



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?
My behavior in this regard is governed by Canon 3 B (7) of the Code of Judicial Conduct, which provides I "shall not initiate, permit, or consider *ex parte* communications," except under the limited circumstances set forth in the Canon. Yes, I can envision tolerating *ex parte* communications in those specific limited circumstances set forth in Canon 3 B (7).
5. What is your philosophy on recusal, especially in situations in which lawyer-legislators, former associates, or law partners are to appear before you?
My behavior in this regard is governed by Canon 3 E of the Code of Judicial Conduct, which provides that I shall disqualify myself "in a proceeding in which [my] impartiality might reasonably be questioned." I am also very conscious of Canon 3 B (1), which requires a judge to hear a case unless disqualification is required.
I do not recuse myself when lawyer-legislators appear in front of me.
My only former associate or partner is my father, and I am automatically disqualified in his cases under Canon 3 E (1) (d) (ii).
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?
Whether or not something would "actually prejudice [my] impartiality" is not the primary consideration in this situation. The standard is whether my "impartiality might reasonably be questioned." The question states the "something" does have "the appearance of bias." Therefore, my recusal would be required whether it was requested or not, unless my disqualification were waived by all parties as provided for in Canon 3 F.

7. What standards have you set for yourself regarding the acceptance of gifts or social hospitality?
The acceptance of gifts and social hospitality is governed by Canon 4 D (5). I have set the standard of strict compliance with this Canon, and I will continue to adhere to that standard.
8. How would you handle a situation in which you became aware of misconduct of a lawyer or of a fellow judge?
If I received information indicating a "substantial likelihood" of misconduct, then I would comply with Canon 3 D (1) or (2).
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?
As an associate member of the supreme court, cases will be before me in four general categories: (1) cases before the court after certiorari has been granted or pursuant to Rule 204(b); (2) petitions for certiorari that have not been decided; (3) attorney disciplinary cases; and (4) motions. I will approach each category with the same determination to understand the true issues in the case and resolve it according to law.
My preparation for cases in the first category will be the same as my preparation for cases set for oral argument before the Court of Appeals. My preparation begins with my senior law clerk's review of the briefs and record within days of their assignment from the Clerk's office. He or she then allocates the cases among my clerks for preparation. Each clerk will then spend a couple of hours with the case to gain a basic understanding of the facts, the issues on appeal, how those issues arose in the proceedings below, how the Court of Appeals resolved the case if it came from that court, and the legal principles that appear to govern the appeal. Usually within a week of assignment, I will have a conference with all my law clerks present in which each clerk explains his or her case. From this discussion, I begin to identify the true issues in each case. This is important because of the limited role of the Judiciary. Recognizing this limited role, a court must do as little as possible to resolve the case or controversy before it. In order to restrict the action of the court in this manner, it is essential to identify the true issues before the court.
I will then direct my law clerk assigned to the case as to how I believe he or she should proceed to analyze the case. This includes the task of collecting, understanding, and discussing with me, all of the case and statutory law that could relate to the resolution of the issues we have identified. For the next two to three weeks, my law clerk and I will have frequent conferences by phone or in person on our progress in understanding the case. During this time, my law clerk will be working to prepare a bench memorandum. As needed during this time frame, I will read the briefs or portions of the record. Through the course of these discussions, I will lay out the structure of the bench memorandum I believe

should be written, and my law clerks will work with me to fill in that structure with the argument and discussion that appears necessary to resolve the case. Approximately three to four weeks into our analysis, my law clerk will give me a draft bench memorandum based on our discussions of the case and the law clerk's factual and legal research. At that point, I will carefully read the draft bench memorandum, and reread the briefs and those portions of the record helpful to gain a full understanding of the facts, issues, and legal principles applicable to the case. I will then have a series of meetings, phone conferences, and exchanges of edits to the bench memo designed to enable my law clerk to finalize the bench memo. It is my understanding that the Supreme Court's custom is the assigned justice will eventually distribute the bench memo to the court. We will attempt to have our bench memoranda finished two weeks before oral argument.

