

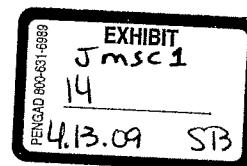
**JUDICIAL MERIT SELECTION COMMISSION
PERSONAL DATA QUESTIONNAIRE**

Court, Position, and Seat # for which you are applying: Judge of the Circuit Court, Tenth Judicial Circuit, Seat #1

1. NAME: Mr. Rivers Lawton McIntosh
BUSINESS ADDRESS: 138 North Main Street; Anderson, South Carolina 29621
TELEPHONE NUMBER: (office): (864) 225-0001

2. Date of Birth: 1960
Place of Birth: Anderson, South Carolina
3. Are you a citizen of South Carolina? Yes.
Have you been a resident of this state for at least the immediate past five years? Yes.
5. Family Status: Married May 2, 1998, to Jessie Ruth Wilson. Divorced on November 26, 1997, Tenth Circuit Family Court, One Year Separation. one child.
6. Have you served in the military? No.
7. List each college and law school you attended, including the dates of your attendance, the degrees you received, and if you left an institution without receiving a degree, the reason for your departure.
College: Wofford College (1978 – 1982) B.A. Political Science;
Law School: USC School of Law (1983 – 1986) Juris Doctor.
8. List the states in which you have been admitted to practice law and the year of each admission. Also list any states in which you took the bar exam but were never admitted to the practice of law. If you took the bar exam more than once in any of the states listed, please indicate the number of times you took the exam in each state.
South Carolina; Admitted 1986
9. List the significant activities in which you took part during your attendance at college, graduate, and law school. Give the dates you were involved in these activities and list any leadership positions you held.
 - A) Wofford College
 - i) Football Letterman – 4 years
 - ii) Sigma Alpha Epsilon
 - B) USC School of Law:
 - i) Clerk Legislative Council (1984, 2nd Semester)
 - ii) McNair Law Firm – Law Clerk (1985 – 1986)
10. Describe your continuing legal or judicial education during the past five years. Include **only** the title and date of any continuing legal or judicial education course completed.

<u>Conference/CLE Name</u>	<u>Date(s)</u>
(a) 6 th Annual Spring Seminar	05/02/03;



- (b) Organize, Operate Law Firm 10/24/03;
 - (c) Auto Torts XXVI 12/05/03;
 - (d) Employment Law A to Z 04/14/04;
 - (e) Police Liability 08/24/04;
 - (f) Revised Lawyers Oath CLE 10/05/04;
 - (g) Auto Torts XXVII 12/03/04;
 - (h) Attorney ECF Training 06/29/05;
 - (i) Ethics Update 10/26/05;
 - (j) 2nd Annual Dove Shoot 11/21/05;
 - (k) Auto Torts XXVIII 12/03/05;
 - (l) Solving Water Intrusion & Mold 02/23/06;
 - (m) Auto Torts XXIX 12/01/06;
 - (n) Workers CompHearing 05/08/07;
 - (o) Auto Torts XXX 11/30/07;
 - (p) Ethics Tutorial 10/30/08;
 - (q) Auto Torts XXXI 12/05/08.
11. Have you taught law-related courses or lectured at bar association conferences, educational institutions, or continuing legal or judicial education programs? No
12. List all published books and articles you have written and give citations and the dates of publication for each. None
13. List all courts in which you have been admitted to practice and list the dates of your admission. Give the same information for administrative bodies that require a special admission to practice.
- (a) November 14, 1986: Admitted to practice in all South Carolina state courts
 - (b) November 21, 1988: Admitted to practice in U.S. District Court - DSC
14. Describe chronologically your legal experience since graduation from law school and include a list of all law firms with which you have been associated. Describe the general character of your practice and divide it into periods with dates if its character has changed over the years.
- (a) After taking my bar examination, I was a law clerk for McIntosh and Sherard in Anderson, South Carolina (now McIntosh, Sherard & Sullivan) until I was admitted to practice on November 14, 1986
 - (b) Shortly after being admitted to practice, I served as an interim law clerk for the Honorable Luke N. Brown, Jr., Circuit Court Judge, Fourteenth (14th) Judicial Circuit. I clerked until May, 1987 and completed my clerkship upon Judge Brown's originally selected law clerk passing the bar examination.
 - (c) Subsequent to my clerkship, I was hired as an associate by McIntosh and Sherard (Now McIntosh, Sherard & Sullivan) in May of 1987. I have continuously worked as either an associate or partner with McIntosh, Sherard & Sullivan from May of 1987 through the present.
 - (d) (May of 1987 through approximately 1990) – The general character of my practice included primarily handling civil and domestic cases. The

civil cases I assisted with or handled ranged from representing individuals and business as plaintiffs or defendants in business and real estate related litigation. I also represented or assisted with representing plaintiffs in personal injury cases. My domestic practice primarily included representing both wives and husbands as either plaintiffs or defendants. A small percentage of my practice involved representing criminal defendants with charges such as grand larceny, criminal sexual conduct (1st), simple possession, DUI and traffic offenses. Although I represented criminal defendants in Circuit Court on guilty pleas, I have not tried a criminal case above the magistrate's court level. I also occasionally closed loans.

- (e) (1990 – 2000) I discontinued representing criminal defendants and performing loan closings. My civil and domestic practice continued as described above. I also started representing claimants in workers' compensation cases. Approximately thirty (30%) percent of my practice was devoted to domestic cases; approximately forty (40%) percent of my practice was devoted to personal injury and workers' compensation and approximately thirty (30%) percent was devoted to representing individuals and businesses in business and real estate related litigation. In this category, I represented both plaintiffs and defendants.
- (f) (2000 – 2006) While the focus on my practice remained the same, the percentage of my practice devoted to each area changed. In March, 2003, our firm hired an associate to assist me with litigation. Our associate focuses primarily on domestic cases, enabling me to stop handling domestic cases in 2006 (with the exception of Court-appointed cases). During this period, the number of personal injury cases I handled declined to approximately twenty (20%) percent of my practice, which, together with representing workers' compensation claimants, constituted approximately thirty (30%) percent of my practice. I also began handling probate matters, mostly litigation, which constituted approximately five (5%) percent of my practice. The remainder of my practice continued to focus on representing individuals and businesses as plaintiffs or defendants in real estate and business litigation, as well as my Court-appointed cases. I also defended the County of Anderson in two (2) cases.
- (g) (2006 – present) Approximately thirty (30%) percent of my practice involves representing plaintiffs and claimants in personal injury and workers' compensation cases. Approximately five (5%) percent involves handling probate matters, mostly litigation. The remainder of my practice continues to involve representing individuals and businesses as plaintiffs or defendants in real estate and business-related litigation as well as my Court-appointed cases.

If you are a judge and are not seeking a different type of judgeship, the following questions are inapplicable:

- (b) If you are a candidate for **Circuit Court**, please provide a brief written description of your experience in criminal matters, including any cases handled over the past five years and include a brief description of the issues involved. Further, please provide a brief written description of your experience in civil matters, including any cases handled over the past five years and include a brief description of the types of matters handled, issues involved, and procedural history. Please include information such as the primary areas in civil court in which you practice, whether you represent plaintiffs or defendants, or both. You may go back further than five years if you feel it would assist the Commission with its assessment of your experience. If you lack experience in an area, describe how your background has prepared you to preside over such matters as a Circuit Court Judge, or how you would compensate for your lack of experience in this area.

Candidate for Circuit Court

(a)Criminal Experience I have not handled a criminal case within the last five (5) years. To compensate for my lack of experience, I would research and study cases and authoritative sources concerning the procedural and substantive aspects of criminal law. For example, I recently obtained a copy of the South Carolina Criminal Trial Techniques Handbook published by the CLE Division of the SC Bar. I would attend C.L.E.s and workshops involving criminal law. I would also seek counsel from more seasoned and experienced members of the judiciary.

(b)Civil Experience: Within the last five (5) years, I have tried jury and non-jury trials in Circuit Court. I have litigated workers' compensation cases and handled appeals of those cases. I have handled appeals before the South Carolina Court of Appeals and appeals before the South Carolina Supreme Court. I have argued numerous motions in Circuit Court typically involving discovery matters or motions for summary judgment. I have tried a good number of cases in municipal or magistrate's court. I have handled many conflicts that were resolved without the necessity of litigation or were settled after litigation was commenced. I have frequently appeared before the Family Court in Court-appointed cases as an attorney or guardian *ad litem*. Presently, most of my cases involve representing individuals or businesses as either plaintiffs or defendants in real estate, business or estate related litigation. Examples of these cases include usurpation of a corporate opportunity, tortious interference with prospective economic advantage, breach of fiduciary duty, dissolution of a corporate entity, interference with an easement, encroachments, removal of a personal representative or trustee, fraud, accountings,

breach of lease, breach of contract, the Uniform Commercial Code (Article 2), and construction cases.

- (c) A significant but lesser part of my caseload involves representing plaintiffs in personal injury actions and claimants in workers' compensation cases. The personal injury cases vary from car wrecks, trip and falls to dog bites. I was recently successful in an appeal of the grant of summary judgment in a dog bite case. (See Harris -v- Anderson County Sheriff, (Sup.Ct.Op.No.26596, Filed 2/09/09) (See §19(b) below.) In addition to representing claimants before the South Carolina Workers' Compensation Commission, I am currently defending two (2) uninsured employers in workers' compensation claims.

15. What is your rating in Martindale-Hubbell? BV

Retired judges/justices and judges/justices applying for reelection to their current position may omit Questions 16-21. If a candidate is seeking a judgeship different than his or her current position, Questions 16-21 should be answered based on experience prior to serving on the bench.

16. What was the frequency of your court appearances during the last five years?

- (a) federal: None
(b) state: The frequency of my appearances in state court varies. My appearances may include multiple appearances in a week; but there are periods when I have no appearances for several weeks. Typically, my court appearances do not involve periods of more than a month that I do not appear.

