

**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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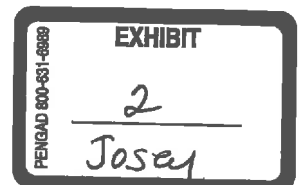
1. **Do you plan to serve your full term if elected? Yes.**
2. **If elected, do you have any plans to return to private practice one day?**

I have no definite plans to return to private practice. If I enjoy judicial service as I expect, I would hope to serve as long as circumstances will allow.

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 a general rule *ex parte* communications should not be allowed and should be proactively discouraged by judges. The core concepts of fundamental fairness guaranteed by procedural due process are notice and opportunity of litigants to be heard. Inappropriate *ex parte* communications regarding the merits of a matter undermine each of these concepts by withholding notice and denying a concurrent opportunity to be heard.

Of course, *ex parte* communications are allowed in certain limited contexts, such as an initial application for a temporary restraining order, but such communications in those circumstances should be limited and controlled by the judge so as not to exceed the scope allowed. *Ex parte* communications regarding administrative matters such as scheduling might be tolerated if controlled, not abused by counsel, and helpful to



efficient delivery of judicial services. *Ex parte* contacts are covered by Section 3B (7) of the Code of Judicial Conduct.

- 5. What is your philosophy on recusal, especially in situations in which lawyer-legislators, former associates, or law partners are to appear before you?**

The Code of Judicial Conduct provides that recusal shall occur when "(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer...." Section 3E (1) (a). Absent such a subjective bias or prejudice, which I generally do not have, recusal may still be required by the general language of section 3E (1) if impartiality is reasonably questioned. Factors I would consider in evaluating the reasonableness of any such question would include the nature and duration of my relationship with the particular attorney (or party) as well as the nature and length of separation in the case of former associates and partners.

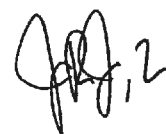
As for lawyer-legislators, there may be an appearance concern with their practice before any state tribunal but they are not prohibited from such practice and, by necessity, some judge must hear their matters; unless a particular legislator played a unique individual role in the corporate judicial election process, I do not believe a "reasonable" question of bias is raised. Nevertheless, I believe every precaution should be taken in those matters involving lawyer-legislators to guard against both actual bias and the perception of unfairness.

- 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 the disclosure objectively "had" the appearance of bias, I would grant the motion in accordance with Section 3E (1) of the Code of Judicial Conduct which states, "A judge *shall* disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned...." (Emphasis added). Although the subdivisions of section 3E (1) specify numerous circumstances requiring recusal, the list is not exhaustive and the general provision mandates recusal based upon the reasonable appearance of a question. Such recusal is required regardless of the subjective lack of actual bias.

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

In accordance with Cannon 4 of the Code of Judicial Conduct, found in Rule 501 of the South Carolina Appellate Court Rules, I would respectfully

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decline gifts or social hospitality unless predicated on the existence of a friendship outside of any judicial relationship. Only gifts or hospitality consistent with the occasion and the non-judicial relationship would be accepted. This is also consistent with South Carolina Bar Ethics Advisory Opinion 97-40.

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

Section 3D of the Code of Judicial Conduct provides,

“(1) A judge who receives information indicating a substantial likelihood that another judge has committed a violation of this Code should take *appropriate action*. A judge having knowledge that another judge has committed a violation of this Code that raises a substantial question as to the other judge's fitness for office shall inform the appropriate authority.

(2) A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct contained in Rule 407, SCACR, should take *appropriate action*. A judge having knowledge that a lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects shall inform the appropriate authority.” (Italics Added).

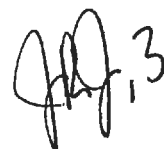
Appropriate action according to the commentary may include directly communicating with the judge or lawyer involved in the suspected violation of the rules. I would act cautiously hoping to preserve and protect both the integrity of the judicial process and the professionals within the process. I would likely discuss the matter directly and investigate the matter to determine if further action is warranted or if the matter needs to be reported to the appropriate authority (Disciplinary Counsel).

**9. Are you affiliated with any political parties, boards or commissions that need to be evaluated?**

I am not an officer in any political party.

I presently serve on the South Carolina Bar Foundation Board of Directors and as one of its officers. This is the charitable arm of the South Carolina Bar. It would need to be re-evaluated.

I also serve on the South Carolina Supreme Court's Commission on Continuing Legal Education and Specialization. While Section 4C(2) and (3) of the Code of Judicial Conduct allow such service, there are judicial representatives already serving on the Commission and it may be that my slot requires a private bar member.



I also serve on the Homeowners Association Board for Little Bald Rock Club (the location of our mountain home in northern Greenville County). While Section 4C(2) and (3) of the Code of Judicial Conduct might allow me to continue such service, I would certainly re-evaluate the matter at the time.

