

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

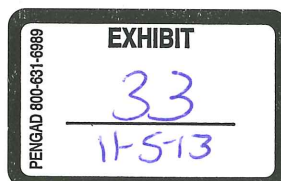
**Supreme Court/Court of Appeals  
(Incumbent)**

Full Name: Jean Hoefer Toal  
Business Address: 2418 Wheat Street  
Columbia, SC 29205  
or  
Supreme Court,  
1231 Gervais Street  
P.O. Box 12456 (zip 29211)  
Columbia, SC 29201  
Business Telephone: (803) 734-1584

1. Do you plan to serve your full term if reelected?  
No, I plan to retire December 31, 2015.
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?

As Chief Justice, I am frequently called, written, and sometimes visited in person, by lawyers, pro se litigants, state and local government officials, news reporters, and members of the general public. Some of these calls and visits relate to pending litigation in our court or in other courts in South Carolina. Many of these contacts are status inquiries that can be referred to staff or answered by me. Others are requests for emergency hearings or attempts to discuss the merits of the case. It is never proper for me to discuss the merits or any pending case, whether before my court or another court, and I never do so. With regard to ex parte requests for emergency action by me or by the court, I or my staff always involves all parties in any scheduling of or conduct of any proceeding, even an emergency proceeding.

My Administrative Assistant and my Law Clerks screen my calls and inform anyone who attempts to discuss the merits of a matter that I cannot engage in an ex parte discussion of the merits of any case.



Lawyers know of the prohibition against ex parte communication and very few attempt to engage in ex parte communication with me. Laymen and pro se litigants are more difficult to satisfy at times.

The bottom line for me is that ex parte contact about the merits of a matter is never proper.

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 believe a judge should recuse herself if she is unable to objectively and impartially hear a case by reason of financial conflicts of interest, close familial relationships, close personal relationships, extra judicial knowledge about the matter before the court which cannot be set aside, or by reason of the appearance of being biased in favor of or against any litigant. I do not believe a judge should recuse herself if the motion is nothing more than a reflection of a party's dissatisfaction with the judge's rulings. The Code of Judicial Conduct, scholarly writings on the subject, and the opinions of the Judges Advisory Committee provide good guidance and should always be consulted when a question of recusal arises.

When a judge recuses herself from a matter, she should have no further involvement in the matter, procedurally or substantively. When I recuse on a matter, I advise the Clerk of the Supreme Court, all parties or their attorneys, and the next senior justice, generally Justice Costa M. Pleicones, unless he is also recused. Justice Pleicones becomes the Acting Chief Justice for the matter. He appoints an Acting Justice to substitute for me. I am not further advised or involved in the matter. I have also instructed the trial judges of our state that when they are recused, they should advise their administrative judges and me so that a substitute judge can be appointed. They should, thereafter, have no further involvement administratively or substantively in the matter.

I do not believe that a South Carolina judge should automatically recuse in cases involving lawyer legislators as advocates, parties or witnesses. I do not feel that lawyer legislators forfeit their ability to practice or participate in our courts by reason of their responsibility under our Constitution to elect judges. In the American state courts systems, judges are selected either by popular election, gubernatorial appointment or legislative election. South Carolina is one of only two states in which the entire statewide judiciary is elected by the state legislature. South Carolina is the only state in which legislative election cannot be bypassed if the General Assembly is not in session. In our state, vacancies for statewide judges can only be filled by the General Assembly. In my view, our strong judicial screening system

insulates our judges from the pressure to which many judges in other states are subjected – ruling in accord with popular opinion rather than the applicable law. Recusal for lawyer-legislators should be treated the same way recusal for any other lawyer is treated.

With regard to cases involving former associates and law partners, I recused on their cases while I still had a financial relationship with them. It has been many years since I have had any business relationship with my former law partners and associates or with any person or entity other than my family's sand mining business. I no longer routinely recuse on any case involving former law partners or associates. I would recuse on a matter involving any former client where I might have knowledge that would affect my ability to sit. For example, I have and will always recuse on cases involving the Catawba Indian Nation.

