit.
50. References:
- (a) Morris Rosen, Esq.
134 Meeting Street
Charleston, S.C. 29401-2224
843-577-6726
 - (b) Mathew Keller
3135 Edenvale Road
Johns Island, S.C. 29455
843-514-5965
 - (c) William C. Hood, Jr., Esq.
14 Lockwood Ave, Unit 11B
Charleston, S.C. 29401
843-906-0044
 - (d) Missy Gold
1600 Boone Hall Road

Charleston, S.C. 29407
843-571-2067
(e) Fleetwood Hassell
The Bank of South Carolina
256 Meeting Street
Charleston, S.C. 29401
843-724-1500

YOUR SIGNATURE WILL BE HELD TO CONSTITUTE A WAIVER OF THE
CONFIDENTIALITY OF ANY PROCEEDING BEFORE A GRIEVANCE COMMITTEE OR
ANY INFORMATION CONCERNING YOUR CREDIT.

I HEREBY CERTIFY THAT MY ANSWERS ARE TRUE AND COMPLETE TO THE BEST
OF MY KNOWLEDGE.

Signature: James Turner

Date: August 12, 2010

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

Family Court
(New Candidate)

Full Name: James A. Turner
Business Address: 4045 Bridgeview Drive
North Charleston, SC 29405
Business Telephone: (843) 202-6650

1. Why do you want to serve as a Family Court Judge?
I believe that the Family Court is a critical component of our judicial system as one of the most important parts of our society is family and one of the critical obligations of our judicial system is safeguarding our children. Professionally, I believe this to be a natural progression in my judicial career. As the Family Court is a people oriented court I feel I can best utilize my interpersonal skills honed during my service as a magistrate judge.
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 do not have present plans but would not completely rule out the possibility.
4. Have you met the statutory 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 try to avoid them completely but the Cannons do allow limited exceptions for scheduling etc. It is simply easier to avoid them if at all possible.
6. What is your philosophy on recusal, especially in situations in which lawyer-legislators, former associates, or law partners are to appear before you? I have a very strict recusal policy. I disclose any known potential conflict and if the parties have concerns then I do not hear the case.
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?
This has happened and I always grant the motion if an objective person would potentially see a problem.
8. How would you handle the appearance of impropriety because of the financial or social involvement of your spouse or a close relative?

Recusal

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

I generally decline all gifts. It is easier but I recognize that the Canons allow acceptance up to a certain dollar amount.

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

If practical and allowed I would advise the person of my concerns and advise them to self-report and if they do not that I may be obligated to report and if so obligated, to report. If not practical or allowed or for more serious misconduct I would report without consultation.

11. Are you affiliated with any political parties, boards or commissions that, if you were elected, would need to be evaluated? None

12. Do you have any business activities that you would envision remaining involved with if elected to the bench? None

13. Since family court judges do not have law clerks, how would you handle the drafting of orders?

The rules allow inviting lawyers to submit proposed orders (copied to opposing counsel). I do not have a law clerk now and follow this policy. At times I just prepare my own orders.

14. If elected, what method would you use to ensure that you and your staff meet deadlines? I maintain personal involvement with my staff's scheduling and deadlines and have a very fast docket presently.

15. If elected, what specific actions or steps would you take to ensure that the guidelines of the Guardian Ad Litem statutes are followed during the pendency of a case? I would reference and apply them in every applicable case.

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

As a judge I have simply applied the law and interpreted the law using precedent. My position is not and would not be legislative.

17. 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 provide internships, speak to law school groups and classes, and have written an occasional article about the process.

18. 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?

Yes it can, but I have managed the stress and strain for eighteen years.

19. Would you give any special considerations to a *pro se* litigant in family court?

I see a great number of *pro se* litigants in my court every day. I attempt to keep the playing field as level as possible and ensure that their cases are fully articulated but at the end of the day I must base decisions on the law and the evidence whether the person is represented or not.

