

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

Supreme Court/Court of Appeals
(New Candidate)

Full Name: The Honorable Diane Schafer Goodstein

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1. Do you plan to serve your full term if elected?

Yes. I am still inspired by the work I get to do. It started with my election in 1998 and continues to grow even to this day. I would be privileged to be able to continue to do the work in the capacity as a Justice of our Supreme Court.

2. If elected, do you have any plans to return to private practice one day?

No, I have no plans beyond my time as a Judge.

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?

I begin with the premise that *ex parte* communications should be avoided. However, there are those rare circumstances where such communications are acceptable, such as for purely administrative or emergency reasons where a party would gain tactical or other advantage and where all parties are promptly notified of the communication. Let me give this example. I am always cautious about having a conversation which could be construed as *ex parte* however I am grateful I took a call from an attorney on a Friday afternoon requesting his case be continued because he was on the way to the hospital and he knew something was wrong. I told him I would call the other side and tell them of our call and if his concerns were accurate we would work out the issue of the scheduling of his trial set for Monday and right then to care for his health. My clerk and I called the other attorney and described what had occurred. The lawyer who called died several hours later. I believe because the issue was only one of scheduling and emergent and we promptly called the other attorney therefore the *ex parte*

communication was acceptable. Clearly there was no advantage to be had and I was glad this attorney's last hours were at least alleviated of this concern.

Of course our law contemplates ex parte procedure such as preliminary restraining orders. Indigent criminal defendants are allowed ex parte communications for certain specified reasons such as requests for expense money and other defendants for matters such as mental evaluations however I would note that ex parte in these circumstances does not mean without a record.

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 would not recuse myself simply because one of the lawyers in the case was a lawyer legislator. I do not believe the rules contemplate such a blanket recusal for that reason solely. If I had a relationship with anyone with whom I felt created a situation where one side or the other had influence regarding my decision I would recuse myself whether the person happened to be a lawyer legislator or not. At this time, I would not recuse myself if a former associate appeared before me because I have been out of the practice of law for nearly 18 years. However, let me also add that when lawyers appear before me that have a substantial relationship with my husband who is an attorney it is my practice to disclose those relationships with counsel and recuse myself where that relationship would affect my impartiality or give a reasonable person the appearance of impropriety. Of course where an attorney has done work for me such as a real estate closing or for businesses formerly owned by my husband that relationship is disclosed and a recusal done unless there is a waiver. My former law partner cannot appear before me because he is my husband. My daughter is practicing in a firm and I would recuse myself from her firm's cases.

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?

When I am met with those circumstances where I have disclosed a matter that could have the appearance of bias and I have therefore disclosed the matter I recuse myself if a normal and reasonable person viewing the matter would perceive a conflict. However, if the parties waive any potential or perceived conflict after consultation with their attorney and away from any influence from the Court then I would hear the matter.

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

If I have been asked to give a talk or teach a seminar I would accept refreshments if they are offered to the group at large. If it is necessary that I travel overnight to give a talk or teach I will accept a room offered for my use for the required period

only. Also there are bar associations who entertain the judiciary as a whole at judicial conferences and I have attended those. Before I went on the bench I had friends with whom I would have lunch or dinner occasionally. I still have these friends and will engage in the occasional normal mutual hospitality. They entertain me no more than I entertain them. Because I am involved in meetings regarding many subjects associated with this position and because there will sometimes be lunch meetings and I eat lunch, I am confident that I have provided more lunches than have been provided for me. I have had counties provide a meal for me along with the jury and other court personnel as we are waiting for a jury to complete their deliberations. Other than the reciprocal normal hospitality with friends, I do not allow litigants or attorneys to buy me meals or give me gifts or anything of value outside of perhaps the smallest gesture (such as a note or flowers upon the death of a parent from a longstanding friend). It is my normal practice, if they do I return the gift with a note however if the gift is perishable I donate it and send a note of explanation. I do not accept anything of value from a litigant perhaps with the exception of a county where I have held court and the county through the clerk of court provided snacks (counties are often litigants). In 2014 I was the portrait recipient from the Association of Justice and while money was raised for the portrait and gifts made to the University of South Carolina School of Law and Charleston School of Law I am unaware of the amounts or the donors. To my knowledge I have been provided nothing of value which could connect a lawyer or litigant with a case pending before me.

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

I would seek to correct the problem if I could do so properly and make the appropriate report.

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 order to properly prepare to hear cases I would do the following. I would begin by reading the briefs and then the record on appeal. I would then assign the same task to one of my law clerks to do the same in preparation for discussion and research. This first read through is for the purpose of understanding generally the proceedings below, the area of the law involved, and the issues as perceived by

the parties. I would then canvas the area of the law in general to be certain I was cognizant of the area of the law. I would then have my law clerk do the same. I would then revisit the briefs, record and exhibits with circumspection and a focus on the particular cases cited. I would then meet with my clerk to discuss the issues raised and develop the stratagem to research the germane issues. Once that is completed, I would study the results and refine the research if needed. I would meet again with my law clerk to be sure all aspects of the pertinent issues were addressed and then proceed to develop a protocol and outline for the clerk to propose for my study and review a bench brief suitable to be circulated to other members of the court and their staff. Shortly prior to oral arguments, I would revisit the bench brief, counsel's brief, needed sections of the record on appeal and applicable case law. I would have my law clerk do updates for all relevant case law and check the Court of Appeals and the United States Supreme Court to determine if any associable cases have been reported. The bench brief would be updated and circulated if needed and finally I would draft questions for council so that any lingering questions could be responded to by the parties in oral argument. Once oral argument was concluded and the members of the court caucused to discuss, any lingering issues would be researched, the bench brief updated if needed following argument and if assigned, a draft opinion then prepared

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

I believe in the plenary equality of the three branches of government. I am a devotee to the extraordinary composition which is the foundation of the democracy of the United States and that is, the co-equal three branches of government. I believe government works best when each branch is devoted to the preservation and confines of its own domain. It is the Supreme Court's duty to assure for all citizens, minority and majority alike, that the laws which affect their lives, are equally sanctioned and imposed by the Constitution of this State and of the United States. I do not believe it is appropriate for the Court to legislate nor do I believe it is appropriate for the Court to allow a deviation from the clear dictates of the Constitutions of this State and the United States.