As I have done at the Court of Appeals, I will renew my work on the case in the days before oral argument. That work will include, as the circumstances of the individual case warrant, re-reading the opinion of the Court of Appeals or the order of the trial court and the briefs and record, and studying the applicable legal principles. In particular, I will make sure I am prepared to discuss prior case law in detail with the lawyers at oral argument. I often require my law clerks to play the role of "devil's advocate" to identify any problems in the position I have initially taken.

The second category of cases is petitions for certiorari the court has not yet ruled upon. My approach to those cases will be to be ready to vote within days of the filing of any return to the petition—which should be less than sixty days from the final decision of the Court of Appeals. This will enable me to help the Supreme Court reduce its backlog of certiorari petitions. In some instances, I may seek the assistance of my law clerks or the Supreme Court staff attorneys' office in researching whether it is appropriate to grant certiorari.

The third category of cases is attorney or judicial disciplinary cases. I have worked on only one attorney disciplinary case with the Supreme Court when I sat as a visiting justice in the early 2000s. I anticipate that my preparation for those cases will be essentially the same as preparation for oral argument cases except that the materials to review will be different, and I anticipate the involvement of my law clerks will be less than it is on oral argument cases. I will adapt my approach to preparing for those cases as I learn more about them.

The fourth category is motions that come before the Supreme Court. At the Court of Appeals, I handled most of the motions requiring judicial involvement (many are handled by the Clerk's office) and I refined my approach for handling them. If the Chief Justice, the Clerk, or the Staff Attorneys' office brings any motions to me, I will follow the approach I developed at the Court of Appeals, adapted to the procedure followed in the Supreme Court.

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

My philosophy is that I do not engage in judicial activism.

"Judicial Activism" is a term usually used to mean "making law," or to otherwise allow the work of the court to go beyond the properly limited role of the judiciary. I do not engage in judicial activism. Making law is for the Legislative Branch of

Government. Judges and courts resolve actual cases or controversies, and in doing so they interpret and apply existing law.

As far as setting and promoting public policy, I believe it is the province of the Legislative Branch, and to a lesser extent the Executive Branch. When public policy set by the Legislature has an impact on the resolution of a case before any court, it is the responsibility of the judge to apply that public policy. To the extent there is any policy-making role for the Judicial Branch, that role is filled by the Supreme Court. While it is often necessary for the Supreme Court and other courts to "discern" public policy in order to resolve cases or controversies, it is somewhat rare the Supreme Court will "set" public policy. In setting public policy, the Supreme Court must be careful to stay within the role of deciding cases, and not allow itself to go beyond that role. To do so is judicial activism.

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 speak frequently in Continuing Legal Education seminars and to community groups. I intend to continue doing that. Being Chief Judge of the Court of Appeals has brought opportunities to represent South Carolina in other parts of the country as well. Since joining the Court of Appeals, I have given speeches in California, Arizona, North Carolina, and Georgia. I have also given speeches to national and regional groups meeting in South Carolina. Further, being Chief Judge has put me in a stronger leadership position with the Bar of our State. I have used that leadership position to increase my efforts to improve the quality of the Bar, both in terms of the qualifications of its lawyers and in terms of having a positive impact on the people they represent.

I worked with the Court of Appeals, the Attorney General, and the Appellate Division of the Office of Indigent Defense to start the Appellate Practice Project. To date, we have brought in 75 private lawyers who worked for free to handle criminal appeals to the Court of Appeals. This project has shortened the delay in preparing criminal appeals by approximately six months. I plan to continue to pursue these initiatives. I am currently working with legal services organizations, software designers, and others to expand the concept of the Appellate Practice Project to other areas of the legal system in order to improve the way our system delivers legal services to citizens who cannot afford it—all with zero government funds.

I also teach law. My experience teaching law at the USC School of Law and the Charleston School of Law has refocused my dedication to the duty of judges and lawyers to improve and teach the law. I plan to continue to seek opportunities to teach law.

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?

Serving as a judge definitely causes a strain on personal relationships.

I handle it the best I can. As far as my children are concerned, I try to make them understand the legal process and the limited role the judicial system plays in government. My children are essentially grown, with one son a senior in high

school. This new phase of my life—having grown children—will reduce the strain serving as a judge places on my family.