17. What percentage of your practice involved civil, criminal, and domestic matters during the last five years?

- (a) civil: 97%
(b) criminal: 0
(c) domestic: 3% (Court appointments)

18. What percentage of your practice in trial court during the last five years involved matters that went to a jury, including those that settled prior to trial?

- (a) jury: 50%
(b) non-jury: 50%

Did you most often serve as sole counsel, chief counsel, or associate counsel in these matters?

I most often serve as sole counsel.

19. List five of the most significant litigated matters you have personally handled in either trial or appellate court or before a state or federal agency. Give citations if the cases were reported and describe why these matters were significant.

(a) Lowrey -v- School District of Oconee County (CA No. 2005-CP-37-06)

This was a week-long jury trial involving parents and a minor child's claims stemming from mold exposure in an elementary classroom setting. It is memorable because the case involved the dispute of whether prolonged exposure to mold could proximately cause permanent damage. All of

plaintiffs' exhibits were presented via computer presentation and backed up by exhibit notebooks. This case was settled on appeal.

- (b) Harris -v- Anderson County Sheriff's Office (Sup.Ct.Op.No.26596, Filed 02/09/09)

This case was significant because it resulted in the South Carolina Supreme Court's Opinion clarifying the dog bite statute.

- (c) Oconee County -v- Anderson County and Pickens County (CA No.2002-CP-39-942)

This case involved a three (3) county dispute over an alleged breach of a tri-county landfill agreement. This case was settled before trial after extensive discovery at mediation. The case is memorable because it involved technical issues concerning state-of-the-art recycling facilities and DHEC regulations but was resolved on the basis of a statute of limitations issue.

- (d) Stringer -v- Herron, 309 S.C.529, 424 S.E.2d 547 (Ct.App.1992)

The case was significant because it involved mapping over fifty thousand (50,000) veterinary patients by zip code. Procedurally, it is significant because it involved the grant of a TRO, a supercedeas of the TRO, a trial on the merits and an appeal on the merits. It is an often-cited case involving covenants not to compete ancillary to an employment contract.

- (e) Estate of Bonnie O. Landreth 2003-ES-04-00523 and Estate of Johnny C. Landreth, Sr., 2003-ES-04-00488 (Probate)

The cases, litigated together, were significant because they involved two (2) fairly large estates, multiple pieces of real property, a family corporation and securities, rental properties, rental incomes and other assets. I represented a devisee of the estates that petitioned to remove the personal representative for alleged misconduct and for related relief. The case involved identifying real properties in each estate, real properties conveyed from the estate and attempting to verify significant expenses allegedly spent to upgrade numerous rental properties and rental incomes. This case is significant because we were able to obtain a buy-out for client of a minority share of a family corporation after his equity in the business was upwardly adjusted. We were also able to segregate and convey to my client fee simple ownership in designated rental properties as opposed to his being a tenant-in-common. Overall, we were able to obtain for our client a fair distribution of his parents' estates and remove him, in large part, from a continued entanglement with siblings.

20. List up to five civil appeals you have personally handled. Give the case name, the court, the date of decision, and the citation if the case was reported.

- (a) Watson -v- Town of Pendleton, 294 S.C.155, 363 S.E.2d 234 (Ct.App. 1987)
- (b) Weldon -v- Tiger Town RV & Marine Center, Inc., et al
(Unpublished Opinion No. 2004-UP-354)
(Withdrawn, Substituted & Refiled August 18, 2004 (Ct. App.))
- (c) Perpetual Bank, FSB -v- W. Jerry Fedder, et al

(Unpublished Memorandum Opinion No. 2004-MO-031)

(Supreme Court, filed June 28, 2004)

(d) Glenn -v- School District No. Five of Anderson County, et al
294 S.C.530, 366 S.E.2d 47 (Ct.App.1988)

(e) Silver Bay Seafood Restaurants, Inc. -v- Mann, et al
(Unpublished Opinion No. 2008-UP-431 (Ct. App.)
(filed July 31, 2008, petition for certiorari pending)

21. List up to five criminal appeals that you have personally handled. Give the case name, the court, the date of decision and the citation if the case was reported. None
22. Have you ever held judicial office? If so, list the periods of your service, the courts involved, and whether you were elected or appointed. Describe the jurisdiction of each of the courts and note any limitations on the jurisdiction of each court. No
23. If the answer to question 22 is yes, describe or list five of your most significant orders or opinions and give the citations if they were reported. Also list citations to any appellate review of these orders or opinions. Not Applicable
24. Have you ever held public office other than judicial office? If so, list the periods of your service, the office or offices involved, and whether you were elected or appointed. Also, state whether or not you have timely filed your report with the State Ethics Commission during the period you held public office. If not, were you ever subject to a penalty. No
25. List all employment you had while serving as a judge (whether full-time or part-time, contractual or at will, consulting or otherwise) other than elected judicial office. Specify your dates of employment, employer, major job responsibilities, and supervisor. Not Applicable
26. Have you ever been an unsuccessful candidate for elective, judicial, or other public office? No
27. Have you ever been engaged in any occupation, business, or profession other than the practice of law, teaching of law, or holding judicial or other public office? If so, give details, including a description of your occupation, business, or profession, the dates of your employment, and the name of your business or employer.
Yes. I own cattle and sell cattle on at least an annual basis. I also own rental property
28. Are you now an officer or director or involved in the management of any business enterprise? No
29. A complete, current financial net worth statement was provided to the Commission.
30. Describe any financial arrangements or business relationships you have, or have had in the past, that could constitute or result in a possible conflict of interest in the position you seek.

I am the titled owner of an office building at 112 Montgomery Drive in Anderson, South Carolina where my wife's medical practice is located. The

practice became associated with the hospital and is known as AnMed/Anderson Bone and Joint. My wife is considered an employee of the hospital; and AnMed leases the property from me. I would disclose the relationship in any proceeding in which AnMed is a party. Title is to be transferred to my wife.

31. Have you ever been arrested, charged, or held by federal, state, or other law enforcement authorities for violation or for suspicion of violation of any federal law or regulation, state law or regulation, or county or municipal law, regulation, or ordinance, or any other law, including another country's law
 - (a) 1991: I was charged with DUI by Caycee P.D. on July 13, 1991. The disposition of the charge was a plea to reckless driving.
 - (b) 1993: I was charged with DUI by a State Trooper (Greenville County) on November 14, 1993. I was found not guilty by a jury.
32. Have you, to your knowledge, ever been under federal, state, or local investigation for possible violation of a criminal statute? .No
33. Has a tax lien or other collection procedure ever been instituted against you by federal, state, or local authorities? Have you ever defaulted on a student loan? Have you ever filed for bankruptcy? No
34. Have you ever been sued, either personally or professionally, that is, have you ever been named as defendant or respondent in any court of law?
 - (a) Christi M. McIntosh -v- Rivers Lawton McIntosh (1996-DR-04-2167) November 26, 1997. Divorce on grounds of Continuous Separation of More Than One (1) Year.
 - (b) Melvin Julius Robinson -v- Perpetual Bank, FSB, et al (1997-CP-04-853) This was a pro-se case against numerous defendants asserting multiple "causes of action" stemming from the plaintiff's arrest and the use of his bank card. I was named as a party defendant because I was the attorney for the bank (Perpetual Bank, FSB). By Order filed March 10, 1998, I was dismissed as a party along with other individually named employees of the bank.
 - (c) R. Lawton McIntosh -v- Celtic Life Ins. Co. (1999-CP-04-1171) In this case, I brought suit against my health insurance company for bad faith and breach of contract based on its refusal to pay applicable benefits for a knee surgery. This insurance company denied coverage, asserting a non-reported pre-existing knee condition. During discovery, it was determined that my pre-existing knee condition was reported; and the claim was paid. This case was dismissed on June 7, 2000.
 - (d) National City Mortgage Co., d/b/a -v- Jerry Garton a/k/a (2005-CP-04-1926) This was a foreclosure action against the named defendant. I was named as a defendant by virtue of being the attorney for a judgment creditor of a possible previous owner. The relevant portion of the caption reads ... "Perpetual Bank, FSB c/o Attorney L. McIntosh". I was not actually a party to the action.

36. Are you now or have you ever been employed as a "lobbyist," as defined by S.C. Code § 2-17-10(13), or have you acted in the capacity of a "lobbyist's principal," as defined by S.C. Code § 2-17-10(14)? No
37. Since filing with the Commission your letter of intent to run for judicial office, have you accepted lodging, transportation, entertainment, food, meals, beverages, money, or any other thing of value as defined by S.C. Code § 2-17-10(1) from a lobbyist or lobbyist's principal? No
38. S.C. Code § 8-13-700 provides, in part, that "[n]o public official, public member, or public employee may knowingly use his official office, membership, or employment to obtain an economic interest for himself, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated." Please detail any knowledge you have of any formal charges or informal allegations against you or any other candidate for violations of these provisions. None
39. S.C. Code § 8-13-765 provides, in part, that "[n]o person may use government personnel, equipment, materials, or an office building in an election campaign." Please detail any knowledge you have of any formal charges or informal allegations against you or any other candidate for violations of these provisions. None
40. Itemize (by amount, type, and date) all expenditures, other than those for travel and room and board, made by you, or on your behalf in furtherance of your candidacy for the position you seek.
- 12/19/08
Letters: 140 @ .533 \$ 74.62
Staff Time: 4 hrs.@ 15.71 \$ 62.84
- 01/12/09:
Badge: 1 @ 15.90 \$ 15.90
- 01/16/09
Letters: 3 @ .533 \$ 1.60
Staff Time: .5 hrs @ 15.71 \$ 7.86
- 01/28/09:
Letter: 1 @ .533 \$.53
Staff Time: .25hrs @ 15.71 \$3.93
Total thru 2/25/09 \$167.28
41. List the amount and recipient of all contributions made by you or on your behalf to members of the General Assembly since the announcement of your intent to seek election to a judgeship. None
42. Have you directly or indirectly requested the pledge of any member of the General Assembly as to your election for the position for which you are being screened? Have you received the assurance of any public official or public employee that they will seek the pledge of any member of the General Assembly as to your election for the position for which you are being screened? None

