



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

Supreme Court/Court of Appeals
(New Candidate)

Full Name: Jason Phillip Luther

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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?

Canon 3B(7) of the Code of Judicial Conduct forbids a judge from initiating, permitting, or considering ex parte communications. I have followed that rule as a lawyer and would follow it as a judge. The Rule permits limited exceptions, but many of those exceptions (e.g. scheduling or administrative purposes) could be handled by the Clerk of Court and do not require direct communication with the judge. For all other permitted ex parte communications, I would comply with the appropriate rules. See, e.g., Canon 3B(7), Commentary, Rule 501, SCACR (describing examples of ex parte communications expressly authorized by law).

5. 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 that scenario, I would give significant deference to a party that requested my recusal. If a party reasonably questions my impartiality, Canon 3E of the Code of Judicial Conduct requires me to disqualify myself—regardless of what I think of my ability to be impartial.

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

I would follow the standards set forth in Canon 4D of the Code of Judicial Conduct. I would not accept gifts from lawyers or parties who appear before me as a judge. I would only accept ordinary social hospitality as expressly permitted under Canon 4D, being careful to avoid any appearance of impropriety or conflict of interest.

7. 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?

In the event I received information indicating a substantial likelihood that another judge or lawyer had committed a violation of the Code of Judicial Conduct or the Rules of Professional Conduct, I would do two things. First, I would advise the fellow judge or lawyer (respectfully, and in the appropriate setting) that I was aware of the misconduct, encourage the judge or lawyer to self-report, and remind them of my own obligations to report the misconduct. Second, in order to satisfy my duties under Rule 8.3 of the Rules of Professional Conduct, I would inform the appropriate authority. See Canon 3D(1).

8. Are you affiliated with any political parties, boards or commissions? If so, in what capacity are you serving?

No.

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

Yes. My wife and I give regularly to our church, and I have occasionally encouraged other members to contribute financially to special church events or initiatives. I serve on the Midlands Board for

Junior Achievement of Greater South Carolina, and from time to time have engaged in fund-raising activities for Junior Achievement such as charity golf tournaments, Midlands Gives, or the South Carolina Business Hall of Fame. My wife and I also donate to a number of other charitable organizations. If elected judge, I would follow the standards governing a judge's participation in fund-raising activities as set forth in Canon 4C(3).

10. How would you prepare for cases that were before you?

I would begin by reading the trial court order or decision that has been appealed. To me, this is the best starting point because that order was crafted by a fellow judge, after careful and considerate deliberation, who (1) presumably is not biased toward either party and (2) has likewise sworn to uphold the Constitutions of both South Carolina and the United States. I would then read the parties' briefs. Next, I would review any cases or statutes relied upon by the parties, giving particular attention to prior opinions or controlling precedents of our state's appellate courts. Meanwhile, I would ask the appropriate law clerk or staff attorney to do the same so that we can discuss the case together. If necessary, I might conduct additional research. I would also do what I typically have done in preparation of an appeal, which is to set aside undistracted time simply to "think" about the case and mentally digest the arguments and materials I have reviewed. At the appropriate time, I would discuss the case with the judges on the panel.

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

The genius of the American republic—and South Carolina's own tripartite form of government—is that it is grounded in a written constitution that embodies the intertwined notions of separation of powers and "checks and balances." The South Carolina Constitution vests the legislative power in the General Assembly, the executive power in the Governor, and the judicial power in the unified judicial system. See S.C. Const. art. III, § 1; art. IV, §1; art. V, § 1. The legislative, executive, and judicial powers of the government are separate and distinct; yet in fulfilling their distinct roles, each branch serves as a check on the others. See S.C. Const., art. I, 8. The judiciary exercises its checking power by applying the law to the specific case or controversy before it. My role as a judge is to interpret and apply the law as written—not as I might wish it were written. As Alexander

Hamilton put it, judges exercise “neither Force nor Will, but merely judgement.” See The Federalist No. 78.