As far as friends are concerned, when I first became a Circuit Judge I remember wondering how ruling against lawyers I knew might affect my personal relationships with them. I was resolved, however, that I would never allow any personal relationship to affect a ruling of mine in any way. I find that my resolve to do this improves my personal relationships with lawyers, even when I rule against them, because it earns their respect.

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

I serve on the Duke University Alumni Advisory Committee for the upstate. All I do in that capacity is interview high school seniors who have applied to Duke. I also serve in the unofficial role of President of the Duke Club of the Upstate, which specifically does not involve any fundraising. I am simply a contact person for Duke alumni who live in this area, and from time to time I schedule events for Duke alumni in our area.

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.

It is important in interpreting the Constitution, or any other historical document, to understand the context in which it was written. It would also be important to understand the manner in which the Constitution has been interpreted in the past, and the effect that interpretation has had on the law and on the State;

- b) The use and value of an agency's interpretation of the Constitution:
I do not believe it is important to understand how an agency has interpreted the Constitution;

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

These documents could be particularly useful in understanding the context in which the Constitution was written, and therefore its intended meaning. Of the three listed, this would ordinarily be given the greatest weight.

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?

Local government has no power except what is specifically granted to it by the State. The South Carolina Constitution provides that all political power is vested in and derived from the people. That power is placed in State government through the State Constitution. In ratifying the United States Constitution, much of that power was delegated, or transferred, to the federal government. Any

power that was not specifically delegated to the federal government was retained by the State. Local government derives its power from the State. Other than that power specifically given to local government through the Constitution or statutory law, local government has no power.

The power that has been granted to local government through "Home Rule" is broad. State law allows local government to do most anything its elected officials believe is appropriate, as long as it is not inconsistent with State law or the Constitution. However, that broad power comes from the State, and does not exist in any manner independent of 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. 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?
Since joining the Court of Appeals, I have published the following, which could possibly be characterized as "scholarly":
- (a) The Courage of a Lawyer, ABA Litigation Journal, Winter 2013
This article was also published in *Voir Dire*, the magazine of the American Board of Trial Advocates, and will soon be republished in *South Carolina Lawyer*;
 - (b) artofevidence, <http://artofevidence.wordpress.com/>
This is a blog I publish for my students, formerly at the Charleston School of Law, currently at the USC School of Law;
 - (c) Appellate Advocacy—"Speaking Frankly", Foreword to *Charleston Law Review*, volume 5 number 1 (Fall 2010).
23. What do you feel is the appropriate demeanor for a judge?
A judge should be patient and courteous in court and should make a serious effort not to appear biased on issues or toward parties.
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. A judge is required to "act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary."
25. Would there be a role for sternness or anger in meetings with attorneys?
There is no role for anger. Though judges are human, and are prone to feel emotion such as anger even when sitting on the bench or meeting with lawyers, the decisions a judge makes should never be based on anger. Judges owe a duty to control anger in such a way that litigants and lawyers do not see it, even if the judge feels it, and in such a way that anger never controls a judge's decision.

There can be a role for sternness in the sense of firmness. In some situations, lawyers and litigants need to see confidence and resolve in the demeanor of the judge. This is especially true for the presiding judge in an appellate proceeding. But there is never a need for a judge to show sternness in a condescending or demeaning way. Judges must respect the role that lawyers, litigants, witnesses, court staff, and others play in the judicial system, and make every effort to treat them with respect and dignity at all times.

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?
I have not requested anyone to contact a member of the General Assembly on my behalf in regards to this election to the Supreme Court. Of course, in my initial election into the Circuit Court in 2000, in my reelection bid in 2006, in my bids for the Supreme Court in 2008 and 2009, in my bid for Chief Judge in 2010, and in my reelection bid in 2015, I did so after the point in time when the rules allowed me to.
31. Have you contacted any members of the Judicial Merit Selection Commission?
I have not contacted any member of the Judicial Merit Selection Commission since the vacancy for this seat was announced.
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 Cannon Few
Sworn to before me this 5th day of August, 2015.
Ashley Wardlaw
Notary Public for South Carolina
My Commission Expires: 4-27-19