43. Have you requested a friend or colleague to contact members of the General Assembly on your behalf? Are you aware of any friends or colleagues contacting members of the General Assembly on your behalf? No
44. Have you or has anyone acting on your behalf solicited or collected funds to aid in the promotion of your candidacy? No
45. Have you or has anyone acting on your behalf contacted members of the Judicial Merit Selection Commission about your candidacy or intention to become a candidate?
I mailed a letter to all legislators announcing my intent to become a candidate which inadvertently would have included the legislative members of the Judicial Merit Selection Commission. I have had no further contact of significance.
46. List all bar associations and professional organizations of which you are a member and give the titles and dates of any offices you have held in such groups.
(a) South Carolina Bar
(b) Anderson Inns of Court
(c) South Carolina Association for Justice
(d) South Carolina Workers' Compensation Education Association
47. List all civic, charitable, educational, social, and fraternal organizations of which you are or have been a member during the past five years and include any offices held in such a group, any professional honors, awards, or other forms of recognition received and not listed elsewhere.
(a) Alzheimers Association State Board - South Carolina Chapter (State Board Member)
(b) Western South Carolina Torch Club (Treasurer)
(c) Debutante Club of Anderson, Inc. (Parliamentarian)
(d) The Chiquola Club of Anderson (member)
(e) National Rifle Association
(f) Anderson Board of Assessment Appeals
(g) Anderson YMCA
48. Provide any other information that may reflect positively or negatively on your candidacy, or which you believe should be disclosed in connection with consideration of you for nomination for the position you seek.
I was born and raised in Anderson County. My father was an attorney and my mother a homemaker. My parents instilled fiscal conservatism and a strong work ethic in my siblings and me. My parents taught us to treat people with respect and dignity regardless of their origin, color or station in life. During high school and college, I was involved with organized sports which required me to budget my time and to be physically disciplined. I have tried to continue these traits and to incorporate them in my career. I am married to an orthopaedic surgeon. We built our home on her family farm. The family has lived on and operated the farm for over one hundred years. My wife and I have strong values and a traditional view of the value of hard work.

49. References:

- (a) Shawn McGee, President
The Peoples Bank
801 East Front Street
Iva, South Carolina 29655
(864) 348-6181
- (b) Steven M. Krause, Esquire
Krause, Moorhead & Draisen, P.A.
207 East Calhoun Street
Anderson, South Carolina 29621
(864) 225-4000
- (c) Thomas C. Brittain, Esquire
Hearn, Brittain & Martin
4614 Oleander Drive
Myrtle Beach, South Carolina 29577
(843) 449-8562
- (d) Gray Suggs
Suggs & Johnson, LLC
Post Office Box 102
Anderson, South Carolina 29622
(864) 226-0306
- (e) Dr. William R. Childs
St. John's Methodist Church
215 South McDuffie Street
Anderson, South Carolina 29624
(864) 224-6563

YOUR SIGNATURE WILL BE HELD TO CONSTITUTE A WAIVER OF THE CONFIDENTIALITY OF ANY PROCEEDING BEFORE A GRIEVANCE COMMITTEE OR ANY INFORMATION CONCERNING YOUR CREDIT. I HEREBY CERTIFY THAT MY ANSWERS ARE TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

S/ R. Lawton McIntosh

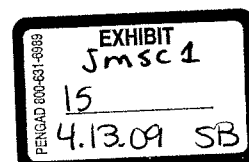
Date:03/09/09

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

Circuit Court
(New Candidate)

Full Name: Rivers Lawton McIntosh
Business Address: 138 North Main Street
Anderson, South Carolina 29621
Mailing: Post Office Box 197
Anderson, South Carolina 29622-1097
Business Telephone: (864) 225-0001

1. Why do you want to serve as a Circuit Court judge? It is a great honor and responsibility to be elected and to serve as a Circuit Court judge. The position needs a person who is willing to get to work early as well as to work late. The position requires a person with experience, a person who has integrity, impartiality and a good temperament. I believe I possess these traits; and I believe that I would be a good Circuit Court judge.
2. Do you plan to serve your full term if elected? Yes
3. Do you have any plans to return to private practice one day?
Not Presently
4. Have you met the Constitutional requirements for this position regarding age, residence, and years of practice? Yes
5. What is your philosophy regarding *ex parte* communications? Are there circumstances under which you could envision *ex parte* communications being tolerated?
Ex parte communications, in general, are not proper and should not be tolerated, especially if they involve substantive matters or are intended to gain a tactical edge. Legally permissible *ex parte* communications, such as the limited basis for a TRO pursuant to Rule 65, SCRCP, or communications for administrative, scheduling or emergency purposes, would be allowed.
6. What is your philosophy on recusal, especially in situations in which lawyer-legislators, former associates, or law partners are to appear before you?
If elected, I do not believe my relationships with former partners or associates or the appearance of lawyer-legislators before me should impact my impartiality and ability to make an even-handed decision. If reasonable concerns are raised concerning my objectivity or impartiality which are not for purposes of delay, I would lean toward recusal if after discussions with all parties there remains the appearance of impropriety.



7. 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? I would give great deference to a party requesting my recusal because of a perceived bias. If, after discussion and disclosure to all parties, there still remains a reasonable concern with my bias, I would likely grant the motion.
8. How would you handle the appearance of impropriety because of the financial or social involvement of your spouse or a close relative? I would recuse myself from a matter where my wife or close relative has more than a *de minimus* financial or social involvement.
9. What standards would you set for yourself regarding the acceptance of gifts or social hospitality? I would only accept ordinary social hospitality from family and close friends.
10. How would you handle a situation in which you became aware of misconduct of a lawyer or of a fellow judge? I would contact the person directly; and if I have knowledge that there is a substantial likelihood that misconduct had occurred, I would report the conduct to the appropriate authority.
11. Are you affiliated with any political parties, boards or commissions that, if you were elected, would need to be re-evaluated?
 - A) Alzheimers Association State Board – South Carolina Chapter
 - B) Anderson County Board of Assessment Appeals
 - C) South Carolina Association for Justice
 - (D) South Carolina Workers’ Compensation Education Association
 - (E) National Rifle Association
 - (F) Anderson YMCA
 [I would resign from (A), (B), (C) (D) and (E)]
12. Do you have any business activities that you would envision remaining involved with if elected to the bench? Yes. I own cattle which I annually sell and would like to continue to do so. I also own rental properties and would like to continue to do so.
13. If elected, how would you handle the drafting of orders? I would usually request the prevailing party to submit a proposed order electronically in order for me to make changes if necessary, or I would personally draft the order. A copy of the proposed order would have to be served on opposing counsel for comment.
14. If elected, what methods would you use to ensure that you and your staff meet deadlines? My staff and I would use a computer calendaring system, backed up by hard copy calendars.
15. What is your philosophy on “judicial activism,” and what effect should judges have in setting or promoting public policy? Although a judge must be independent, I do not believe it is proper for

the judiciary to legislate from the bench.

16. Canon 4 allows a judge to engage in activities to improve the law, legal system, and administration of justice. If elected, what activities do you plan to undertake to further this improvement of the legal system?

If requested, I would be available to participate in CLEs, workshops or bar functions designed to improve the administration of justice.

17. 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 address this?

I believe serving as a judge could strain the stated personal relationships in various ways. With regard to my spouse and child, being away from home and/or having limitations on our social activities could cause strain. I have spoken with my family concerning this possibility and would continue to have "family discussions" if problems appeared. With regard to friends and relatives, my not being able to give legal advice may be a source of strain. I have spoken with my close friends and relatives concerning this possibility.

18. The following list contains five categories of offenders that would perhaps regularly appear in your court. Discuss your philosophy on sentencing for these classes of offenders.

Although I do not make any pledges or promises concerning my conduct in office other than the faithful and impartial performance of my duties, my general philosophy is:

- a. Repeat Offenders: As a general rule, I would consider giving repeat offenders longer sentences unless they qualified for and had available diversion programs such as drug court.
- b. Juveniles (that have waived to the circuit court): A primary goal would be rehabilitation, if possible; but this would depend on the magnitude of the crime.
- c. White collar criminals: A sentence should be imposed that is fair and unbiased, with significant restitution.
- d. Defendants with a socially and/or economically disadvantaged background: As with all categories, a sentence should be imposed that is fair and unbiased and which does not overburden the system. Care should be given with monetary penalties so that the obligation does not create repeat offenders.
- e. Elderly defendants or those with some infirmity: As with all categories, a sentence should be imposed that is fair and unbiased and which does not overburden the system. Care should be taken, if possible, to avoid placing too great of a financial burden on the system because of the added expense.

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

No

20. Would you hear a case where you or a member of your family held a *de minimis* financial interest in a party involved?
Yes, but I would make full disclosure and insure that my impartiality is not at issue.
21. Do you belong to any organizations that discriminate based on race, religion, or gender? No
22. Have you met the mandatory minimum hours requirement for continuing legal education courses? Yes
23. What do you feel is the appropriate demeanor for a judge?
A judge should be even-tempered, respectful and attentive to lawyers, litigants, jurors and court personnel. He or she should be fair and impartial and display a strong work ethic.
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?
24/7
25. Do you feel that it is ever appropriate to be angry with a member of the public, especially with a criminal defendant? Is anger ever appropriate in dealing with attorneys or *pro se* litigants?
It is never appropriate for a judge to demonstrate anger in dealing with lawyers, litigants, jurors, court personnel or the general public.
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?
At present, I have reported the following expenditures:
- | | | | | |
|--------------------|-----------|---|-------|----------|
| A) Letters | 144 | @ | .533 | \$ 76.75 |
| B) Staff Time | 4.75 hrs. | @ | 15.71 | \$ 74.63 |
| C) Badge | 1 | @ | 15.90 | \$ 15.90 |
| Total thru 2/24/09 | | | | \$167.28 |
27. If you are a sitting judge, have you used judicial letterhead or the services of your staff while campaigning for this office?
Not applicable
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? No
31. Have you contacted any members of the Judicial Merit Selection Commission?
I mailed a letter to all legislators announcing my intent to become a

candidate which inadvertently would have included the legislative members of the Judicial Merit Selection Commission. I have had no other contact of significance.

