

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

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

Full Name: James Edward Lockemy
Business Address: P.O. Box 750, Dillon, SC 29536
Business Telephone: (843) 774-4166



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 communications with a party who has a matter before you is strictly prohibited and I do not engage in that activity. If someone in the community begins to speak of a matter that is before any court that may someday involve me, I immediately leave the presence of those in the discussion. If someone directly approaches me about a matter, I instruct them not to discuss any pending legal matter with me and let them know clearly that discussion will result in my recusal and notification to everyone involved that I have been exposed to an *ex parte* communication. Further, I do all I can to remove myself from the presence of that person.

The only time that *ex parte* communication is permitted on a limited basis is when certain matters of funding requests for a defendant in a criminal case are at issue. Then, the State is aware of the request and is only left out of the conversation to avoid knowledge of defense strategy. Substantive matters about the issues of the case are not discussed. In addition, certain *ex parte* communications are permitted in some emergency requests and then only to maintain the status quo and set a hearing where all parties can be heard and no permanent jeopardy is incurred by anyone.

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 not practiced law for over 20 years, so I do not recuse myself when someone I practiced with appears before me. Any connection with any case or matter that may cause me to be biased or create an appearance of impropriety no longer exists. Further, I do not recuse myself when a lawyer-legislator appears before me just as I would not recuse myself if a legislator-business person appeared before me in a case. Of course, in either case, if there is a reason

- because of personal involvement or some other circumstance that would reasonably cause an appearance of impropriety then recusal would be proper.
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?
In most cases, I would grant such a motion. The appearance of impartiality is just as important as being impartial to make sure the rule of law prevails in society.
7. What standards have you set for yourself regarding the acceptance of gifts or social hospitality?
While the Canons of Ethics and Rules of Judicial Conduct permit the acceptance of minor gifts from family and friends who are attorneys, my philosophy is not to accept any such gifts or gratuities. In my view, normal matters of social hospitality, like attending a gathering where general groups are invited, are not prohibited as long as nothing of significant value is exchanged.
8. How would you handle a situation in which you became aware of misconduct of a lawyer or of a fellow judge?
Report that lawyer or judge to the proper commission and/or disciplinary body.
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 read the case material thoroughly and research any additional law necessary. Further, I require my law clerks to also be fully informed about the issues and the law in the case. I then discuss all of the issues with my law clerks and judicial panel colleagues, and give both parties a full and fair hearing.
12. What is your philosophy on “judicial activism,” and what effect should judges have in setting or promoting public policy?
As an appellate judge on an intermediate court of appeals, my focus is to make sure the trial court applied the law properly as reflected in the South Carolina statutes and the provisions of the Constitution of this state and the United States. In addition, I look to the case law as decided by our Court in previous decisions as well as case law as decided by the Supreme Court of our state and the United States. The South Carolina Constitution, as well as the United States Constitution, makes it clear that the law is made by the representatives of the people in their legislative bodies.
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 speak at various seminars on legal topics. I have spoken at schools across the state about the law and its importance in our free society. I have also written articles in legal publications about our legal system. Over the last several years, I have participated in three films about our legal system and its importance to our society. One of these films is shown in our state school system. The other two

have been shown across the nation as part of presentations of the American Bar Association. In addition, I teach courses in American history and American government at a small college. Teaching provides an excellent opportunity to discuss our legal system and the administration of justice.

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?

It does to some extent but balancing that strain with other needs of life is very important. I feel that I do this in a way that keeps me involved with family, friends, and other areas of life.

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

I do not serve on any other boards or committees within the SC Bar or the community except for those already mentioned in my packet. As reflected in my packet, I am involved in service to the South Carolina National Guard in the capacity of Commander of the Joint Services Detachment and I am a member of the Executive Council of the National Guard Association of South Carolina.

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.