20. Are you involved in any active investments from which you derive additional income that might impair your appearance of impartiality?

None known

21. Would you hear a case where you or a member of your family held a *de minimis* financial interest in a party involved? No

22. Do you belong to any organizations that discriminate based on race, religion, or gender? No

23. Have you met the mandatory minimum hours requirement for continuing legal education courses? Yes

24. What percentage of your legal experience (including experience as a special appointed judge or referee) concerns the following areas? If you do not have experience in one of these areas, can you suggest how you would compensate for that particular area of practice?

Private practice experience

- a. Divorce and equitable distribution: 30%
- b. Child custody: 15% (some part of divorce proceeding)
- c. Adoption: 0%
- d. Abuse and neglect: 0%
- e. Juvenile cases: 5%

I would familiarize myself with the statutes and procedures for adoption and abuse and neglect cases. I would take advantage of sitting Family Court Judges' experience and guidance if I had general questions about a process or procedure.

25. What do you feel is the appropriate demeanor for a judge?

Firm but fair, patient, courteous, and analytical.

26. 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 am mindful of my position even though the interactions in my leisure time don't always require the same demeanor and standard of decorum that is expected while on the bench.

27. Do you feel that it is ever appropriate to be angry with a member of the public who would appear before you, especially with a criminal defendant? Is anger ever appropriate in dealing with attorneys or a *pro se* litigant?

Anger is not appropriate. Concerned consideration of the case in a courteous way the preferred standard.

28. How much money have you spent on your campaign? If the amount is over \$100, has that been reported to the House and Senate Ethics Committees? None
29. If you are a sitting judge, have you used judicial letterhead or the services of your staff while campaigning for this office? None
30. Have you sought or received the pledge of any legislator prior to this date? No
31. Have you sought or been offered a conditional pledge of support by any legislator pending the outcome of your screening? No
32. 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?
None known
33. Have you contacted any members of the Judicial Merit Selection Commission? No
34. 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/James A. Turner

Sworn to before me this 11th day of August, 2010.

Notary Public for South Carolina

My commission expires: 11-3-0218

ALEXANDRA D. VARNER, P.A.
ATTORNEY AT LAW

272 W. COLEMAN BOULEVARD
BUILDING A, SUITE 200
MOUNT PLEASANT, SC 29464

PHONE (843) 881-7243
FAX (843) 881-6776

November 4, 2010

Via Facsimile- (803) 212-6606

Jane O. Shuler, Esquire
Chief Counsel
Judicial Merit Selection Commission
P.O. Box 142
Columbia, South Carolina 29202

Via Facsimile- (803) 212-7356

Bonnie Goldsmith Anzelmo, Esquire
Assistant Chief Counsel
SC House Judiciary Committee

Re: Family Court, Ninth Judicial Circuit, Seat 1

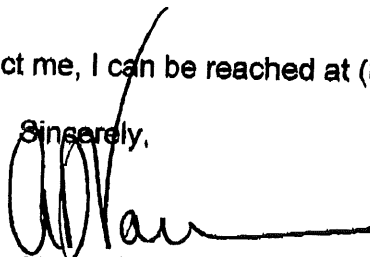
Dear Ms. Shuler and Ms. Anzelmo:

I am writing to amend my Personal Data Questionnaire ("PDQ"). Specifically, I would like to amend Question #50 removing Kermit S. King, Esquire as a person submitting a letter of recommendation on my behalf and adding Carl E. Pierce, II Esquire. Mr. Pierce's contact information is: Pierce, Hems Sloan & McLeod, LLC, 321 East Bay Street, Charleston, South Carolina 29401, (843) 722-7733. A copy of Mr. Pierce's letter of recommendation is attached hereto.

Please allow this letter to serve as my formal amendment to my PDQ Question #50.