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?

If I was to become a member of the Court, I would be particularly interested in implementing measures that I studied and theoretically developed in the Judicial Leadership program through the National Judicial College. My study was based on the premise that it is feasible to use existing infrastructure to provide services to those users an economic savings while simultaneously providing financial benefit to the judicial system thereby moving it closer to self sufficiency. I am intrigued by maximizing resolution platforms such as Veteran's courts which can

utilized non-state resources to provide services which otherwise would be the responsibility of the State.

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?

I believe that serving as a judge has not strained my personal relationships. After eighteen years my family and friends are well acclimated to my judicial life.

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

Commission on Judicial Conduct, Panel Chair
Circuit Court Advisory Committee

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:

The greatest weight should be given to the documents produced contemporaneously to the Constitution, such as the minutes of the constitutional convention or other such documents because when there is no express language as to the objective to be accomplished by a Constitutional provision the intent of the makers shall be ascertained and shall control. Obviously cotemporaneous documents would be invaluable to the determination of the intent of the framers. (See SCJUR CONSTLAW section 5). Regarding the use and value of an agency's interpretation of the Constitution, where the agency has been delegated the authority from the legislature, if the interpretation can be deemed Constitutional it should be. If there are competing interpretations and one is constitutional and the other not the constitutional interpretation will be adopted. Statutory provisions are presumed Constitutional until proven otherwise beyond all reasonable doubt. Finally, the use and value of historical evidence in the practical application of the Constitution also may yield evidence of the intent of the framers and adopters of the Constitution.

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

The short answer is yes. The General Assembly has plenary legislative power, limited only by the State and Federal Constitutions and legislation not expressly or impliedly inhibited by either Constitution maybe validly enacted. Ashmore v. Greater Greenville Sewer District 211 SC 77; 44 SE 2d 88. Further the Legislature has plenary power in matters of taxation, subject only to express constitutional limitation and finally it is well settled in South Carolina that a statute will, if possible, be construed so as to render it valid; that a legislative act will not be declared unconstitutional unless its repugnance to the constitution is clear and beyond all reasonable doubt and that every presumption will be made in favor of the constitutionality of a legislative enactment; that it will be declared unconstitutional only when its invalidity appears so clearly as to leave no room for reasonable doubt that an act violates some provision of the Constitution; and that all reasonable presumptions must be made in favor of the validity and constitutionality of the Act. In conclusion, the constitution is not a grant but a limitation of legislative power and its provisions will not be construed to impact limitations beyond their clear meaning. Clarke v. South Carolina Public Service Authority, et al. 177 SC 427 (1935)

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?

The Legislature may vest large measures of discretionary authority in matters relating to the Administration and Execution of Statutes but it may not delegate lawmaking powers. It is the General Assembly which is vested with the entire legislative power of the State and is subject only to such restrictions upon and regulations of such power as are contained in the Constitution. Clarke v. South Carolina Public Service Authority et al 177 SC 427 (1935)

The General Assembly has the right to pass such legislation as in its judgment may seem beneficial to the State and to create such agencies of government as may be necessary to carry out its purpose unless expressly prohibited by the 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?

I have authored materials to assist with my teaching opportunities for the Orientation School for New Circuit Court Judges on the subject of "Running of the Court" however I do not consider them published.

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

A Judge should always be patient and respectful to all who appear before her or him. A Judge should listen to those who come before her or him. I think a Judge should be mindful that litigation is stressful, frightening and can be very expensive. I think a Judge should create as best as possible a structured, calm and efficient environment to allow for parties and their attorneys to work. I believe this environment supports greatly the quest for the truth and justice.


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?

These rules apply everyday in life.

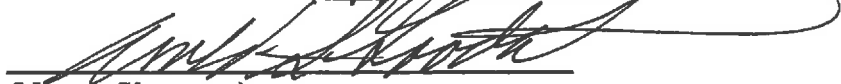
25. Would there be a role for sternness or anger in meetings with attorneys?

Meetings with attorneys by their very nature are typically, informal so while some degree of firmness may be needed to be sure the discussion and counsel are appropriate sternness would rarely, if ever, be needed. If I believed that a meeting would be such that true sternness would be required (as opposed to a hearing where there would be a record) I would ponder whether a meeting was the method, I would want to utilize. In eighteen years while rarely some degree of firmness may have been needed I cannot recall an instance in a meeting which would be described as sternness or anger.

I HEREBY CERTIFY THAT THE ANSWERS TO THE ABOVE QUESTIONS ARE TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE.


(Candidate Signature)

Sworn to before me this 24 day of July, 2016.



(Notary Signature)

ARNOLD GOODSTEIN

(Print name)

Notary Public for South Carolina

My Commission Expires: 7/24/2020