When required by the necessities of a case to analyze parts of the South Carolina Constitution, I research many areas of the concerned provision. History plays an important role in the meaning of a provision adopted by the drafters, and ultimately, by the citizens. Notes and minutes reflecting the debates which occurred during the constitutional convention, as well as notes of the discussions which occurred during the ratification process, are crucial in helping discern the intent of the provision if it is not clear on its face. Additional non-controlling but informative sources are memoirs and treatises written by participants in the convention. Early decisions by the South Carolina Supreme Court also help in understanding the full meaning of the provision, especially if the opinion includes an interpretation of a provision that seems universal to all members of the Court and does not meet with any published opposition from convention delegates. In the interpretation of a constitutional provision, its application and usage in a modern sense cannot be ignored. When the drafters created the South Carolina Constitution, they, like the drafters of the United States Constitution, were aware that many things would change in our society. Consequently, some consideration must be given to modern usage and application of the provision.

Agency interpretation of a constitutional provision would be the least important part of the process. Our Constitution was adopted in 1795, years before most agencies that now operate in the state were created. In addition, the Court must be aware of the dangers of an agency's self-interests which may hinder an unbiased consideration of a constitutional provision.

17. Is the power of the South Carolina General Assembly plenary in nature unless otherwise limited by some specific Constitutional provision?
The power of any branch of government is limited and checked by the power and authority of the other two branches of government. If the question, by use of the word plenary, is inquiring about the limits of the power of the General Assembly, the question almost answers itself by its last phrase. In fact, early on after the adoption of our state constitution, our Supreme Court declared that the General Assembly is vested with the entire legislative power of the state except as limited by the Constitution. See Clarke v. South Carolina Public Service Authority, 177 S.C. 427, 181 S.E. 481 (1935). The supreme law of any state or nation, formed as this country was in 1788, is not the laws drafted by the Legislature, the edicts of the courts, or the application by the governor, but the Constitution as adopted by the people. Direct reference is made to the power of the people in Article I, Section 1 of the South Carolina Constitution. Any actions by any branch of government contrary to the Constitution endanger the freedoms of the people in a representative democracy. Therefore, as the question infers, the General Assembly has the plenary power to make law, but this power is limited by the South Carolina Constitution. The development of law in our country since Marbury v. Madison, 5 U.S. 137 (1803) provides that the courts decide if the General Assembly has exceeded its constitutional authority. This determination is done with the presumption that the laws passed by the General Assembly are constitutional.
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?
Our Constitution provides that local governments are created by the state. Moreover, Article VIII, Section 7 of the South Carolina Constitution authorizes the General Assembly to set the structure, organization, powers, duties, functions, and responsibilities of counties. Similar rules apply to the incorporation of municipalities as stated in Article VIII, Section 9. Importantly, Article VIII, Section 14 specifically prohibits local governments from setting aside certain freedoms of the people and common responsibilities of local governments like bonded indebtedness. Therefore, the power of local governments flows from the state in a general sense. Notwithstanding this power structure, the Constitution which is the people's vehicle to control all governments does provide certain limitations on the state in regard to passing laws effecting local governments. Article VIII, Section 15, for example, requires the consent of local government on laws granting construction rights over public streets by utilities. In addition, each local government enforces state law within its borders and may enforce local ordinances which are not criminal in nature.
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.
(a) "Judging in Kosovo, When Duty Calls" Summer 2006 Edition of The Judges' Journal;
(b) "Bumper Sticker for the People: Marbury vs. Madison" 50 The Judges' Journal 2011.
23. What do you feel is the appropriate demeanor for a judge?
Give everyone a fair and just opportunity to present their case without rudeness, disrespect, or bias. Further, to decide the matter in a timely manner but only after an appropriate and full deliberation applying the correct law.
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?
Seven days a week, twenty-four hours a day.
25. Is there a role for sternness or anger with attorneys?
There is never a role for anger with attorneys, but sternness can be necessary to control the courtroom to show that the judge is in charge and to avoid chaos, disruption, or any danger to fairness.
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/James E. Lockemy

Sworn to before me this 5th day of August, 2015.

Margaret Lynn Falin

Notary Public for South Carolina

My Commission Expires: 1-31-17