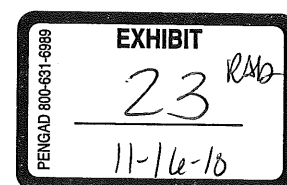
Should you need to contact me, I can be reached at (843) 478-8362.

Sincerely,



Alexandra D. Varner

ADV
Enclosure as stated



PIERCE, HERNS, SLOAN & McLEOD, LLC

CARLE PIERCE, II
LOUIS P. HERNS
ALLAN P. SLOAN, III ★◆
W. MULLINS McLEOD, JR.
JOSEPH C. WILSON, IV †
JAMES G. KENNEDY
JAMES D. GANDY, III
GEORGE L. INABINET, JR.
WILLIAM P. EARLY

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AMY F. PILLÉ

◆ MEMBER SC & FL BAR
◆ CERTIFIED SC CIRCUIT
COURT MEDIATOR
† MEMBER SC, FL & GA BAR
▲ MEMBER SC & KY BAR
★ MEMBER SC, CO & WA BAR

Direct Dial: (843) 725-7701
E-Mail: caripierce@pham.net

August 10, 2010

Jane O. Shuler, Esquire
Chief Counsel
Judicial Merit Selection Committee
P.O. Box 142
Columbia, SC 29202

Re: Recommendation of Alexandra D. Varner

Dear Ms. Shuler:

The purpose of this letter is to provide my recommendation for Alexandra D. Varner in her application as Family Court Judge, 9th Circuit, Seat 1. I have known Ms. Varner personally and professionally for a number of years. I have observed her as an attorney, businesswoman and a mother. She exemplifies the highest standards in everything she undertakes.


I have had the pleasure of seeing Ms. Varner's work ethic and attention to detail first hand. Ms. Varner's work ethic is second to none and I think Ms. Varner is uniquely qualified to sit in judgment on the difficult issues that a Family Court Judge faces on a daily basis. She has experience in domestic law, experience in raising children and experience managing a family. Although no one of these experiences is absolutely necessary to be a competent Family Court Judge, the fact that she has consistently excelled at all these speaks volumes about her capabilities.

Ms. Varner would bring practical and professional experience to her courtroom if elected. Her level-headed and analytical approach to the law will be an asset to the Family Court Bench.

Again, I whole-heartedly recommend Ms. Varner's consideration for Family Court, 9th Circuit, Seat 1.

With kind regards, I am

Sincerely,

A handwritten signature in black ink, appearing to read 'Carl E. Pierce, II', with a long horizontal flourish extending to the right.

Carl E. Pierce, II

**JUDICIAL MERIT SELECTION COMMISSION
PERSONAL DATA QUESTIONNAIRE**

Court, Position, and Seat # for which you are applying:

Family Court, Ninth Judicial Circuit, Seat 1

1. NAME: Alexandra DeJarnette Varner
BUSINESS ADDRESS: P.O. Box 1098
Mount Pleasant, S.C. 29465
E-MAIL ADDRESS: avarner@varnercommercial.com
TELEPHONE NUMBER: (office): 843-478-8362
2. Date of Birth: 1968
Place of Birth: Washington, D.C.
3. Are you a citizen of South Carolina? Yes
Have you been a resident of this state for at least the immediate past five years? Yes
5. Family Status: Married on June 4, 1994, to Dean DeFoix Varner, III. Never divorced. Two children.
6. Have you served in the military? No
7. List each college and law school you attended, including the dates of your attendance, the degrees you received, and if you left an institution without receiving a degree, the reason for your departure.
 - (a) University of Virginia, Charlottesville, Virginia, B.A. in Government and French, May 1990;
 - (b) University of Valencia, Valencia, Spain, Summer 1987;
 - (c) Temple University School of Law, Philadelphia, PA, August 1992-May 1993. Transferred to USC School of Law
 - (d) University of South Carolina School of Law, Columbia, S.C., May 1995.
8. List the states in which you have been admitted to practice law and the year of each admission. Also list any states in which you took the bar exam but were never admitted to the practice of law. If you took the bar exam more than once in any of the states listed, please indicate the number of times you took the exam in each state.