With regard to recusal in family matters or those involving other lawyers, I routinely recuse on any matter related to my family's business interests, on any matters in which my husband or his law firm is involved, on any matter in which my cousin John Hoefer – who my family's lawyer – is involved, on any matter in which my lawyer brother is involved, and in any matter in which any other law firms which may represent my family from time to time may then be involved.

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 and have given great deference to motions to recuse and have routinely granted such motions, even in cases where I did not believe my impartiality was actually affected.

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

My husband and I accept from and extend to our friends, including lawyers, ordinary hospitality when visiting in each other's homes. When we go out, we always pay our own way. I will ride with a lawyer. I attend the conventions of The South Carolina Bar, The South Carolina Defense Trial Attorneys Association, The South Carolina Trial Lawyers Association, The South Carolina Solicitors Association, the South Carolina Summary Court Judges Association, and other bar- and law-related groups. I almost always appear on continuing legal education programs at these gatherings. I have accepted lodging, food, beverages and meals from these groups, and I am advised that this is proper and not considered the acceptance of a gift. I do not accept any gifts of any kind from individual lawyers.

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

If the lawyer misconduct involved a possible violation of the Rules of Professional Conduct, I would refer the matter to Lee Coggiola, Disciplinary Counsel. If the matter involved possible violation by a judge of the Code of Judicial Conduct, I would refer the matter to Lee Coggiola, Disciplinary Counsel, with a copy to Judge C. Thomas Cooper, Chair, S.C. Judicial Standards Commission. If the possible judicial misconduct did not involve a potential violation of the ethical codes regulating lawyers or judges, but did involve conduct which could affect the judge's ability to perform effectively, I would, as Chief Justice, personally counsel with the judge.

Our Court has become increasingly concerned about the evidence of possible criminal misconduct presented in some of the lawyer discipline cases we hear. Accordingly, the Court directed me to instruct Lee Coggiola, Disciplinary Counsel, that all lawyer or judicial discipline matters which involve evidence of criminal misconduct should be referred to the Attorney General, the appropriate solicitor, the United States Attorney, or other prosecutorial authority. On December 10, 2001, I issued a letter to Henry Richardson, then Disciplinary Counsel, directing him to set up a policy in accord with the court's concerns.

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 prepare for the cases – both orally argued and submitted – motions, proposed rules changes, and other matters requiring legal rulings as follows:

For Orally-Argued Matters

Forty days before the cases are to be heard, my law clerks and I receive the Records on Appeal and Briefs. We divide the cases among the clerks for their reading, research and preparation of bench memoranda. I also begin to read all Records and Briefs in each case. The Supreme Court Clerk's Office preassigns by random draw to each justice responsibility for drafting bench memoranda and opinions in the cases. Each justice, including me, has 20 percent of the cases assigned for these purposes. My law clerks and I prepare bench memos in the cases assigned to me and circulate them to the other justices and their clerks. We receive memos from the other justices on cases assigned to them. Each of my clerks is responsible for a

certain number of opinion cases as well as cases of the other justices. They prepare shorter memos on the other justices' cases. I read authorities, bench memos and personally research the cases extensively. I prepare my own personal bench memo on all the cases, identifying the questions I will pursue at oral argument. I participate intensely in oral argument and consider it an important part of the appellate process.

For Non-Argued Cases and Other Matters

My law clerks, the court's staff attorneys, the Clerk of our court and I read, research and consult extensively in preparation for our court's Agenda Conferences on these matters.

Much effort is also expended by me and my clerks in drafting final proposed opinions and circulating these opinions among the other members of our court.

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

The South Carolina Supreme Court has a long tradition of avoiding "judicial activism." I agree with and have sought to continue this tradition during my 25 years of service.

The Judicial Branch has the responsibility and authority to interpret the statutory law as enacted by the General Assembly in a manner that attempts to ascertain legislative intent and enforce it where consistent with the State and Federal Constitutions. Great deference is given to harmonizing the interpretation of varying provisions of statutory law so as to enforce legislative intent.