In my view, judicial activism is anti-democratic because it upends this constitutional balance. It turns the court into a super-legislature, wherein judges impermissibly inject their preferences into important policy decisions reserved for the people’s elected representatives. Moreover, judicial activism often results in certain matters being removed from beyond the reach of the democratic process indefinitely. The General Assembly, on behalf of South Carolina citizens, sets policy. Thus, as our courts have routinely held—correctly so—once the legislature has made a choice, there is no room for the court to second guess the wisdom or folly of those public policy determinations. The court’s duty is to uphold the law absent a clear constitutional infirmity, with all reasonable doubt resolved in favor of the constitutionality of the act.

12. 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 have enjoyed participating in continuing legal education programs, serving as a volunteer judge in moot court competitions, reviewing applications and providing mock interviews for law students applying for clerkships, mentoring younger lawyers, and continuing to support the South Carolina Law Review. I find it especially rewarding to engage with and invest in students who are interested in the law because my decision to become a lawyer was the result of individuals who intentionally and graciously invested in me as a young person. I would continue these activities as a judge. I also enjoy teaching and writing, and will continue to pursue opportunities to do both in a way that (hopefully) improves our legal system.

13. 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?

My wife and I have both managed to balance our legal careers with the responsibility and joy of raising our three sons, making time for family and friends, and honoring other commitments in our community—in part because we both empathize with the demands that come with each other’s law practice. There are certainly unique

pressures that come with serving as a judge, but I do not think they will strain these relationships. If anything, I believe the strong relationships I have with my family and close friends will serve as a necessary and indispensable support system for me as I experience the pressures of serving as a judge.

14. 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:

Under our Supreme Court's precedent, the guiding principle for interpreting the South Carolina Constitution is that both the citizenry and General Assembly have worked to create the governing law. The task of the court, then, is to determine the intent of the Constitution's framers and the people who adopted it.

My method of analysis is to ascertain, as best as possible, the original public meaning of the text. The text is the law; what the text says is the best evidence of legislative intent, and therefore should be given the greatest weight. What was the ordinary and popular meaning of the words used at the time they were written? Where the language of the text is not plain or clear, then the court may look to historical background/tradition to understand the Constitutional text. In that vein, contemporaneously produced documents (e.g. minutes of the convention) may be relevant for consideration and can be helpful in interpreting the Constitution because those documents are illustrative of how the text of the Constitution was originally understood by intelligent and informed people of that time. Legislative history and historical evidence can also be illuminating as to the intent of the drafters. However, I would exercise caution in relying on some forms of legislative history, understanding that it is susceptible to being cherry-picked or overgeneralized.

Lastly, I would afford no deference to an agency's interpretation of the Constitution. In South Carolina, there are certain situations wherein courts will defer to an agency's interpretation of a statute or regulation the agency is charged with administering, but that deference does not extend to matters of Constitutional interpretation. Agencies are part of the executive branch and in most instances enjoy only executive power. By contrast, courts exercise judicial power by interpreting and expounding upon the laws and Constitution. Deferring to an agency's interpretation of the Constitution arguably strips courts of their judicial power while permitting an agency to exercise judicial power, which implicates separation of powers concerns.

15. 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.

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

Yes.

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

A judge should be even-tempered, patient, dignified, respectful, and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity. See Canon 3B(4), Rule 501, SCACR. Ultimately, a judge is tasked with deciding a controversy or resolving a conflict between competing parties, so the judge should demonstrate a willingness to hear and consider the views of all sides with attentiveness, respect, open-mindedness, understanding, and humility. These rules extend beyond the courtroom, because a judge is expected to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. See Canon 2A, Rule 501, SCACR.

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

A judge can be stern or firm without being angry. In meetings with attorneys, circumstances may dictate the former, but not the latter. All attorneys—including judges—have taken the Oath of Office that includes a pledge to integrity and civility, both in the courtroom and elsewhere. Anger toward attorneys, whether in the courtroom or in meetings, is inconsistent with this commitment to civility. As the commentary to Canon 3B suggests, judges can and should be efficient and businesslike—perhaps sternly, if necessary—while still demonstrating patience.

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 _____, 2023.

(Signature)

(Print name)

Notary Public for South Carolina

My Commission Expires: _____