South Carolina 1995
9. List the significant activities in which you took part during your attendance at college, graduate, and law school. Give the dates you were involved in these activities and list any leadership positions you held.
 - (a) Kappa Alpha Theta, UVA, 1987-90 (including rush counselor 1990);
 - (b) Big Sister Mentor Program, Charlottesville, VA, volunteer, 1989-90;
 - (c) U.S. Senate, Senator Paul Trible's Office, Washington, DC, intern 1988;
 - (d) Republican National Convention, New Orleans, LA, intern 1988;
 - (e) Phi Delta Phi, USC, 1993-95;
 - (f) Guardian *ad Litem*, Columbia, S.C., volunteer, 1993-95.

10. Describe your continuing legal or judicial education during the past five years. Include **only** the title and date of any continuing legal or judicial education course completed.

<u>Conference/CLE Name</u>	<u>Date(s)</u>
(a) Mechanics of Family Recovery Court and DSS Appointments	September 2005;
(b) Revised Lawyers' Oath and Ethics	April 2005;
(c) S.C. Bar Children's Issues in Family Court	March 2006;
(d) S.C. Bar Convention- Family Law Seminar	January 2007;
(e) S.C. Bar Ethical Considerations and Pitfalls for Family Law Lawyers	February 2007;
(f) S.C. Bar Nuts & Bolts of Permanency Planning & TPR	February 2007;
(g) S.C. Bar Side Bar S.C. Family Law Update	February 2007;
(h) S.C. Bar Convention Family Law	January 2008;
(i) S.C. Bar Side Bar Live	February 2008;
(j) S.C. Bar Random Observations from the Bench	February 2008;
(k) S.C. Bar Side Bar S.C. Family Law Update	February 2008;
(l) S.C. Bar GAL Training	January 2009;
(m) S.C. Bar Side Bar Live	February 2009;
(n) S.C. Bar Judges and Attorneys Abuse Seminar	December 2009;
(o) MUSC Mental Health Law Update	January 2010;
(p) S.C. Bar Convention Family Law	January 2010.

11. Have you taught law-related courses or lectured at bar association conferences, educational institutions, or continuing legal or judicial education programs?

I have lectured at the CLE Program "Cool Tips from the Hottest Domestic Law Practitioners III" April 2001.

12. List all published books and articles you have written and give citations and the dates of publication for each. None
13. List all courts in which you have been admitted to practice and list the dates of your admission. Give the same information for administrative bodies that require a special admission to practice. Admitted to practice before the State Courts of South Carolina in 1995.
14. Describe chronologically your legal experience since graduation from law school and include a list of all law firms with which you have been associated. Describe the general character of your practice and divide it into periods with dates if its character has changed over the years.
- (a) The Mason Law Firm, Mount Pleasant, S.C. 1996-97, a general practice firm. I handled commercial and civil litigation cases as well as a worker's compensation case. I also handled real estate closings as well as family law cases for the firm. In addition, I handled minor criminal matters, including cases on behalf of the town of Mount Pleasant, S.C.

- (b) Rosen, Rosen & Hagood, Charleston, S.C. 1997-2000. My practice was concentrated in the area of Family Law. Cases handled while at that firm were Hollar v. Hollar; Bakala v. Bakala and Wooten v. Wooten.
- (c) Alexandra D. Varner, PA, Mount Pleasant, S.C., 2000-present. My solo practice focuses entirely on Family Law and includes DSS appointments on behalf of a local firm, Evans, Carter, Kunes & Bennett.

If you are a judge and are not seeking a different type of judgeship, the following questions are inapplicable:

- (a) If you are a candidate for Family Court, please provide a brief written description of your experience within each of the following Family Court practice areas: divorce and equitable division of property, child custody, adoption, abuse and neglect, and juvenile justice. Include information about cases you have handled in each of these practice areas, or if you have not practiced in an area, describe how your background has prepared you to preside over such matters as a Family Court Judge.