The Constitutions of the State of South Carolina and of the United States must be upheld, but every presumption should be made in favor of the constitutionality of statutory enactments.

Our common law tradition is an important component of the judge's responsibility and, therefore, prior precedent should be adhered to, where possible. An ordered society depends on the consistency and predictability of judicial rulings. "Judicial activism" is not compatible with these goals.

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?

As Chief Justice, I have taken very seriously my responsibility under Canon 4. I travel the state speaking to all manner of audiences – business, law enforcement, school children, lawyers, church groups, civic organizations, judges of all levels, local government leaders, and other community groups. I have given hundreds of addresses in my judicial career discussing the judicial system and its impact on our society.

I have chosen to highlight the use of technology to improve the delivery of justice, especially in rural South Carolina. Electronic communication, research, and management are now used extensively in our state as a result of my efforts.

The Judicial Branch has been recognized statewide and nationally for our innovations in the use of technology in our courts.

I am personally involved in extensive teaching activities. I have also continued to author scholarly articles and books on legal topics.

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?

Yes, particularly in my position. I believe it is important to balance the pressure of public life with a strong focus on family and close friends. My personal life revolves entirely around my family and a small circle of my oldest and dearest friends.

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

Conference of Chief Justices, Member and Committee Chair  
Columbia Silica Sand Co. Inc., Board of Directors and Secretary

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?

See also answer to Question 12.

- a. The use and value of historical evidence in practical application of the Constitution:

Historical evidence is an important source of interpreting our Constitution. [See State v. Thrift, 312 S.C. 282, 440 S.E.2d 341 (1994); dissents of Burnett & Toal, JJ in Johnson v. Collins, 333 S.C. 96, 508 S.E.2d 575 (1998); Joytime Distributors and Amusement v. State, 338 S.C. 634, 528 S.E.2d 647 (1999) and Westside Quik Shop v. Stewart, 341 S.C. 297, 534 S.E.2d 270 (2000)]. Our court has used historical evidence extensively as we attempt to interpret the intent of the people in adopting provisions of our Constitution.

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

I do not believe an executive administrative agency should determine the constitutionality of a statute. Our Court has so held. See Video Gaming Consultants, Inc. v. SCDOR, 342 S.C. 34, 535 S.E.2d 642 (2000). An administrative agency must abide by the Constitution and statutes, but it may not use the Constitution to declare a statute invalid or unenforceable. Under our Constitution, only a court may declare the constitutionality

of a statute. Allowing an administrative agency to rule on the constitutionality of a legislative enactment would violate the separation of powers doctrine.

- c. The use and value of documents produced contemporaneously to the Constitution, such as the minutes of the convention: Documents produced contemporaneously with our Constitution, including minutes of the convention or, in modern times, study committee reports, legislative hearing reports and other documents produced in connection with the General Assembly's adoption and submission of constitutional amendments are very valuable and influential in interpreting our Constitution.

17. Is the power of the South Carolina 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?

No other level of government has plenary power. All other grants to local government are in derogation of the authority of the people and the General Assembly. Local government only possesses such powers as are directly granted to it by statute or by our Constitution.

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, listed in other filings.

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

A judge accessible to all and biased toward none. A judge should be compassionate. A judge should behave in her personal conduct so as to be above reproach.

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?

7 days a week, 24 hours a day

25. Is there a role for sternness or anger with attorneys?  
Sternness – Yes, in limited circumstances  
Anger – 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?  
None
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/Jean Hoefer Toal

Sworn to before me this 8th day of July, 2013.

Wayne H. Shelly

Notary Public for S.C.

