



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

Supreme Court/Court of Appeals
(New Candidate)

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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?
Ex parte communications should not be allowed on any substantive matters or issues. My law clerk is also well aware of the rules concerning ex parte communications and acts as an excellent front line of defense against ex parte communications. Furthermore, I scrupulously try to avoid any ex parte communications and insist that my staff observe this rule as well. The only occasion in which either my staff or I permit ex parte communication is either "for scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits" or consultation with ALC personnel whose function is to aid the ALJs in carrying out our adjudicative responsibilities or with other judges in accordance with the Code of Judicial Conduct, Rule 501, SCACR (Canon 3).
5. What is your philosophy on recusal, especially in situations in which lawyer-legislators, former associates, or law partners are to appear before you?
I have no former associates or law partners. The fact that an individual is a lawyer- legislator would not be a ground for which I would *sua sponte* recuse myself, as long as I believed that I could fairly and impartially consider the case. However, if a motion was made, I would give consideration to the concerns expressed -- especially if there was a potential that a reasonable person would perceive an appearance of impropriety.
If a potential of an appearance of impropriety existed, I would recuse myself regardless of whether I felt that I could fairly and impartially consider the case. Nevertheless, the fact that a lawyer who is appearing before the court is also a legislator should not be the sole reason for recusal. Otherwise, lawyer-legislators would be precluded from appearing in many courts.

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 a reasonable person could perceive an appearance of impropriety, I would recuse myself regardless of whether I felt that I could fairly and impartially consider the case. The only exception I could envision would be a situation in which all the other Administrative Law Judges would be subject to the same potential appearance of impropriety or I would be the only judge available in a matter requiring immediate judicial action. Then, the "rule of necessity" would offset the appearance of impropriety. Under the latter instance, I would transfer the case to another judge as soon as possible.
7. What standards have you set for yourself regarding the acceptance of gifts or social hospitality?
A judge should not accept any gifts except those specifically authorized by the Code of Judicial Conduct, Rule 501, SCACR (Canon 4). As far as social hospitality, judges cannot and should not live in ivory towers. However, the acceptance of a judgeship inherently brings limitations upon your lifestyle. One of those limitations is that any gift or social hospitality that could reasonably be perceived to influence the judge in the performance of judicial duties should not be accepted.
I do not accept food, meals, beverages, lodging, transportation, entertainment, or other things of value from any attorney or group of attorneys. The only other individuals I accept gifts from are my family, coworkers and close personal friends of whom I would never hear any case involving their interest. Additionally, the only social hospitality I have accepted, or would accept from an attorney, is the attendance of holiday parties in which a large number of bar members are invited.
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 any conduct which I had actual knowledge that raised a substantial question of a judge's fitness for office or a lawyer's honesty, trustworthiness or fitness to practice in the legal profession, in accordance with Rule 501, SCACR. If I simply received information concerning a judge's or lawyer's honesty, trustworthiness or fitness to practice in the legal profession, I would take what action I believed was appropriate under the circumstances.
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?
In reviewing appellate matters as an ALJ, I read the briefs, research the issues and review the record before issuing an order. I would follow that practice at the Supreme Court of reading all the adversarial filings and the relevant designated record and researching the law in accordance with the complexity of the case.

Additionally, as a judge on the Supreme Court, I would also have the advantage of consulting with my law clerks and reading the bench memoranda and opinions in the cases. If I questioned those findings, I would prepare my own memo of the law.

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

In South Carolina, the Legislature enacts public policy through statutes and regulations. Judges must honor the language of those statutes and regulations except when a constitutional issue is at stake, and even in those instances every presumption should be made in favor of the constitutionality of statutory enactments.

I thoroughly believe that my record and reputation as an ALJ confirms that I am not a “judicial activist” as that term is commonly understood. Courts have no legislative powers but should rather follow and enforce the law, not create it. When an ambiguity exists in a statute or regulation that necessitates construction, I strive to effectuate the intent of the legislature, not usurp its authority.