Since I graduated from law school in 1995, I have been involved in family law, including divorce and equitable division of property, child custody, child support, and abuse and neglect. My current practice includes a number of custody cases as well as divorce and equitable distribution cases and DSS appointments, which I handle for a local law firm. My practice in the past ten years has been 100% dedicated to Family Law. I have experience in all area of Family Law and feel that my experience in complex private cases as well as in DSS cases has prepared me for the bench.

15. What is your rating in Martindale-Hubbell? I do not have a Martindale-Hubbell rating. I do not know the reason for this.
16. What was the frequency of your court appearances during the past five years?
 - (a) federal: none;
 - (b) state: frequent.
17. What percentage of your practice involved civil, criminal, domestic, and other matters during the past five years?
 - (a) civil: 0%;
 - (b) criminal: 0%;
 - (c) domestic: 100%;
 - (d) other: 0%.
18. What percentage of your practice in trial court during the past five years involved matters that went to a jury, including those that settled prior to trial?
 - (a) jury: 0%;
 - (b) non-jury: 100%.

Did you most often serve as sole counsel, chief counsel, or associate counsel in these matters? I served as both associate counsel as well as sole counsel.
19. List five of the most significant litigated matters you have personally handled in either trial or appellate court or before a state or federal agency. Give citations if the cases were reported and describe why these matters were significant.

- (a) Dodge v. Dodge (associate counsel with Mark A. Mason at trial), 332 SC 401, 505 S.E. 2d 344 (Ct App 1998)- a precedent setting appellate decision in child custody and a case which became the subject of a question on the S.C. Bar Examination.
 - (b) Bakala v. Bakala (associate counsel with Robert N. Rosen at trial and on appeal), 319 SC 348, 461 SE 2d 388, 2003- service of process and international law (Hague Convention).
 - (c) Hollar v. Hollar (associate counsel with Robert N. Rosen at trial and on appeal), 342 SC 463, 536 SE 2d 883, 2000- significant as to substantial change of circumstance and GAL fees.
 - (d) Chestnut v. Chesnut (associate counsel with Robert N. Rosen at trial)- a recent case tried with Mr. Rosen in March 2010 with a significant award of attorneys' fees.
 - (e) Wooten v. Wooten (associate counsel with Robert Rosen at trial), 358 SC 54, 594 S.E. 2d 854 (Ct App 2003)- standards for awarding marital home in equitable distribution or as an incident of support.
20. List up to five civil appeals you have personally handled. Give the case name, the court, the date of decision, and the citation if the case was reported.
- (a) Bakala v. Bakala, 319 SC 348, 461 SE 2d 388, 2003- Supreme Court
 - (b) Hollar v. Hollar, 342 SC 463, 536 SE 2d 883, 2000- Court of Appeals
21. List up to five criminal appeals that you have personally handled. Give the case name, the court, the date of decision and the citation if the case was reported. None
22. Have you ever held judicial office? No
24. Have you ever held public office other than judicial office? If so, list the periods of your service, the office or offices involved, and whether you were elected or appointed. Also, state whether or not you have timely filed your report with the State Ethics Commission during the period you held public office. If not, were you ever subject to a penalty? No
25. List all employment you had while serving as a judge (whether full-time or part-time, contractual or at will, consulting or otherwise) other than elected judicial office. Specify your dates of employment, employer, major job responsibilities, and supervisor. N/A
26. Have you ever been an unsuccessful candidate for elective, judicial, or other public office? No
27. Have you ever been engaged in any occupation, business, or profession other than the practice of law, teaching of law, or holding judicial or other public office?
- Yes. Before I attended law school in 1992, I briefly worked in public relations for the Spoleto Festival USA, Charleston, S.C., 1991.
28. Are you now an officer or director or involved in the management of any business enterprise? No
29. A complete, current financial net worth statement was provided to the Commission.