**10. Have you engaged in any fund-raising activities with any political, social, community, or religious organizations?**

As a former board member for the Montessori School of Florence, I was active in budgeting and planning fundraising activities for the school. Likewise, as a former board member of Lighthouse Ministries of Florence, I have contributed (together with my wife and children) to sponsor their annual barbeque fundraiser. Our family has also financially sponsored a fundraiser for Choices School of Florence, a non-profit alternative school affiliated with our church. I previously solicited contributions and sponsorships for the First Annual Harry Carson Celebrity Golf Tournament held by the Florence School District One Foundation. I have also been thrown in the Muscular Dystrophy "jail" where I had to raise "bond" money in order to be released.

Approximately ten years ago my wife and I hosted a fundraising reception in our home for Florence School District One Board candidate Jim Canup (a non-partisan election). While my wife and I have contributed to our church (where I have served on the Stewardship and Finance Committees), occasional political candidates, and non-profit causes in our area, our personal involvement in fundraising activities has been more limited. While we have given to other candidates within the past few years, we have not held any other event at our home or done more than making a personal contribution.

**11. How would you prepare for cases that were before you?**

As a Judge on the Court of Appeals, I would anticipate preparing for appeals before the Court by reading and outlining the briefs of the parties, and reading and reviewing the trial record - completely if necessary or in relevant part. I would anticipate using law clerks and other staff to assist in this process including the research of applicable law, both that cited by the parties and perhaps that not referenced by any party.

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

Each of three branches of government is critical to good government. But each of the three should not play the same role in *setting* public policy. All three play a role in promoting public policy.

The executive branch sets policy by the legislative and budgetary proposals it advocates and by its use of discretionary powers and priorities. The legislative branch sets ultimate policy, of course, by the Acts and resolutions it passes. The judicial branch generally does not have a role in setting public policy; on the other hand, its role in enforcing the rule of law is critical.

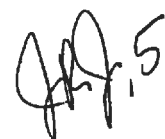
Judges should be vigilant not to engage in making decisions which are more appropriately and effectively made by one of the other two branches of government. Of course, judges should not shy away from necessary decisions – ones that cannot be made by the other branches.

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?**

Historically I have been active with the South Carolina Bar serving on numerous committees, the Board of the Bar Foundation, and the Board of both local and state legal aid organizations. I previously served as the President of the Florence County Bar and the South Carolina Chapter of the Federal Bar Association. I presently serve on the South Carolina Supreme Court’s Commission on Continuing Legal Education and Specialization. I have also served as a speaker and panelist at continuing legal education events. As a judge, I would hope to continue service to the Bar through program and committee participation both with local bars and the State Bar.

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?**

As I was once told by a senior jurist (now deceased) of this state and as I have repeated, “the law is a jealous mistress.” This has been true in every phase of my practice (big firm, small firm, government firm and solo) and I do not expect it to change if I am fortunate enough to be elected. The strain on my family is actually lessened when I feel both called to my work and successful with it. We are a close family with a wealth of love and mutual support; I am very blessed in that regard.



My previous involvement with my children's lives and activities (school, scouts, soccer, choir, etc.) has declined as they have moved on to secondary education and graduate school. Nevertheless, I remain involved with my children's lives. If elected I am sure our family would adjust to the change and focus on those precious relationships that mean the most (and which serve as the ballast for my proposed ability to serve).

Nevertheless, if elected, I would expect some travel away from home and possibly related strain on personal relationships. If needed, my wife is prepared to reduce her working hours to facilitate our family's flexibility. We are also prepared to make use of our vacation home if helpful in serving other areas of the State.

From my service as United States Attorney, my family learned to adapt to the travel and strain; indeed, we tried to use it as a positive opportunity – my family often visited Columbia when my work was here (thanks to my wife's flexible work schedule). They spent more time at the zoo and museum; we enrolled them in some Columbia-based summer camps. We used our former lake house for a meeting spot as it provided me quicker access to Columbia and the upstate.

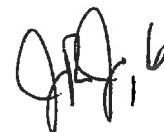
Fortunately, my friends are a supportive group and tolerant of inattention caused by my vocational pursuits of the heart. My closest friends in the legal profession have often been both my allies and my adversaries in our adversarial system; our friendships are not based upon casual acquaintance or common litigation objectives, but on shared faith, values, and life experiences (often children). I do not believe this service will strain those few true friendships. And again, public service has also provided an opportunity for making new friends in more diverse places and professions.

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

I presently serve on the South Carolina Bar Foundation Board of Directors and as its President-Elect. This is the charitable arm of the South Carolina Bar.

I also serve on the South Carolina Supreme Court's Commission on Continuing Legal Education and Specialization.

I also serve on the Homeowners Association Board for Little Bald Rock Club (the location of our mountain home in northern Greenville County).

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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:

Of course, most constitutional interpretation in our state, if not all, is designated for the Supreme Court. Nevertheless, here are my thoughts:

In analyzing matters involving the South Carolina Constitution and its interpretation, weight should be given to each of the factors listed in this question. First and foremost, it is important to identify and give meaning to the framers' intent when drafting and enacting the Constitution by looking at the choice of language used in the document itself; historical evidence of such intent in a given context may be limited or nonexistent.