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 currently speak at CLEs and at classes at USC law school. I also serve on a S.C. Bar committee which seeks to improve our judicial system. Furthermore, I am active in the South Carolina Administrative and Regulatory Law Association which seeks to promote collegiality and legal education among lawyers who practice administrative law. I plan to remain active in such activities and indeed expand my level of service if elected to the Supreme Court.

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. This is not currently a problem and I don’t envision it to be one in the future.

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

I serve on the Administration and Regulatory Law Committee of the SC Bar. Also, I am president of the South Carolina Administrative and Regulatory Law Association.

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;
- (b) The use and value of an agency’s interpretation of the Constitution;
- (c) The use and value of documents produced contemporaneously to the Constitution, such as the minutes of the convention.

An answer to the above questions requires consideration of what history the Court is considering and what is meant by “practical application.” As with statutory construction, if the Constitution is clear on its face there is no need for construction. If the Constitution is ambiguous, the courts should seek to

determine the intent of the framers and the people who adopted the constitutional provision. See, Neel v. Shealy, 261S.C. 266, 199 S.E.2d 542 (1973). In this context, consideration of history may be relevant. That consideration would most probably be limited to history for which the court can take judicial notice and history that is relevant to determine the intent of the framers of the Constitution. In other words, the court may be guided by history that clarifies the meaning of ambiguous words or phrases. Following that supposition, documents produced contemporaneously to the Constitution may play a significant role in determining the intent of the framers and of the people who adopted it. Other historical information may also clarify the meaning of specific words that are in dispute. For instance, in Sloan v. Sanford, 357 S.C. 431, 593 S.E.2d 470 (2004), the South Carolina Supreme court used a historical analysis to determine the meaning of the word “militia” in the Constitution. Ultimately, the goal should be an objective search to determine the drafters’ true intent.

As to value of an agency’s interpretation of the Constitution, in Dunton v. S.C. Bd. of Exam’rs in Optometry, 291 S.C. 221, 223, 353 S.E.2d 132, 133 (1987), the court held that “[t]he construction of a statute by the agency charged with its administration will be accorded the most respectful consideration and will not be overruled absent compelling reasons.” (emphasis added). However, no agencies in South Carolina are charged with the administration of the Constitution. Therefore, an agency’s interpretation of the Constitution would not be entitled to any distinct deference.

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?
With the amendment of Article VIII of the South Carolina Constitution in 1973 and the enactment of the Home Rule Act, Dillon’s Rule was abolished and autonomy was restored to local governments in South Carolina. Williams v. Town of Hilton Head Island, 311 S.C. 417, 429 S.E.2d 802 (1993). Nevertheless, that autonomy is limited by the General Assembly’s authority to decide what powers local governments exercise. Hospitality Ass’n of South Carolina, Inc. v. County of Charleston, 320 S.C. 219, 464 S.E.2d 113 (1995). Therefore, ultimately the authority of local governments flows from powers as are directly granted to it by the General Assembly and 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.
23. What do you feel is the appropriate demeanor for a judge?
A judge's demeanor should be patient, courteous and respectful to litigants. The judge should assure the litigants that he is neutral and impartial so that the litigants will be confident that they have received a fair trial even though they may not be pleased with the result. Additionally, the judge should maintain sufficient control of the courtroom to insure that integrity of the judicial process is upheld.
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?
A judge should always observe high standards of conduct so that the integrity and independence of the judiciary will be preserved. Therefore, those 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?
A judge, like any human, is susceptible to becoming angry. However, it is not appropriate to display anger from the bench or in chambers. Even if angry, a judge's demeanor must always be respectful. Nevertheless, there are times when a judge may need to address the behavior of a member of the public or an attorney in a stern manner. In those rare instances, if practicable, I have those discussions in chambers so as to avoid embarrassing the attorney or creating the appearance of partiality.
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?
Other than copying this application, 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, to both questions.
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/Ralph K. "Tripp" Anderson, III
Sworn to before me this 27th day of July, 2015.
E. Harvin Belser Fair
Notary Public for South Carolina
My Commission Expires: 11-26-17