My Commission Expires: March 22, 2015



**JEAN H. TOAL**  
2418 WHEAT STREET  
COLUMBIA, SOUTH CAROLINA 29205

November 5, 2013

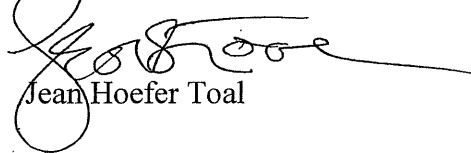
Jane O. Shuler, Chief Counsel  
Judicial Merit Selection Commission  
P.O. Box 142  
Columbia, S.C. 29202

Dear Ms. Shuler:

Enclosed please find an addendum to questions 10 and 11 of the Judicial Merit Selection Commission Personal Data Questionnaire. The addendum reflects all of the continuing legal education courses I have attended and the law-related courses I have taught in 2013 through October 31, 2013.

If you have any questions or need further information, please do not hesitate to contact me at (803) 734-1584.

Sincerely,



Jean Hoefler Toal

JUDICIAL MERIT SELECTION COMMISSION  
PERSONAL DATA QUESTIONNAIRE

ADDENDUM TO QUESTIONS 10 AND 11

Chief Justice Jean Hofer Toal

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. **Do NOT attach a separate list. This must be listed on your completed PDQ form.**

**(Example format below - Please do not insert a table.)**

<i>Conference/CLE Name</i>	<i>Date(s)</i>
(a) <i>Annual Judicial Conference</i>	<i>08/21/00;</i>
(b) <i>Ethics 2000</i>	<i>12/13/00;</i>
(c)	

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**COURSES ATTENDED IN 2013 (THROUGH OCTOBER 31)**

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1-16-13	Sowell Gray Stepp & Laffitte-Appellate Practice in South Carolina
1-25-13	South Carolina Bar Criminal Law Section-Part 2
2-15-13	Greenville County Bar Association Year End CLE
3-11-13	South Carolina Bar Bridge the Gap
3-14-13	2013 Orientation School for New Probate Court Judges
3-26-13	South Carolina Bar Ethics in Eighteen Holes
4-15-13	Charleston School of Law Symposium; In Search of a <i>Grand Unified Theory</i> : Thirty Years with the Endorsement Test
4-18-13	2013 Family Court Judges Conference
4-25-13	Association of General Counsel Spring Meeting
5-03-13	2013 South Carolina Circuit Court Judges Spring Conference
5-29-13	2013 Orientation School for New Family Court Judges

- 6-07-13 South Carolina Bar-Fast Break on Fast Track Jury Trials: How it Will Work
- 6-13-13 In the Interest of the Game: Protecting America's Pasttime and the Profession (Charleston Riverdogs CLE)
- 6-28/29-13 2013 U.S. Court of Appeals Fourth Circuit Judicial Conference
- 7-20-13 2013 Ninth Annual National Foundation for Judicial Excellence Symposium
- 8-3-13 2013 South Carolina Association for Justice Annual Convention
- 9-20-13 Charleston School of Law Symposium - *Gideon* at 50: How Far We've Come, How Far to Go
- 9-22/23-13 2013 South Carolina Solicitors Association Fall Conference
- 9-24-13 2013 Annual South Carolina Public Defender Conference
- 10-4-13 2013 South Carolina Insurance Reserve Fund Law Enforcement Defense Counsel Annual Meeting
- 10-10/11-13 South Carolina Women Lawyers Association - Vision for Success: Women Leaders from the Courtroom to the Boardroom
- 10-21-13 South Carolina Association of Justice Pro Bono Summit
- 10-22-13 37th Annual South Carolina Educational Conference on Workers' Compensation & 4th Annual Workers' Comp Academy
- 10-30-13 South Carolina Conference on Lawyer & Judicial Discipline
- 10-30-13 Greenville County Bar Association - Fast Break on Fast Track Jury Trials: How it Works

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.

