

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

**Supreme Court/Court of Appeals
(Incumbent)**

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1. Do you plan to serve your full term if re-elected? Yes.
2. Do you have any plans to return to private practice one day? No.
3. Have you met the Constitutional requirements for this position regarding age, residence, and years of practice? Yes.
4. What is your philosophy regarding *ex parte* communications? Are there circumstances under which you could envision *ex parte* communications being tolerated?

Ex parte communication is improper and should rarely, if ever, occur. When I was chief judge of the court of appeals, I occasionally received ex parte communications in the form of letters from inmates, which I immediately transmitted to the clerk of court to handle. Now that I am a member of the Supreme Court, such letters are very infrequent. As a family court judge, ex parte communication would sometimes take place if an ex parte emergency order was sought. On the appellate bench, attempts at ex parte communication are exceedingly rare.

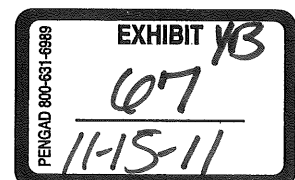
My staff is aware that ex parte communication is proscribed and knows how to handle any telephonic attempts at ex parte communication.

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 recuse myself consistent with the Canons of the Code of Judicial Conduct. I maintain a list of standing disqualifications which is frequently updated.

6. If you disclosed something that had the appearance of bias, but you believed it would not actually prejudice your impartiality, what deference would you give a party that requested your recusal? Would you grant such a motion?

I would defer to granting the motion. Even though I might not feel that my partiality would be affected, if a party reasonably believes I would be less than fair, I would recuse myself because a party's



perception of my lack of impartiality and his or her belief in the integrity of the judicial system is a compelling consideration.

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

I accept only ordinary social hospitality among family and friends.

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

If I were to receive information that a judge or an attorney likely committed a violation of the Code of Judicial Conduct or the Rules of Professional Conduct, I would take appropriate action, which might include direct communication with the lawyer or judge. If I had knowledge that a violation had been committed by a judge or lawyer, I would take appropriate action, which may include sanctions if it occurred in a case over which I was presiding or may include reporting to the appropriate authority governing judicial or lawyer discipline.

9. Are you affiliated with any political parties, boards or commissions that need to be re-evaluated? No.

10. Have you engaged in any fund-raising activities with any political, social, community, or religious organizations? No.

11. How do you prepare for cases that come before you?

I carefully read the record and briefs in every case before me, whether or not I am the assigned author. My law clerks divide up the cases and read all of them. Prior to oral argument, my law clerks and I thoroughly discuss every case before the court that term.

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

I believe a judge's responsibility is to follow the law as enacted by the General Assembly. With regard to construing statutory provisions, I consider myself a strict constructionist. I am not a judicial activist in any way; however, some decisions do ultimately turn on a policy decision. In those instances, I endeavor to make my decision based on what I can glean to be the public policy of our state as expressed in legislative enactments and in prior decisions by the South Carolina Supreme Court.

13. Canon 4 allows a judge to engage in activities to improve the law, legal system, and administration of justice. What activities do you plan to undertake to further this improvement of the legal system?

I have always been extremely active in CLEs in South Carolina. I have been a presenter at more than 100 CLEs since I began to practice law. I also speak frequently at civic meetings, college commencements, and such events as Palmetto Girls State because I believe it is important to educate the public about our excellent judicial system. I served as an adjunct faculty member at the Charleston Law School from 2006 to 2008, teaching appellate advocacy. I plan to

continue being active in education programs for lawyers, judges, and the public.

14. Do you feel that the pressure of serving as a judge strains personal relationships (i.e. spouse, children, friends, or relatives)? How do you address this?

Any demanding job presents opportunities for stress on one's family. I am fortunate to have a lawyer-husband who is keenly aware of the demands of my position and completely supportive of me. I am very actively involved in my church and find that maintaining my spiritual strength helps greatly in relieving stress.

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

I am presently serving as chair of the Chief Justice's Docket Management Task Force. I am also a member of the University of South Carolina's Law School Partnership Board and the Board of Advisors for the Charleston Law School.

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 would consider historical evidence in reaching any decision on the practical application of the Constitution because such evidence helps to reveal the drafters' intent; however, I would not consider historical evidence controlling.

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

I would give an agency's interpretation of the Constitution little weight. Interpreting the constitution is a function of the judiciary, not an 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 with the Constitution should be given the greatest weight because they may provide insight into the intention of the drafters. However, there is no need to consider these areas when the language of the Constitution is clear and unambiguous.

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

It is plenary in nature.

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?

All grants of authority, including that of local governments, flow from the plenary power of one of the three branches of state government.

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?

I have written a chapter on Comparative Negligence for South Carolina Damages (S.C. Bar CLE 2004), and I have written a chapter on oral argument for The Appellate Prosecutor: A Practical and Inspirational Guide to Appellate Advocacy (S.C. Bar CLE 2005).

I was a contributing author to the South Carolina Appellate Practice Handbook (S.C. Bar CLE 1985), and I was on the editorial board for Roy T. Stuckey and F. Glenn Smith's treatise, Marital Litigation in S.C. (S.C. Bar CLE 1997).

I also wrote a thesis as part of the L.L.M. program at the University of Virginia, from which I graduated in 1998.

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

A judge should reflect sincere interest in matters before the court and should be extremely well prepared for every case. A judge should conduct himself or herself in a calm and dignified manner and should be polite and courteous to litigants, lawyers, court personnel, and the public

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?

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

25. Is there a role for sternness or anger with attorneys?

There is rarely, if ever, a place for sternness at the appellate level. There is never a place for anger by a judge in a 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?

No money has been spent on my campaign.

27. While campaigning for this office, have you used judicial letterhead or the services of your staff for your campaign? 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? If so, give details. 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/Kaye G. Hearn

Sworn to before me this 21st day of July, 2011.

Notary Public for S.C.

My Commission Expires: 4/1/2014