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/Rivers Lawton McIntosh _____

Sworn to before me this 9th day of March, 2009.

Notary Public for S.C.

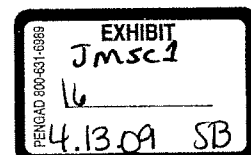
My Commission Expires: 3/14/2018 _____

JUDICIAL MERIT SELECTION COMMISSION
PERSONAL DATA QUESTIONNAIRE

Court, Position, and Seat # for which you are applying: Thirteenth Judicial Circuit,
Circuit Court Judge, Seat #3

1. NAME: Mr. Eric K. Englebardt
BUSINESS ADDRESS: 200 E. Broad Street, Ste 250
Greenville, South Carolina 29601
E-MAIL ADDRESS: eenglebardt@turnerpadget.com
TELEPHONE NUMBER: (office): (864) 552-4600

2. Date of Birth: 10/31/64
Place of Birth: New York, New York
3. Are you a citizen of South Carolina? Yes.
Have you been a resident of this state for at least the immediate past five years? Yes.
5. Family Status: Married November 10, 1990, to Helen Elizabeth Burris. Never divorced, three children.
6. Have you served in the military? No.
7. List each college and law school you attended, including the dates of your attendance, the degrees you received, and if you left an institution without receiving a degree, the reason for your departure.
 - (a) University of North Carolina, B.A., 1986;
 - (b) University of North Carolina School of Law, J.D., 1989.
8. List the states in which you have been admitted to practice law and the year of each admission. Also list any states in which you took the bar exam, but were never admitted to the practice of law. If you took the bar exam more than once in any of the states listed, please indicate the number of times you took the exam in each state.
South Carolina, 1989 and North Carolina, 1990.
9. List the significant activities in which you took part during your attendance at college, graduate, and law school. Give the dates you were involved in these activities and list any leadership positions you held.
College:
 - (a) Sigma Chi Fraternity (Rush Chairman), 1984-1986;
 - (b) WXYC-FM Radio, 1982-1986 (Sports Director 1983-1986);
 - (c) Resident Assistant, 1984-1986;
 - (d) Youth Coach, Chapel Hill Parks and Recreation, 1983-1989;
 - (e) Umpire/Referee, 1982-1986.Law School:
 - (a) Board of Governors, Student Bar Association, 1986-1989;
 - (b) Member, Holderness Moot Court, 1988-1989;



- (c) Chairman, J. Braxton Craven Moot Court Competition, 1988-1989;
 - (d) Phi Delta Phi, 1986-1989;
 - (e) Order of Banisters (honorary) 1989.
10. Describe your continuing legal or judicial education during the past five years. Include only the title and date of any continuing legal or judicial education course completed.

<u>Conference/CLE Name</u>	<u>Date(s)</u>
(a) SCDTAA Joint Meeting	7/24/2003;
(b) SCDTAA Annual Meeting	11/6/2003;
(c) SCDTAA Joint Meeting	7/22/2004;
(d) NBI How to Litigate Your First Civil Trial in South Carolina	12/17/2004;
(e) District of South Carolina CM/ECF	2/3/2005;
(f) ABA Transportation MegaConference	3/3/2005;
(g) SCDTAA Joint Meeting	7/28/2005;
(h) SCDTAA Annual Meeting	11/3/2005;
(i) Changes to South Carolina	2/25/2006;
(j) SCDTAA Joint Meeting	7/27/2006;
(k) Changing the Rules, a Review	11/8/2006;
(l) SCDTAA Annual Meeting	11/9/2006;
(m) Uni-State Lawyers	3/3/2007;
(n) NBI The Art of Settlement	4/24/2007;
(o) SCDTAA Trial Academy	6/6/2007;
(p) NBI Mediation A Valuable Tool	7/24/2007;
(q) SCDTAA Annual Meeting	11/1/2007;
(r) Ounce of Prevention is Worth a Pound of Cure	2/27/2008;
(s) SCDTAA Joint Meeting	7/24/2008;
(t) SCDTAA Annual Meeting	11/13/2008.

11. Have you taught law-related courses or lectured at bar association conferences, educational institutions, or continuing legal or judicial education programs? If so, briefly describe each course or lecture.

I have taught sections on opening and closing arguments, expert cross-examination as a group leader at the SCDTAA Trial Academy. I have also served as an instructor at NBI CLEs including "Mediation A Valuable Tool", "How to Litigate Your First Civil Trial" and "The Art of Settlement".

12. List all published books and articles you have written and give citations and the dates of publication for each.

- (a) I authored course materials for an NBI Seminar entitled "What to Expect in Your First Civil Trial in South Carolina" in December 2004;
- (b) I also authored a chapter called "How a Mediator Can Help You", in course materials for NBI Course "Mediation, A Valuable Tool for Litigation", in July 2007.

13. List all courts in which you have been admitted to practice and list the dates of your admission. Give the same information for administrative bodies that require a special admission to practice.

I was admitted to the South Carolina Bar in November 1989 and North Carolina Bar in February of 1990 and I have also had been admitted to the United States District Court in South Carolina and all three Federal districts in North Carolina.

14. Describe chronologically your legal experience since graduation from law school and include a list of all law firms with which you have been associated. Describe the general character of your practice and divide it into periods with dates if its character has changed over the years.

Since I graduated from law school my legal practice has been with three law firms. I began as an associate at Haynsworth, Marion, McKay & Guerard where I had served as a law clerk between my second and third year of law school. I started work in August 1989 and was admitted to the Bar in November of that year. I then was admitted to the North Carolina Bar after the February Bar Exam in 1990 and have been admitted to the United States District Court in South Carolina and all three districts in North Carolina. As a result of having spent some time working in the defense of the asbestos cases I have practiced in all three federal districts in North Carolina as well as the district of South Carolina on a variety of other cases as well. Additionally, I have tried several cases in State and Federal Court in North Carolina as well as approximately 70 cases in South Carolina.

In January of 1998 I became a shareholder at Haynsworth, Marion, McKay & Guerard where I continued until January of 2001, shortly after the merger where that firm became known as Haynsworth Sinkler Boyd. In January of 2001 I became a partner at Clarkson, Walsh, Rheney & Turner, P.A. I served as managing shareholder at that firm from July 1, 2004 through December 31, 2004. In September 2005 I became a shareholder at Turner, Padget, Graham & Laney, P.A. My practice has focused generally on the areas of insurance defense litigation, though I have handled a variety of plaintiff's cases as well as a small number of criminal/domestic matters. In 2000 I became certified as a mediator and have practiced as a mediator, mediating over 500 cases pending in both State and Federal Court. I am proud to have been listed in "Best Lawyers in America" since 2007 for my ADR practice. I have also served as an arbitrator on two occasions in the last eighteen months in civil cases, and have more arbitrations scheduled in the next several weeks.

In the last 5 years my Court appearances have decreased in part because of the growth of my mediation practice and in part because of the decrease in the number of civil cases going to trial due to the success of ADR. I have tried two cases in the last six months. The first was a landowner dispute over tree cutting at a property line. The second was a complicated family dispute described more fully in response to question 19, which involved both civil and

criminal issues.

My experience in criminal matters is admittedly more limited than my civil experience. In addition to the case described in response to question 19, I have appeared in traffic court on a couple of occasions in the past for clients, but have never fully handled a significant criminal matter. Recently, however, I have begun participating in Youth Court, presiding as judge over misdemeanor criminal matters arising in the schools. This has given me some additional exposure to the criminal process in terms of the procedures and penalties, as well as interaction with members of law enforcement and members of the Criminal Defense Bar who oversee the program.

Additionally, several times in the last few months I have attended General Sessions Court as an observer, trying to get a feel for the ebb and flow of criminal procedure.

Obviously, I will need to overcome my lack of experience in criminal matters were I to be elected as a circuit judge, however, I have always prided myself as being a quick learner and, despite not having had a true criminal practice, I have always kept abreast of the case law involving criminal cases by reading the advanced sheets regularly. Obviously, it will take some study as well as listening to become familiar with criminal procedure, however, I believe I have a good handle of the Rules of Evidence and would be able to overcome my lack of experience in criminal matters to be an effective circuit judge.

15. What is your rating in Martindale-Hubbell? BV.

Retired judges/justices and judges/justices applying for reelection to their current position may omit Questions 16-21. If a candidate is seeking a judgeship different than his or her current position, Questions 16-21 should be answered based on experience prior to serving on the bench.

16. What was the frequency of your court appearances during the last five years?

- (a) Federal: 4-5 times;
- (b) State: I have had 5 or so jury trials and many court appearances in State Court in this time period. As the practice has shifted toward more mediation, many fewer cases have gone to trial in the Upstate. I would estimate that I have tried 70 trials before a jury in my career.

17. What percentage of your practice involved civil, criminal, and domestic matters during the last five years?

- (a) civil: 96%;
- (b) criminal: 2%;
- (c) domestic: 2%.

18. What percentage of your practice in trial court during the last five years involved matters that went to a jury?

- (a) jury: 85%;
- (b) non-jury: 15% - Motion Hearings. I have not had any non-jury trials in that time period.

Did you most often serve as sole counsel, chief counsel, or associate counsel

in these matters? Sole counsel.