**(Example format below - Please do not insert a table.)**

- (a) *I have lectured at the 1900 SC 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 1900 Annual SC Bar Meeting*
- (c)

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**COURSES TAUGHT IN 2013 (THROUGH OCTOBER 31)**

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- 1-16-13 I have participated in a panel discussion on the topic of “The End is Near: Insight from the Bench” at Sowell Gray Stepp & Laffitte’s seminar, *Keep Calm and Appeal On: Appellate Practice in South Carolina*.
- 1-25-13 I have lectured on the topic of “A View from the Bench” at the South Carolina Bar Criminal Law Section’s *Criminal Law Update-Part 2*.
- 2-15-13 I have presented the “State of the Judiciary” at the Greenville County Bar Association’s *Year End CLE*.
- 3-11-13 I have made the “Welcome from the South Carolina Supreme Court” and have participated in a panel discussion on the topic of “Practice before the South Carolina Appellate Courts” at the South Carolina Bar CLE Division’s *Bridge the Gap Program* for new admittees to the SC Bar.
- 3-14-13 I have made the “Introduction and Welcoming Remarks” at South Carolina Court Administration’s *2013 Orientation School for New Probate and Associate Probate Court Judges*.
- 3-26-13 I have participated in a panel discussion on the topic of “Ethics Scenarios and Answers” at the South Carolina Bar CLE Division’s seminar, *Ethics in Eighteen Holes*.
- 4-17-13 I have made “Remarks from the Chief Justice” at the *2013 Family Court Judges Conference*.
- 4-25-13 I have participated in a panel discussion on the topic of “The State of Our State Courts-Transformative Change in an Era of Federalism, Civil Justice Reform and Resource Allocation” at the Association of General Counsel’s *Spring Meeting*.
- 5-01-13 I have lectured on the topic of “For the Good of the Order” at the South Carolina Circuit Court Judges’ *Spring Conference CLE*.
- 5-29-13 I have made “Welcoming Remarks” and lectured on the topic of “Being a Judge” at South Carolina Court Administration’s *2013 Orientation School for New Family Court Judges*.
- 6-07-13 I have participated in a panel discussion on the topic of “Why Fast Track? History, Outline & How It Will Work” and have participated in a panel addressing seminar attendees’ questions at the South Carolina Bar CLE Division’s seminar, *Fast Break on Fast Track Jury Trials: How it Works*.
- 6-13-13 I have lectured on the topic of “In the Interest of the Game: Protecting America’s Pasttime and the Profession” at the Charleston River Dogs’ ethics seminar.

- 7-20-13 I have lectured on the topic of "Funding and Judicial Independence" at the *2013 Ninth Annual National Foundation for Judicial Excellence Symposium*.
- 9-20-13 I have lectured on the topic of "Equipping Gideon's Army: Funding the Right to Counsel/Is There a Solution or Is It Forever Beyond Reach? Ethical Considerations in Managing Heavy Caseloads" at the Charleston School of Law's symposium, *Gideon at 50: How Far We've Come, How Far to Go*.
- 9-22/23-13 I have presented the "State of the Judiciary" at the *2013 South Carolina Solicitors Association Fall Conference*.
- 9-24-13 I have presented on the topic of "A View from the Bench" at the *2013 Annual South Carolina Public Defender Conference*.
- 10-4-13 I have presented on the topic of "Ethics and the Growth of Social Media" at the *2013 South Carolina Insurance Reserve Fund Law Enforcement Defense Counsel Annual Meeting*.
- 10-10/11-13 I have made the "Welcome Remarks" at the South Carolina Women Lawyers Association's seminar, *Vision for Success: Women Leaders from the Courtroom to the Boardroom*.
- 10-21-13 I have made the "Welcome and Opening Remarks" at the South Carolina Association of Justice's *Pro Bono Summit*.
- 10-22-13 I have participated in a panel discussion on the topic of "The Provider's Role in Worker's Compensation: Medical Treatment and Beyond" at the *37th Annual South Carolina Educational Conference on Workers' Compensation & 4th Annual Workers' Comp Academy*.
- 10-30-13 I have made the "Welcome and Opening Remarks" at the Office of Commission Counsel/Office of Disciplinary Counsel's *South Carolina Conference on Lawyer and Judicial Discipline*.
- 10-30-13 I have presented on the topic "Fast Break on Fast Track Jury Trials: How it Works" at the Greenville County Bar Association's *CLE Program*.