Thus, in many cases the historical application of a Constitutional provision or an agency's interpretation of a Constitutional provision might be most useful in rendering a judicial interpretation consistent with effective public policy. An interesting example of a South Carolina Supreme Court decision looking at such factors and rendering a Constitutional interpretation is Sloan v. Sandford, 357 S.C. 431, 593 S.E.2d 470 (2004) (interpreting the State Constitution as allowing Governor to also serve as a commissioned officer in the Air Force Reserve).

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

Article I, Section I of the South Carolina Constitution provides that "all political power is vested in and derived from the people only...." Article I of the Constitution also declares that certain individual freedoms shall be free from legislation of the General Assembly. Nevertheless, *but for* specific Constitutional limitations, the power of the South Carolina General Assembly has been broadly construed.

Indeed, the Supreme Court of South Carolina has declared that "the legislative power of the General Assembly is not dependent upon specific

Constitutional authorization. The State Constitution only limits the legislature's plenary powers. Thus, the General Assembly may enact any law not prohibited, expressly or by clear application, by the State or Federal Constitutions." Unisys Corp. v. South Carolina Budget and Control Board, 346 S.C. 158, 551 S.E.2d 263 (2001) (quoting Johnson v. Piedmont Municipal Power Agency, 277 S.C. 345, 350, 287 S.E.2d 476, 479 (1982).

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?**

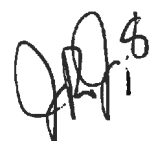
Under South Carolina law, local governments do *not* have plenary authority. The authority of local governments does flow from the state level.

Article VIII of the South Carolina Constitution was amended by referendum vote of the citizens in November of 1972 and ratified by the General Assembly in March of 1973. The Amendments to Article VIII of the Constitution established what is commonly referred to as "home rule."

The 1973 Constitutional Amendments delegated to the General Assembly the implementation of specific powers to be bestowed upon local governments. The General Assembly has, of course, enacted legislation that grants each county and municipality the power to enact "regulations, resolutions, and ordinances which are necessary and proper for the security, welfare, convenience...health, peace, order and good government" in that locality. See S.C. Code Ann. §§ 4-9-25 (counties) and 5-7-30 (municipalities). The Constitution also provides that the "powers, duties, and responsibilities granted local government subdivisions by the Constitution and By-Laws shall include those fairly implied and not prohibited by the Constitution." South Carolina Constitution Article VIII § 17.

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?**

Like most churches, my church, Central United Methodist Church, does restrict membership to those who declare faith or transfer from other Christian churches; my church does not discriminate on the basis of race or gender. Because the church does not stigmatize those who are not members (indeed, it seeks them out), this is not invidious discrimination and is not violative of Section 2C of the Cannons of Judicial Conduct.

**21. Have you met the mandatory minimum hours requirement for continuing legal education courses?**

Yes. I actually serve on the Supreme Court's Commission that monitors and regulates continuing legal education of the Bar.

**22. Have you written any scholarly articles?**

Yes as a law student on the Law Review.

An Analysis of Silkwood v. Kerr-McGee Corp. -- Are Punitive Damages and Exclusive Federal Regulation Consistent? 36 S.C.L. Rev. 689 (1985).

Annual Survey of South Carolina Law (Labor and Employment Section), 36 S.C.L. Rev. 179 (1984).

Employment Discrimination and Title VII: Appropriate Conceptual Frameworks for Different Claims.

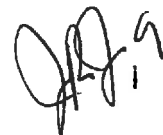
Fetal Vulnerability Plan: Disparate Treatment Absent Intent.

Title VII and The Sexually Offensive Work Environment: A Warranty of Workability

Wildcat Strikes and Local Union Liability.

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

A judge needs to be both patient and wise. A judge must be decisive but not impulsive. A judge must be in control but must not direct the decisions to be made by litigants or their counsel. A judge should be courteous to litigants, counsel, jurors, and staff; a judge's demeanor should leave a positive impression on those citizens who must encounter our third branch of government.



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?

Because these attributes are generally characteristics that a person has (or does not have) by a certain stage in life, a good judge should exhibit them all the time. Moreover, because the public forms its opinions of our judiciary at each and every encounter, judges should seek to always display those characteristics which will reflect well upon the justice system as a whole. Indeed, section 2A of the Code of Judicial Conduct requires that **"A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary."** (Emphasis added). Naturally, judges should be most vigilant regarding the impressions they make in those circumstances where they are acting in a judicial capacity.

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

Undoubtedly, there are times when judges may feel angry, but they should not act out of anger. There may be times when circumstances warrant a firm response, either toward a litigant or attorney, but that decision should not be made in anger but as an appropriate, reasoned response to the circumstances. I am sure this is easier said than done, but all the more reason that judges should practice patience. This is required by Section 3B (4) of the Code of Judicial Conduct.

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 28<sup>th</sup> day of July, 2016.

  
(Notary Signature)

DAVID HENRIK BENTON  
(Print name)

Notary Public for South Carolina

My Commission Expires: 8/21/23