30. Describe any financial arrangements or business relationships you have, or have had in the past, that could constitute or result in a possible conflict of interest in the position you seek. Explain how you would resolve any potential conflict of interest. None
31. Have you ever been arrested, charged, or held by federal, state, or other law enforcement authorities for violation or for suspicion of violation of any federal law or regulation, state law or regulation, or county or municipal law, regulation, or ordinance, or any other law, including another country's law? No
32. Have you, to your knowledge, ever been under federal, state, or local investigation for possible violation of a criminal statute? No
33. Has a tax lien or other collection procedure ever been instituted against you by federal, state, or local authorities? Have you ever defaulted on a student loan? Have you ever filed for bankruptcy? No
34. Have you ever been sued, either personally or professionally, that is, have you ever been named as defendant or respondent in any court of law? No
36. Have you ever been investigated by the Department of Social Services? If so, give the details and the resolution. Has your name ever been enrolled on the Central Registry of Child Abuse and Neglect? No
37. Are you now or have you ever been employed as a "lobbyist," as defined by S.C. Code § 2-17-10(13), or have you acted in the capacity of a "lobbyist's principal," as defined by S.C. Code § 2-17-10(14)? No
38. Since filing with the Commission your letter of intent to run for judicial office, have you accepted lodging, transportation, entertainment, food, meals, beverages, money, or any other thing of value as defined by S.C. Code § 2-17-10(1) from a lobbyist or lobbyist's principal? No
39. S.C. Code § 8-13-700 provides, in part, that "[n]o public official, public member, or public employee may knowingly use his official office, membership, or employment to obtain an economic interest for himself, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated." Please detail any knowledge you have of any formal charges or informal allegations against you or any other candidate for violations of these provisions. N/A
40. S.C. Code § 8-13-765 provides, in part, that "[n]o person may use government personnel, equipment, materials, or an office building in an election campaign." Please detail any knowledge you have of any formal charges or informal allegations against you or any other candidate for violations of these provisions. None
41. Itemize (by amount, type, and date) all expenditures, other than those for travel and room and board, made by you, or on your behalf in furtherance of your candidacy for the position you seek. None
42. List the amount and recipient of all contributions made by you or on your behalf to members of the General Assembly since the announcement of your intent to seek election to a judgeship. None

43. Have you directly or indirectly requested the pledge of any member of the General Assembly as to your election for the position for which you are being screened? Have you received the assurance of any public official or public employee that they will seek the pledge of any member of the General Assembly as to your election for the position for which you are being screened? No
44. Have you requested a friend or colleague to contact members of the General Assembly on your behalf? Are you aware of any friends or colleagues contacting members of the General Assembly on your behalf? No
45. Have you or has anyone acting on your behalf solicited or collected funds to aid in the promotion of your candidacy? No
46. Have you or has anyone acting on your behalf contacted members of the Judicial Merit Selection Commission about your candidacy or intention to become a candidate? No
47. List all bar associations and professional organizations of which you are a member and give the titles and dates of any offices you have held in such groups.
- (a) S.C. Bar, member (worked with Young Lawyer's Division)
 - (b) SCWLA, member
 - (c) Charleston County Bar, member (worked with Executive Committee 2001-02)
48. List all civic, charitable, educational, social, and fraternal organizations of which you are or have been a member during the past five years and include any offices held in such a group, any professional honors, awards, or other forms of recognition received and not listed elsewhere. In the past 5 years, I have been primarily involved at my children's schools (Ashley Hall and Porter-Gaud); however, I have been involved with the following organizations:
- (a) President of Charleston Lawyer's Club 2001
 - (b) Leadership Charleston Class of 1999
 - (c) City of Charleston Teen Court and Mt. Pleasant Youth Court, volunteer, 1998-99
 - (d) Cities in School, Charleston, S.C., Mentor, 1995-96
 - (e) Guardian *ad Litem*, Columbia, S.C., volunteer 1993-95
49. Provide any other information that may reflect positively or negatively on your candidacy, or which you believe should be disclosed in connection with consideration of you for nomination for the position you seek. None
50. References:
- (a) Kermit S. King, Esquire
2008 Marion Street, Suite D
Columbia, S.C. 29201
803-779-3090
 - (b) Robert N. Rosen, Esquire
Rosen Law Firm, LLC
18 Broad Street