19. List five of the most significant litigated matters that you have personally handled in either trial or appellate court or before a state or federal agency. Give citations if the cases were reported and describe why these matters were significant.
 - (a) South Carolina Distributors and Livingston v. Livingston, et.al. This was a multimillion dollar case involving a breach of contract and probate dispute over a family business tried in Cherokee County;
 - (b) _____ v. CSX. This was a wrongful death and personal injury case involving two occupants of a car hit by a CSX train at a crossing in Joanna, South Carolina. This was a jury trial in front of The Honorable G. Ross Anderson in Federal Court in Anderson, South Carolina. After a week of trial, the jury granted us a defense verdict;
 - (c) Davis v. King Chris d/b/a McDonalds. This was a lawsuit against McDonalds Corporation over an injury which occurred in one of its parking lots. This case received much media exposure as at issue was the safety of the McDonalds playlands for children outside many of their restaurants. The case involved many complicated engineering and design issues;
 - (d) Register v. US Steel Corporation. This was a premises liability case involving a severe injury. It was tried to a verdict in Anderson County;
 - (e) Martha Knecht v. Linda Long, Melvin Dennis Long, Sherlon Tench, Dennis Tench, Cynthia Masters and David Masters. This was a lawsuit involving 8 separate causes of action for malicious prosecution, civil and criminal assault allegations, abuse of process, conversion, breach of fiduciary duties, financial exploitation, etc. It lasted for more than 3 years, and involved several criminal hearings, motion hearings and eventually a 3-day jury trial resulting in dismissal of all causes of action against 5 of my clients prior to trial and defense verdicts for my remaining client.
20. List up to five civil appeals that you have personally handled. Give the case name, the court, the date of decision, and the citation if the case was reported. If you are a new applicant for family court, answer this question using domestic appeals. If you are a candidate for an appellate court judgeship, please attach one copy of briefs filed by you in each matter.
 - (a) Bear Enterprises v. County of Greenville, 319 SC 137, 459 S.E.2d 883 (Ct. App. 1995);
 - (b) Camlin v. Bilo, 311 SC 197, 428 S.E. 2d 6(Ct. App. 1993);
 - (c) Threatt Michael Construction Company v. C&G Electric, 305 SC 147, 406 S.E.2d 374 (Ct. App. 1991);
 - (d) Preckler v. Owens- Corning, 60 F.3d 824, 1995 WL 417731 (4th Cir. 1995);
 - (e) Lindsey v. Vann, 2004-UP-442 (Ct. App).

21. List up to five criminal appeals that you have personally handled. Give the case name, the court, the date of decision and the citation if the case was reported. Please attach one copy of briefs filed by you in each matter. N/A.
22. Have you ever held judicial office? No.
23. If the answer to question 22 is yes, describe or attach five of your most significant orders or opinions and give the citations if they were reported. Also list citations to any appellate review of these orders or opinions. N/A.
24. Have you ever held public office other than judicial office? No.
25. List all employment you have had while serving as a judge (whether full-time or part-time, contractual or at will, consulting or otherwise) other than elected judicial office. Specify your dates of employment, employer, major job responsibilities, and supervisor.
I have served as an arbitrator in several cases, and as a judge in Mauldin, South Carolina's Youth Court.
26. Have you ever been an unsuccessful candidate for elective, judicial, or other public office?
Thirteenth Judicial Circuit in 2003. I was a candidate for Circuit Court Seat #4. There were 7 candidates in that race, and I was found qualified and nominated by the Judicial Merit Screening Commission. I withdrew prior to the election in the General Assembly.
27. Have you ever been engaged in any occupation, business, or profession other than the practice of law, teaching of law, or holding judicial or other public office? No.
28. Are you now an officer or director or involved in the management of any business enterprise? No.
29. A complete, current financial net worth statement was provided to the Commission.
30. Describe any financial arrangements or business relationships that you have, or have had in the past, that could constitute or result in a possible conflict of interest in the position you seek. Explain how you would resolve any potential conflict of interest.
I would not hear any cases which were pending in my firm while I was still a member, nor do I believe I would preside over any case for which I served as a mediator.
31. Have you ever been arrested, charged, or held by federal, state, or other law enforcement authorities for violation or for suspicion of violation of any federal law or regulation; state law or regulation; or county or municipal law, regulation, or ordinance? No.
32. Have you, to your knowledge, ever been under federal, state, or local investigation for possible violation of a criminal statute? No.
33. Has a tax lien or other collection procedure ever been instituted against you by federal, state, or local authorities? Have you ever defaulted on a student loan? Have you ever filed for bankruptcy? No.

34. Have you ever been sued, either personally or professionally? No.
36. Are you now or have you ever been employed as a "lobbyist," as defined by S.C. Code § 2-17-10(13), or have you acted in the capacity of a "lobbyist's principal," as defined by S.C. Code § 2-17-10(14)? No.
37. Since filing with the Commission your letter of intent to run for judicial office, have you accepted lodging, transportation, entertainment, food, meals, beverages, money, or any other thing of value as defined by S.C. Code § 2-17-10(1) from a lobbyist or lobbyist's principal? No.
38. S.C. Code § 8-13-700 provides, in part, that "[n]o public official, public member, or public employee may knowingly use his official office, membership, or employment to obtain an economic interest for himself, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated." Please detail any knowledge you have of any formal charges or informal allegations against you or any other candidate for violations of these provisions. None.
39. S.C. Code § 8-13-765 provides, in part, that "[n]o person may use government personnel, equipment, materials, or an office building in an election campaign." Please detail any knowledge you have of any formal charges or informal allegations against you or any other candidate for violations of these provisions. None.
40. Itemize (by amount, type, and date) all expenditures, other than those for travel and room and board, made by you, or on your behalf, in furtherance of your candidacy for the position you seek. None, other than postage on "thank you" letters and stationary for those letters at a cost of approximately \$50.00.
41. List the amount and recipient of all contributions made by you or on your behalf to members of the General Assembly since the announcement of your intent to seek election to a judgeship. None.
42. Have you directly or indirectly requested the pledge of any member of the General Assembly as to your election for the position for which you are being screened? Have you received the assurance of any public official or public employee that they will seek the pledge of any member of the General Assembly as to your election for the position for which you are being screened? No.
43. Have you requested a friend or colleague to contact members of the General Assembly on your behalf? Are you aware of any friends or colleagues contacting members of the General Assembly on your behalf?
No, several friends have asked how they can help and I have told them that if they believed I am a good candidate that I hope they would urge any members of the General Assembly they know to get to know me. I have instructed anyone inquiring as to how they can help with regard to the rules governing pledging prohibitions.
44. Have you or has anyone acting on your behalf solicited or collected funds to aid in the promotion of your candidacy? No.

45. Have you or has anyone acting on your behalf contacted members of the Judicial Merit Selection Commission about your candidacy or intention to become a candidate? Not to my knowledge unless as a result of conversations described in my answer to number 43 above, other than introducing myself to them while campaigning in Columbia.
46. List all bar associations and professional organizations of which you are a member and give the titles and dates of any offices you have held in such groups.
- (a) North Carolina Bar;
 - (b) South Carolina Bar;
 - (c) Greenville County Bar;
 - (d) SCDTAA (Executive Committee Member since 2000);
 - (e) North Carolina Bar Association;
 - (f) Upstate Mediation Network (Vice President 1999-2001).
47. List all civic, charitable, educational, social, and fraternal organizations of which you are or have been a member during the past five years and include any offices held in such a group, any professional honors, awards, or other forms of recognition received and not listed elsewhere.
- (a) Temple of Israel Board of Directors (2nd VP 2005-2007);
 - (b) Greenville Little League (Coach);
 - (c) PTAs of Stone Academy, League Academy, and Greenville High School;
 - (d) Greenville High All-Sports Booster Club;
 - (e) Educational Foundation of the University of North Carolina (Upcountry Chapter Development Committee);
 - (f) UNC and UNC School of Law Alumni Associations.
48. Provide any other information which may reflect positively or negatively on your candidacy, or which you believe should be disclosed in connection with consideration of you for nomination for the position you seek.
- When I ran for a Circuit Court seat in 2003, I wrote about watching my parents work as volunteers as drug counselors while I was a child and how their experiences affected my views on equal justice under the law. While I still have those feelings, obviously a great deal has happened in my life since that time.
- In 2005 my wife, sons and I made the decision to add the 13 year-old daughter of a family friend who had passed away to our family. This child had been adopted by her grandmother (the family friend who died) at a young age after her birth parents lost their parental rights. This forced me to quickly learn to have a great deal of patience and to be firm with my judgments in dealing with not only the normal issues of a larger family but also with raising a teenager (now two teenagers).
- Additionally, obviously there are some special issues that arise in raising someone who has been through what my daughter has been through. Not only did her birth parents lose custody of her and both eventually end up in

prison, but also she had to deal with losing the only parent she ever really knew to cancer. As a result I think I've had to develop a sensitivity and at the same time a toughness that I'm not sure I had previously. These are traits that I think would serve me well on the bench.

49. References:

- (a) Steven M. Krause
Krause, Moorhead & Draisen
207 E. Calhoun Street
Anderson, South Carolina 29621
(864) 225-4000
- (b) Linda Long
Linda Long Travel
1444 Laurens Road
Greenville, South Carolina 29607
(864) 370-0394
- (c) Vernon Dunbar
Turner, Padget, Graham & Laney, P.A.
P. O. Box 1509
Greenville, South Carolina 29602
(864) 552-4601
- (d) Terri Anderson
Director of Education
Temple of Israel
400 Spring Forest Road
Greenville, South Carolina 29615
(864) 292-1782
- (e) Shields Cochran
South Carolina Bank and Trust
200 E. Broad Street, Ste 100
Greenville, South Carolina 29601
(864) 250-1503

YOUR SIGNATURE WILL BE HELD TO CONSTITUTE A WAIVER OF THE CONFIDENTIALITY OF ANY PROCEEDING BEFORE A GRIEVANCE COMMITTEE OR ANY INFORMATION CONCERNING YOUR CREDIT.

