



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

Administrative Law Court
(New Candidate)

Full Name: Thomas Rosamond Smith

Business Address: SCDHHS, 1801 Main Street, Columbia, SC 29201

Business Telephone: (803) 898-2658

1. Do you plan to serve your full term if elected? Yes.
2. Do you have any plans to return to private practice one day? No.
3. Have you met the statutory 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 Hearing Officer, I try to avoid situations where *ex parte* communications may occur. I ask the parties to contact our admin for general questions. In Orders and notices, I remind the parties about *ex parte* communications. If a party wants to talk about the merits of a case, they should contact the other side, and then contact the Hearing Officer (Judge) for a three way call or conference.

There are limited circumstances where *ex parte* communications may be tolerated. An example of one recently was a Pro Se litigant whose immediate family member passed away unexpectedly and the scheduled hearing was a few days away. He contacted our admin and explained the situation. Our admin relayed the basis of the call and I spoke with the litigant. He asked me for a continuance under the circumstances. I granted the continuance without consulting the other side first.

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

If there is a situation where the appearance of a conflict of interest or the need for a possible recusal arises, the parties should be informed of that

situation immediately. If the Judge feels s/he cannot be unbiased, then the Judge should state that on the record and recuse him or herself. If the Judge feels s/he can fulfill his/her duties fairly and without bias, then the Judge should state the reasons on the record, and offer the parties a chance to object and ask for a recusal. If a party asks for a recusal, then the Judge should put that on the record with the reasons for the request. In situations involving close friends or former partners, the best course of action is to avoid the appearance of a conflict of interest, and the Judge should recuse him or herself.

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?

As I previously stated in number five above, I would put the disclosure on the record, my belief of non-bias on the record, and put the parties reasons for asking for the recusal on the record. I would give deference to the request and grant the motion to avoid the appearance of bias.

7. If elected, what standards would you set for yourself regarding the acceptance of gifts or social hospitality?

I would not accept gifts or social hospitality from anyone or any firm who may appear in front of me, directly or indirectly.

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

This would depend on the severity of the offense. For something minor, I would take the fellow Judge aside and remind him or her of our roles and responsibilities. (An example would be a Judge being rude to a litigant.)

For a severe offense, I would document the circumstances and report the fellow Judge to the Commission on Judicial Conduct. (An example would be a Judge who is taking bribes.)

9. Are you affiliated with any political parties, boards or commissions that, if you are elected, would need to be re-evaluated?

NO.

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

NO.

11. How would you handle the drafting of orders?

As a Hearing Officer, I draft all of my Orders.

12. What method would you use to ensure that you and your staff meet deadlines?

I am very organized. Everything is put on two calendars with periodic reminders and due dates. One is electronic and the other a daily planner. It works well.

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

I am not a proponent of "judicial activism." I believe it is a Judge's job to uphold the U.S. and S.C. Constitutions, the code of laws, and the rule of law. In cases involving public policy, I believe the Judge should look at precedent, the history and development of the law including legislative intent, the facts surrounding the case in chief, and the totality of the circumstances.

14. 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 would like to improve the efficiency of the courts. Too many cases take too long to reach a decision.

- I would like to improve the access and understanding of the court system by those who are unfamiliar with it.

- If placed in a leadership role, I would work to improve the continuing education, training, and future development of Judges or future Judges.

15. Do you feel that the pressure of serving as a judge will strain personal relationships (i.e. spouse, children, friends, or relatives)? How would you plan to address this?

I am a person who handles stress well. I have a core group of family and long term friends who have supported me my entire life. I do not anticipate any strain from my continued service as a Judge.

16. Are you involved in any active investments from which you derive additional income that might impair your appearance of impartiality?

NO.

17. Would you hear a case where you or a member of your family held a *de minimis* financial interest in a party involved?

NO. I would disclose on the record and recuse myself to avoid the appearance of a conflict of interest.

18. Are you a member of any organization or association that, by policy or practice, prohibits or limits its membership on the basis of race, sex,

religion, or national origin? If so, please identify the entity and explain if this organization practices invidious discrimination on any basis.

NO.

19. Have you met the mandatory minimum hours requirement for continuing legal education courses for the past reporting period?

YES.

20. What percentage of your legal experience has dealt with cases that appear before the Administrative Law Court? Please describe to the Commission your experience in these areas.

For the past five years, I have been a Hearing Officer for the SC Department of Health & Human Services. Examples of the administrative law cases we hear are: Medicaid eligibility, appeals by hospitals and doctors for reimbursement, appeals for proper medication and treatment, appeals filed on behalf of disabled children and adults, appeals by providers for overpayment claims, nursing home transfer or discharge cases, endangerment to others or self and appeals of audits. There are a multitude of other types of cases. This is a list of the most common.

We are a court of original jurisdiction and hearings are heard, "De Novo." We follow the guidelines of the S.C. Administrative Procedures Act, S.C. Code of Laws, S.C. Code Ann. Regs., Medicaid regulations, Code of Federal Regulations for disability, and Code of Federal Regulations for nursing homes.

Over the past five years, I have handled well over 500 appeals of which approximately 10% go to hearing. Most of the litigants who appear before me are Pro Se. The percentages float over time, but a rough estimate is 60 to 70% of the cases I hear involve a Pro Se litigant.

After the hearing, I issue a Final Administrative Decision. If a party disagrees with my decision, they may file an appeal to the Administrative Law Court. All of my decisions are available for review.

For the previous five years prior to my becoming a Hearing Officer, approximately 90% of the cases I handled were before an Administrative Law Judge. I was the attorney of record. Most of the cases were before a SSA ALJ.

I feel very comfortable in the Administrative Law arena.

21. What do you feel is the appropriate demeanor for a judge and when do these rules apply?

A Judge needs to be well rounded and professional. His or her demeanor should reflect someone who is well prepared, prompt, polite, courteous, patient, dignified, knows the law, knows the record, makes timely rulings, put things on the record, adheres to deadlines, keeps cases moving along, maintains control of proceedings, and ensures all parties feel like they have been heard.

A Judge should avoid disdainful comments, tone, or mannerisms.

Decisions should be consistent, easy to follow, relate back to the record, follow the law, with logical reasoning.

22. Do you feel that it is ever appropriate to be angry with a member of the public who would appear before you? Is anger ever appropriate in dealing with attorneys or a pro se litigant?

It is not appropriate to demonstrate angry with any party in the courtroom or at a proceeding. A Judge should maintain his or her composure at all times. A Judge should maintain control of the proceedings. For difficult litigants, the Judge should be tactful, yet firm. If necessary, the Judge may take a recess to allow the party or parties to regain their composure.

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

Sworn to before me this _____ day of July, 2018.

Notary Public for S.C.

My Commission Expires: _____