- Charleston, S.C.
843-377-1700
- (c) Robert L. Tennyson, Vice President
Community First Bank
288 Meeting Street
Charleston, S.C., 29401
843-723-7700
- (d) Stephanie L. Eames (formerly Stephanie L. Yarbrough)
Nexsen Pruet, LLC
P.O. Box 486
Charleston, S.C. 29402
843-860-1518
- (e) Patricia B. Wilson, CPA/ABV, CVA, CDFA
Dixon Hughes PLLC
525 East Bay Street, Suite 100
Charleston S.C. 29403
843-722-6443

YOUR SIGNATURE WILL BE HELD TO CONSTITUTE A WAIVER OF THE
CONFIDENTIALITY OF ANY PROCEEDING BEFORE A GRIEVANCE COMMITTEE OR
ANY INFORMATION CONCERNING YOUR CREDIT.

I HEREBY CERTIFY THAT MY ANSWERS ARE TRUE AND COMPLETE TO THE BEST
OF MY KNOWLEDGE.

Signature: Alexandra D. Varner

Date: August 11, 2010

<p style="text-align: center;">JUDICIAL MERIT SELECTION COMMISSION Sworn Statement to be included in Transcript of Public Hearings</p>
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Family Court
(New Candidate)

Full Name: Alexandra DeJarnette Varner
Business Address: 814-A Johnnie Dodds Boulevard
Mount Pleasant, SC 29464
Business Telephone: (843) 478-8362

1. Why do you want to serve as a Family Court Judge?

I have always wanted to become a Family Court Judge. I have devoted my legal career to family law. While I have enjoyed private practice, I would like the opportunity to serve the public. I come from a long line of public servants; my father was a career diplomat and my grandfather was in the General Assembly in Virginia. I am compassionate, hard working, energetic, impartial, level-headed and practical and, I believe I will bring these traits to the bench.

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?

At this point, I do not.

4. Have you met the statutory 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 communications are not proper and are not permitted except as expressly authorized by the Judicial Canons and 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?

My philosophy will be to adhere to the Judicial Canons. I do not currently nor have I ever had any law partners. I do, however, have a long standing personal and professional relationship with Robert N. Rosen dating back to 1997, first as an associate of his firm and later as associate counsel in numerous domestic law cases. Given the closeness of our relationship, I would recuse myself in every case involving Robert N. Rosen. As to lawyer-legislators, I do not believe I will have any recusal situations with any lawyer-legislators.

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?

Yes. Even if I felt that I could hear the matter without prejudice, I would recuse myself if a party requested my recusal.

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 advise and urge my spouse or close relative not to continue engaging in questionable social or financial behavior.

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

I would accept only those within the ethical guidelines for judges. If there was a question, I would err on the side of not accepting the gift or social hospitality.

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

I would follow the Judicial Canons and take the appropriate action as set forth in Canon 3, including when appropriate to report the violation to the appropriate authority.

11. Are you affiliated with any political parties, boards or commissions that, if you were elected, would need to be evaluated? NO.

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

I am not currently involved in any business activities except my law practice, which if elected I would close.

13. Since family court judges do not have law clerks, how would you handle the drafting of orders?

I would draft the orders myself and, when appropriate, have the attorneys draft them after I issued specific written instructions with detailed findings of fact and conclusions of law.