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

s/Eric K. Englebardt

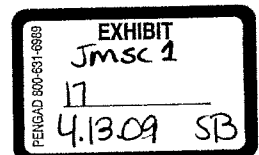
Date: 03/11/09

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

Circuit Court Judge
(New Candidate)

Full Name: Eric K. Englebardt
Address: 326 Hampton Avenue
Greenville, South Carolina 29601
Work Telephone: (864) 552-4600

1. Why do you want to serve as a Circuit Court Judge?
I have spent my entire time as a lawyer working as a litigator trying cases in various Circuit and Federal Courts around the state of South Carolina. There is no question that as a lawyer, my favorite part of my practice is the time I have spent in the courtroom, whether that be in front of juries, arguing motions or trying cases non-jury. Simply put, being in the courtroom is the reason I went to law school. Since my first campaign for a Circuit Court seat I have become even more convinced that this is how I want to enter public service. More and more of my practice has focused on ADR, whether through serving as a mediator or an arbitrator. I have greatly enjoyed all of these activities and found it to be more self-satisfying to help people resolve their disputes from a neutral position rather than to be truly adversarial. Also, through my work as an arbitrator, as well as by serving as a judge in various Moot Court Competitions and for the SC Youth Court I know I am comfortable in that role. It is for these reasons as well as that it has always been a personal goal to become a member of the bench, that have led me to running for this current position.
2. Do you plan to serve your full term if elected? Yes.
3. Do you have any plans to return to private practice one day? I would say at the present time it is my expectation to serve as a judge until retirement.
4. Have you met the Constitutional requirements for this position regarding age, residence, and years of practice? Yes.
5. What is your philosophy regarding *ex parte* communications? Are there circumstances under which you could envision *ex parte* communications being tolerated? I do not believe *ex parte* communications should be tolerated in litigation. There is nothing more infuriating as a litigant than even the thought that the other side has gained the ear of the Court without the opportunity to respond. The one or two times I have been involved in situations where a party



received or attempted to receive a temporary injunction against my client were some of the most frustrating times of my practice. While I certainly understand that limited *ex parte* communication is allowed in those infrequent occurrences, they are the only exceptions that come to mind.

6. What is your philosophy on recusal, especially in situations in which lawyer-legislators, former associates, or law partners are to appear before you? I am firmly of the belief that someone elected to the Circuit Court Bench through the process we use in South Carolina is someone who would have the integrity and personal ethical responsibility to recuse himself in a situation where there was any question as to whether or not they could be fair. I certainly know that this would be the "bright line test" I would want to use myself regarding recusal. However, I cannot imagine a situation where I feel my integrity could be compromised simply because a lawyer-legislator, former associate, law partner, or even close friend appeared before me. Part of my rationale for running for Circuit Court Judge is my deep-seeded sense of justice which puts the litigants and their need for fairness in the system first and foremost. As a result, I believe I could look past the identity of the counsel involved in a matter and focus solely on the ends of justice.
7. 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? Judges have to be particularly careful with statements regarding litigation and their thoughts on issues as well as on litigants. I hope that if I am elected I will be able to avoid any such appearance. However, as stated in my answer to question 6 above, because of my strong feelings that justice is required for all litigants, I believe it is likely that I would have a difficult time granting a motion for recusal if I truly did not believe that my statement actually was evidence of impartiality. Just as a judge has a duty to recuse himself when necessary, that same judge has a duty not to unless necessary in order to keep the "wheels of justice" rolling forward.
8. How would you handle the appearance of impropriety because of the financial or social involvement of your spouse or a close relative? If there was a matter in front of me that had an inkling of financial or social involvement of my spouse or a close relative I believe it would be my duty to recuse myself from such a matter.
9. What standards would you set for yourself regarding the acceptance of gifts or social hospitality? I would follow the code of judicial conduct's requirements regarding the acceptance of gifts or social hospitality. It is my belief that judges should be regular members of

society outside of the courtroom and, obviously, able to accept social invitations as long as their integrity and honesty is not compromised. However, the acceptance of gifts would seem to go "over the line" in this regard and I would not accept them from anyone who would not be someone with whom I exchanged gifts prior to becoming a judge.

10. How would you handle a situation in which you became aware of misconduct of a lawyer or of a fellow judge? If I became aware of misconduct of a lawyer or fellow judge I would be governed by Rule 8.3 of the Rules of Professional Conduct and would respond accordingly. Thankfully, I have not had to deal with this situation in my legal career to date and would hope I never had to deal with it as a judge.
11. Are you affiliated with any political parties, boards or commissions which, if you were elected, would need to be re-evaluated? No.
12. Do you have any business activities that you would envision remaining involved with if elected to the bench? No.
13. If elected, how would you handle the drafting of orders? It would be my hope that I would be able to draft most orders myself with the help of my law clerk. However, having watched judges deal with full calendars during weeks of nonjury hearings, I understand that that might be impractical. In cases where I felt it necessary to have an attorney draft a proposed order for me, I would require the attorneys to allow each other access to orders before their submission to me and comments from both sides before finalizing the order myself. Perhaps most importantly, I have learned from my arbitration practice that decisions need to be made as quickly as possible following a hearing.
14. If elected, what methods would you use to ensure that you and your staff meet deadlines? As a practicing attorney deadlines are extremely important to me and my staff. As a judge this will be even of more paramount importance because it is my belief that judges need to set an example for practicing attorneys. Thanks to the advent of computer technology tickler systems are very easy to set up and it would be my expectation that my secretary, my law clerk and myself would all understand how the tickler systems were used and would work as a team to ensure that all deadlines were met.
15. What is your philosophy on "judicial activism," and what effect should judges have in setting or promoting public policy? I am not at all in favor of judicial activism. It is my belief that statutory laws should be set up by the Legislature as representatives of the public, with the appellate courts the overseers of the Constitution and the protectors of current law. As a circuit court judge it would be my belief that it was my job to enforce the law, regardless of my personal feelings about it. While there are certainly occasions where appellate courts

need to step in and say that an individual act is contrary to public policy, it is my belief that these circumstances are few and far between and that elective government is better suited to set public policy, with the checks and balances of appellate courts to make sure that such decisions follow the constitution.

16. Canon 4 allows a judge to engage in activities to improve the law, legal system, and administration of justice. If elected, what activities do you plan to undertake to further this improvement of the legal system? As a judge I would be more than happy to be involved with activities to improve the law, legal system and administrations of justice. I was very active in the development of the Alternative Dispute Resolution program here in Greenville, and spent two years as the Vice President of the Upstate Mediation Network, an organization dedicated to educating the public about the use of mediation to resolve disputes. I am of the opinion that mediation can be used to further justice in other areas, even on the criminal side to assist in working out plea deals. I also believe the mediation program has been a boon to the civil side of the docket in Greenville and that my experiences as a mediator can help expand that program statewide. Strong mediation and arbitration programs speed up the dockets by removing cases and, accordingly, allowing all parties a more speedy route to the courtroom and finality to their claims.
17. Do you feel that the pressure of serving as a judge strains personal relationships (i.e. spouse, children, friends, or relatives)? How would you address this? In 2006 my wife was appointed as United States Bankruptcy Judge, so I can speak from personal experience on this issue. In actuality I believe that the pressure of serving as a judge might actually be less than that of practicing law in some ways. In talking to my wife and other judges, it seems to me that much of the time their stress level is somewhat less than those of practicing litigation attorneys. Obviously judicial decisions carry their own level of stress, but I do not believe it is any more than having your client's hopes and expectations looking over your shoulder throughout a case. My biggest concern will be time away from my family during terms spent out of circuit. However, I grew up with a father who traveled a great deal and yet we had a close relationship. I would hope to emulate him in staying involved in my children's activities and would simply understand I might have to spend a lot of time in the car driving home to see baseball, soccer and basketball games.
18. The following list contains five categories of offenders that would perhaps regularly appear in your court. Discuss your philosophy on sentencing for these classes of offenders.
 - a. Repeat offenders: I believe in all cases of sentencing case-by-case analysis will be necessary. However, with regard to repeat

offenders I would probably err on the side of harsher penalties as part of my philosophy with criminal sentencing is hoping that being caught and sentenced once would be a deterrent to future criminal acts. Once someone has become a repeat offender it would be my belief that harsher sentence would be necessary because they are less likely to reform and the need to protect society from them would be greater.

b. Juveniles (that have been waived to the circuit court):

Again this would need to be dealt with on a case-by-case basis, particularly looking at the circumstances and charges involved. However, I would probably err on the side of a more lenient sentences for nonviolent juveniles in the hopes that they would have a better opportunity to reform.

c. White collar criminals: I do not believe I would view white collar crime and sentencing very differently than any other kind of crime. Again, I hesitate to give any kind of concrete answer to this question as I hope I would view each case individually instead of painting with a broad brush as to how we would handle each of these kinds of cases. Note that my "philosophy" would probably lead me toward lesser sentences for nonviolent crimes as opposed to violent crimes with many other factors being considered.

d. Defendants with a socially and/or economically disadvantaged background:

My answer to 18(d) is very similar to my answer to 18(c). The backgrounds of the Defendants would not nearly be as important to me as the type of crime they committed and somewhat circuitously whether they are repeat offenders. Obviously if there was some alternative programming such as the Drug Courts, that I felt could help someone, if I had the latitude to do so I would be willing to consider that.

e. Elderly defendants or those with some infirmity:

It is my belief that the penal system should take care of inmates with infirmities or age problems. However, I am a firm believer that criminals should be treated as criminals despite their age or experience. Again, and I know I am repeating myself, more important to me than the makeup of the individual would be the crime they have been convicted of committing.

19. Are you involved in any active investments from which you derive additional income that might impair your appearance of impartiality?
No.
20. Would you hear a case where you or a member of your family held a *de minimis* financial interest in a party involved? It is my belief that hearing a case where a member of my family or myself had even a *de minimis* financial interest in the party involved would certainly, at the

very least, raise an appearance of impropriety. As a result, I would recuse myself of such a case.