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

I would use an internal calendar system to ensure that all matters before me are promptly disposed of. Family Court is a court of emergencies and most, if not all cases require quick resolution. I would work diligently, and require my staff to do the same, to ensure that all matters, including orders are handled in a timely fashion.

15. If elected, what specific actions or steps would you take to ensure that the guidelines of the Guardian *ad Litem* statutes are followed during the pendency of a case?

I would make sure the GAL file detailed reports and do not exceed their cap.

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

The General Assembly should set public policy. Judges should not be judicially active but instead should implement the laws of the State of South Carolina. The litigants of this State need to know that the laws of this State will be implemented not the judge's will.

17. 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 would continue to work to improve the case management of DSS cases. I would also like to work on the issue of mental health and wellness.

18. 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?

NO. My husband, children and relatives are supportive of career decision. I have successfully raised two children, managed my household and practiced law. I do not anticipate my serving as judge will cause any significant personal strain on me.

19. Would you give any special considerations to a *pro se* litigant in family court?

No. The same canons apply when dealing with *pro se* litigants. I would perform my judicial duties without bias or prejudice and would treat a *pro se* litigant in the same manner as other litigants.

20. Are you involved in any active investments from which you derive additional income that might impair your appearance of impartiality? NO.

21. Would you hear a case where you or a member of your family held a *de minimis* financial interest in a party involved?

NO, because there could be the appearance of impropriety.

22. Do you belong to any organizations that discriminate based on race, religion, or gender? NO.

23. Have you met the mandatory minimum hours requirement for continuing legal education courses? YES.

24. What percentage of your legal experience (including experience as a special appointed judge or referee) concerns the following areas? If you do not have experience in one of these areas, can you suggest how you would compensate for that particular area of practice?

a. Divorce and equitable distribution: I have handled and am currently handling numerous divorce and equitable distribution cases. This area makes up approximately 50% of my practice

b. Child custody: I have handled numerous custody cases. This area makes up approximately 30% of my practice.

c. Adoption: To the best of my recollection, I have not handled any adoption cases. This area makes up 0% of my practice.

- d. Abuse and neglect: I have handled numerous DSS cases on behalf of Evans, Carter, Kunes & Bennett as well as other lawyers. I have served as the GAL as well as the attorney for the parent Defendant. This area makes up approximately 20% of my practice.
- e. Juvenile cases: I have not handled any juvenile cases in some time. This area makes up 0% of my practice.
25. What do you feel is the appropriate demeanor for a judge?
I believe a judge should be level-headed, compassionate, dignified, courteous and forthright. I further believe a judge should be impartial and fair.
26. 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 the rules apply all the time because a family court judge is a representative of the State, on the bench as well as off the bench. Even off the bench, a judge is still a judge, and therefore it is essential for a judge to retain decorum at all times.
27. Do you feel that it is ever appropriate to be angry with a member of the public who would appear before you, especially with a criminal defendant? Is anger ever appropriate in dealing with attorneys or a pro se litigant?
I do not believe that anger is ever appropriate in dealing with attorneys, parties and/or pro se litigants. I think it is essential that a judge be courteous and level-headed at all times. A good temperament is an essential qualification for a judge.
28. How much money have you spent on your campaign? If the amount is over \$100, has that been reported to the House and Senate Ethics Committees?
As of the date of this application, I have not spent anything on my campaign.
29. If you are a sitting judge, have you used judicial letterhead or the services of your staff while campaigning for this office? N/A
30. Have you sought or received the pledge of any legislator prior to this date? NO
31. Have you sought or been offered a conditional pledge of support by any legislator pending the outcome of your screening? NO
32. 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
33. Have you contacted any members of the Judicial Merit Selection Commission? NO

34. 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/Alexandra DeJarnette Varner

Sworn to before me this 11th day of August, 2010.

Notary Public for South Carolina

My commission expires: 8-8-2012