21. Do you belong to any organizations that discriminate based on race, religion, or gender? No.
22. Have you met the mandatory minimum hours requirement for continuing legal education courses? Yes.
23. What do you feel is the appropriate demeanor for a judge?
It is my belief that a judge's demeanor is almost as important as his knowledge of the law. As the person in charge of the courtroom it is the judge that sets the tone and is the conduit between the general public, whether they be jurors or litigants, and the judicial system. Judges need to listen with patience and respect to the arguments of counsel, stay concerned with the comfort of the jury, be willing to work hard and, perhaps most importantly, be fair to all sides. Additionally, a judge must hold himself out to be respected by not taking actions that would portray him in a bad light. I believe this is very importantly, as judges are the symbols of our judicial system to the general public and confidence in the caliber of the judge leads to confidence in the system.
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?
While I believe judges certainly have a right to have a normal life outside the courtroom, it is my belief that a judge is always a representative of the court and, as a result, his judicial demeanor should be constant in and out of the courtroom.
25. Do you feel that it is ever appropriate to be angry with a member of the public, especially with a criminal defendant? Is anger ever appropriate in dealing with attorneys or pro se litigants? I believe controlling anger may be one of the hardest things a judge can do. I can think of many examples of cases, especially in the criminal context, where the actions of the criminal were so egregious that losing one's temper would be a natural act. I have also now observed several criminal proceedings where the criminal defendant behaved in a manner which was disrespectful to the judge and the process. However, as discussed in the above response regarding judicial demeanor, I do not believe anger is appropriate coming from the bench. One of the things I've learned from my wife over the years is that it is important to always try and be the most reasonable person in the room, especially in a courtroom. From the bench, that goal has even more importance. Much as I try to hold my temper when dealing with my children, it would be my goal to hold my temper with members of the public and criminal defendants as well. In regard to the second part of this question, I do not think anger per say is ever

truly appropriate. However, that is not to say that a judge expressing unhappiness with the actions of a litigant or an attorney is inappropriate. There are cases where contempt is warranted and in those situations an oral rebuke may be necessary. But, again, much as when disciplining your children it is better to leave anger out of the equation, it would be my hope that I could approach difficult situations from the bench in the same way.

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? I have not spent any money on my campaign other than to pay for gas or food going back and forth to Columbia or around the state, and for some stationary and postage.
27. If you are a sitting judge, have you used judicial letterhead or the services of your staff while campaigning for this office? N/A.
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? I have been asked by several friends, colleagues and other members of the bar how they can help. I have advised them of the rules regarding pledging, but let them know that I hope I get a chance to meet and get to know whomever they know in the General Assembly. I understand some of these contacts may have been made.
31. Have you contacted any members of the Judicial Merit Selection Commission?
I believe I have met most of the legislative members of the Judicial Merit Selection Commission during my time campaigning in Columbia during this legislative session. These "meetings" have been little more than a shake of the hand, introduction, and "cocktail party conversation". I have not had any significant conversations about my campaign with members of the Committee other than to let them know I was running.
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/Eric K. Englehardt

Sworn to before me this 12th day of March, 2009.

Notary Public for S.C.

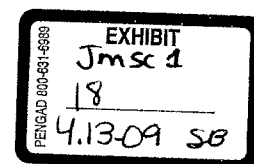
My Commission Expires: 1/12/2019

JUDICIAL MERIT SELECTION COMMISSION
PERSONAL DATA QUESTIONNAIRE

Court, Position, and Seat # for which you are applying: Circuit Court, Thirteenth Judicial Circuit, Seat 3

1. NAME: Mr. Allen Fretwell
BUSINESS ADDRESS: Thirteenth Judicial Circuit Solicitor's Office
305 East North Street, Suite 325
Greenville, SC 29601
TELEPHONE NUMBER: Office: (864) 467-8789

2. Date of Birth: 1974
Place of Birth: Greenville, SC
3. Are you a citizen of South Carolina? Yes
Have you been a resident of this state for at least the immediate past five years? Yes
5. Family Status: Married September 4, 2004, to April Elaine Fretwell. No children.
6. Have you served in the military? N/A.
7. List each college and law school you attended, including the dates of your attendance, the degrees you received, and if you left an institution without receiving a degree, the reason for your departure.
(a) USC School of Law 08/96 – 05/99 Juris Doctorate
(b) University of South Carolina 09/93 – 08/94 (Correspondence Course)
(c) Bob Jones University 08/91 – 05/95 Bachelor of Science
8. List the states in which you have been admitted to practice law and the year of each admission. South Carolina 1999
Also list any states in which you took the bar exam, but were never admitted to the practice of law. N/A
If you took the bar exam more than once in any of the states listed, please indicate the number of times you took the exam in each state. N/A
9. List the significant activities in which you took part during your attendance at college, graduate, and law school. Give the dates you were involved in these activities and list any leadership positions you held.
College:
(a) Who's Who Among Students in American Universities & Colleges
(b) Dean's List
(c) Judge National Forensic League
(d) Counselor, Home Educators Leadership Program
(e) Actor, University Classic Players (Dramatic Productions)
(f) Member, University Debate Association
(g) Software Instructor, Carlson Group, Inc. (Summer 1996)



- (h) Guardian *ad Litem* (11/1995 – 07/1996)
 - (i) Legislative Intern, Fourth Congressional District (Fall 1995 – Summer 1996)
 - (j) Substitute Teacher, Greenville County School District (Fall 1995)
 - (k) Instructor, South Carolina Department of Juvenile Justice (1994-1996)
 - (l) Intern, Merrill Lynch, Pierce, Fenner, & Smith (Fall 1994)
 - (m) Volunteer, Commission on Alcohol & Other Drug Abuse Prevention (Fall 1994)
 - (n) Member, Inter-Societal Council (1994)
 - (o) Vice-President, Excalibur Literary Society (1994)
 - (p) University Fine Arts Contest Finalist, Original Oratory (1993)
 - (q) Member, University Business Association (1992-1995)
 - (r) Computer Lab Assistant (1992-1994)
- Law School:
- (a) Order of the Palmetto (1998)
 - (b) Palmetto Legal Scholar
 - (c) Order of the Wig and Robe (1999)
 - (d) Legislative Council Representative, Student Bar Association (1997-1999)
 - (e) Student Editorial Board, ABA Real Property, Probate, & Trust Journal (1997-99)
 - (f) John Belton O’Neal Inn of Court (1998-1999)
 - (g) Chair, Student Bar Association Technology Committee
 - (h) Research Assistant, Professor Patrick Hubbard (National Historic Preservation)
 - (i) Member, Federalist Society
 - (j) Member, Student-Faculty Taskforce
 - (k) Member, Christian Legal Society
 - (l) Judicial Intern, Honorable Joseph F. Anderson, Jr (Fall 1997)
 - (m) Law Clerk, Chief Legal Counsel for Gov. David Beasley (Summer - Fall 1998)
 - (n) Legislative Aide: Speaker *Pro Tempore* Terry E. Haskins (Fall 1996 -1997)
 - Honorable Michael Easterday (Spring 1998)
 - Honorable Glenn Hamilton (Spring 1998)
 - Honorable Shirley Hinson (Spring 1999)
 - Honorable Robert Leach (Spring 1998)
 - Honorable John Graham Altman (Spring 1999)
 - Honorable Dr. Thomas Dantzler (Spring 1999)
 - Honorable Lynn Seithel (Spring 1999)
 - (o) Law Clerk, Furr and Henshaw P.A. (Summer 1997)
10. Describe your continuing legal or judicial education during the past five years. Include only the title and date of any continuing legal or judicial education course completed.
- | | <u>Conference/CLE Name</u> | <u>Date(s)</u> |
|-----|----------------------------|----------------------|
| (a) | Death Penalty Update | 08/21/08 to 8/22/08; |

- (b) Technology in Prosecution 05/11/08;
 - (c) 2007 Annual Conference 09/23/07;
 - (d) 7th Annual Meeting 05/13/07;
 - (e) 2006 Annual SC Solicitors' 09/24/06;
 - (f) Cross Examination 08/28/06;
 - (g) 13th Circuit Solicitor's Office 05/06/06;
 - (h) Avoiding Errors in Closing 09/27/05;
 - (i) Ethics & P.R. Training Tracks 09/26/05;
 - (j) Prosecution of Ted Bundy 09/25/05;
 - (k) 13th Circuit Solicitor's Office 05/08/05
 - (l) Revised Lawyer's Oath CLE 09/27/04;
 - (m) 2004 Annual Solicitor's 09/26/04;
 - (n) 4th Annual Retreat 05/03/04.
11. Have you taught law-related courses or lectured at bar association conferences, educational institutions, or continuing legal or judicial education programs? If so, briefly describe each course or lecture
- (a) Guest Speaker, Bob Jones University Criminal Justice Class [3/7/08]
Topic: Answering Pre-submitted Questions about Criminal Prosecution
 - (b) CLE Speaker, Thirteenth Judicial Circuit Conference
Topic: Applicability of the Fifth and Sixth Amendments Right to Counsel
 - (c) Guest Speaker, Bob Jones University Criminal Justice Association
Topic: A Prosecutor's Role
 - (d) Guest Speaker, Bob Jones University Criminal Justice Camp
Topic: The Courts
 - (e) Judge, *We The People: Project Citizen* (7/14/06)
 - (f) Attorney Coach, Bob Jones Academy Mock Trial Team (2000 – Present)
 - (g) Judge, Greenville County Youth Court
 - (h) Presiding Judge, American Mock Trial Association Regional Tournament
 - (i) Scoring Judge, American Mock Trial Association Regional Tournament
 - (j) Scoring Judge, National High School Mock Trial Competition (2005)
 - (k) Attorney Coach, Bob Jones University Mock Trial Team (2004 – 2005)
12. List all published books and articles you have written and give citations and the dates of publication for each.
- (a) "Growing up With Grandparents" *Today's Christian Senior* (Spring 2007)*
*Article title may reflect editorial alteration
13. List all courts in which you have been admitted to practice and list the dates of your admission. Give the same information for administrative bodies that require a special admission to practice.
South Carolina , November 15, 1999
14. Describe chronologically your legal experience since graduation from law school and include a list of all law firms with which you have been associated. Describe the general character of your practice and divide it into periods with dates if its character has changed over the years.
- (a) Assistant Solicitor, Thirteenth Judicial Circuit 08/99 to Present

If you are a judge and are not seeking a different type of judgeship, the following questions are inapplicable:

- (b) If you are a candidate for Circuit Court, please provide a brief written description of your experience in criminal matters, including any cases handled over the past five years and include a brief description of the issues involved. Further, please provide a brief written description of your experience in civil matters, including any cases handled over the past five years and include a brief description of the types of matters handled, issues involved, and procedural history. Please include information such as the primary areas in civil court in which you practice, whether you represent plaintiffs or defendants, or both. You may go back farther than five years if you feel it would assist the Commission with its assessment of your experience. If you lack experience in an area, describe how your background has prepared you to preside over such matters as a Circuit Court Judge, or how you would compensate for your lack of experience in this area.

Although I am assigned to the Violent Crimes Unit, drug cases have comprised the majority of my prosecutorial workload over the past five years. Common issues involved in drug cases include: (1) evaluating the credibility of undercover informants; (2) identifying police conduct implicating the Fourth Amendment right against unreasonable searches & seizures; (3) determining the propriety of police-citizen encounters and interrogation of suspects within the Fifth Amendment framework; (4) verifying proper chain of custody for all fungible items and (5) responding to these and other suppression motions through oral argument.

I am also responsible for handling many arson cases made in Greenville County. Common issues in arson cases include: (1) evaluating the process employed by law enforcement and arson investigators in determining cause and origin; (2) reviewing the thoroughness of the investigation to rule out accidental and natural causes; and (3) learning the scientific process utilized by analysts to determine the presence of ignitable liquids and fuel loads in preparation for presenting this evidence at trial.

Serving as the liaison for law enforcement Cold Case Units, I am responsible for evaluating the sufficiency of evidence and providing an alternate perspective for pursuing leads and uncovering additional evidence. I have also had the opportunity to secure convictions in a double homicide that had been cold for over four years prior to arrest and have served as co-counsel in other murder cases. I previously assisted in a capital prosecution for which I conducted the preliminary hearing that resulted in the case being bound over for Grand Jury action.

Moreover, even as a prosecutor, I have been responsible for knowing

and applying the rules that apply to civil practice. I am responsible for knowing and applying the Rules of Evidence in the same manner as those whose practice is restricted to the civil arena. Moreover, I must know and apply the Rules of Criminal Procedure in addition to the Rules of Civil Procedure. Not only must I comply with the Rules of Professional Conduct that govern the behavior of all lawyers, I must also follow the additional rules of conduct that govern prosecutors.

Additionally, I have been involved in the mock trial program in South Carolina for eight years. The cases considered by the mock trial programs are evenly divided between civil and criminal subject matter and require an understanding of the distinction between civil and criminal cases such as burdens of proof and legal presumptions. I have served as the attorney coach for the Bob Jones Academy team who, during my tenure, twice won the State Championship and, in 2004, won the National Championship. I have also served as an attorney coach at the middle school and collegiate levels. I have served as a judge, both presiding and scoring, on the high school and collegiate level, and have most recently served as a presiding judge in multiple rounds at the American Mock Trial Association's District Competition hosted by Furman University. I served as a judge for the National High School Mock Trial Championship in Charlotte, North Carolina, in 2005. I participated in the creation of Greenville County's school-based Youth Court Program and have served as a judge in this program many times. I have served as a judge for the South Carolina Bar's "Project Citizen" program hosted by Clemson University and was, for a number of years, a judge in competitions presented by the National Forensic League.

15. What is your rating in Martindale-Hubbell? To my knowledge, I have never been listed in Martindale-Hubbell.

Retired judges/justices and judges/justices applying for reelection to their current position may omit Questions 16-21. If a candidate is seeking a judgeship different than his or her current position, Questions 16-21 should be answered based on experience prior to serving on the bench.

16. What was the frequency of your court appearances during the last five years?
(a) federal: None;
(b) state: In court 2-3 weeks each month for pleas, trials or motions.
17. What percentage of your practice involved civil, criminal, and domestic matters during the last five years?
(a) civil: 0%;
(b) criminal: 100%;
(c) domestic: 0%.
18. What percentage of your practice in trial court during the last five years involved matters that went to a jury, including those that settled prior to trial? I

carry 275 to 375 warrants on my docket at any given time, dispose of 500 to 600 warrants a year and try 2 to 5 cases a year. That doesn't even register as a percentage point.

- (a) jury: 0.1%;
- (b) non-jury: 99.9%.

Did you most often serve as sole counsel, chief counsel, or associate counsel in these matters? Primarily sole counsel or chief counsel; associate counsel in some instances as a mentor or assisting another prosecutor in a complicated murder case

19. List five of the most significant litigated matters that you have personally handled in either trial or appellate court or before a state or federal agency. Give citations if the cases were reported and describe why these matters were significant.

- (a) State v. Carla Taylor, 260 S.C. 18, 598 S.E.2d 735 (Ct. App. 2004)—Overruled State v. Chisolm, 355 S.C. 175, 584 S.E.2d 401 (Ct. App. 2003), and established the current test for establishing chain-of-custody for drug cases in South Carolina.
- (b) State v. Jomer Hill, Op. No. 4507 (S.C. S. Ct. filed February 24, 2009) (Shearouse Adv. Sh. No. 10 at 67)—This was one of the initial cold case arrests, since the Greenville Police Department started its Cold Case Unit several years ago. The defendant was arrested in November 30, 2004, four years after his crime, and was convicted of double-murder at trial in May of 2006.
- (c) State v. Gustavo Alvarado, AP 2005-UP-120 (S.C. Ct. App. 2005)—Defendant was convicted of Trafficking in Marijuana and was sentenced to 18 years. Defendant appealed on the basis that the stop was pretextual and not supported by probable cause. The Court of Appeals disagreed and the conviction was affirmed. A significant aspect of this case was that the passenger, Gallegos, testified that the drugs were his and the defendant, Alvarado, didn't know anything about them. The case on appeal focused on the element of the defendant's ability to exercise dominion and control over the drugs or over the premises upon which the drugs were found.
- (d) State v. Jermaine Hawkins—Defendant was convicted *in absentia* of two counts each of Armed Robbery and Assault and Battery of a High and Aggravated Nature. This case is significant to me because of the profound effect these crimes had on the victims involved and the fact that an identification of the defendant was strong enough to convict the defendant in his absence. The defendant petitioned for post-conviction relief (PCR) and his application was granted since the trial judge did not specifically advise the jury panel that the defendant's absence should not be held against him, although I advised the jury of this responsibility during closing arguments. Following the granting of the defendant's application for PCR, this case was resolved by way of a guilty plea.

- (e) State v. Jeffrey Motts—Handled the preliminary hearing where this capital-murder case was bound over for grand jury action. The defendant was subsequently convicted and sentenced to death.
20. List up to five civil appeals that you have personally handled. Give the case name, the court, the date of decision, and the citation if the case was reported. If you are a candidate for an appellate court judgeship, please attach one copy of briefs filed by you in each matter. N/A
21. List up to five criminal appeals that you have personally handled. Give the case name, the court, the date of decision and the citation if the case was reported. If you are a candidate for an appellate court judgeship, please attach one copy of briefs filed by you in each matter. N/A
22. Have you ever held judicial office? If so, list the periods of your service, the courts involved, and whether you were elected or appointed. Describe the jurisdiction of each of the courts and note any limitations on the jurisdiction of each court. No.
23. If the answer to question 22 is yes, describe or attach five of your most significant orders or opinions and give the citations if they were reported. N/A
24. Have you ever held public office other than judicial office? If so, list the periods of your service, the office or offices involved, and whether you were elected or appointed. Also, state whether or not you have timely filed your report with the State Ethics Commission during the period you held public office. If not, were you ever subject to a penalty?
Aside from being appointed Assistant Solicitor and Law Clerk to the Chief Legal Counsel to Governor David Beasley, I have not held any public office.
25. List all employment you have had while serving as a judge (whether full-time or part-time, contractual or at will, consulting or otherwise) other than elected judicial office. N/A
26. Have you ever been an unsuccessful candidate for elective, judicial, or other public office?
I have never before been a candidate for elective or any other public office besides a judicial office. I ran as a candidate for the Circuit Court, At-Large Seat 13 in 2007-08 and was found qualified and nominated by the South Carolina Judicial Merit Selection Commission. Once I learned that a candidate in that race had secured enough pledges to be elected, I immediately withdrew from the race. In September of 2008, I again filed as a candidate for the Circuit Court, At-Large Seat 1. I was found qualified, but not nominated, by the Judicial Merit Selection Commission.
27. Have you ever been engaged in any occupation, business, or profession other than the practice of law, teaching of law, or holding judicial or other public office?

	<u>Occupation/Job</u>	<u>Employ. Dates</u>	<u>Employer Name</u>
(a)	Legislative Aide	01/99 – 05/99	SC House of Rep's
(b)	Sales Associate	12/98 – 05/99	The Men's Wearhouse

(c)	Law Clerk	04/98 – 01/99	Gov. David Beasley's Off.
(d)	Legislative Aide	01/98 – 04/98	SC House of Rep's
(e)	Law Clerk	05/97 – 10/97	Furr and Henshaw, P.A.
(f)	Paige/Leg. Aide	08/96 – 05/97	SC House of Rep's
(g)	Software Trainer	04/96 – 08/96	Carlson Compute
(h)	Waiter	03/96 – 04/96	Roe Coach Factory Rest.
(i)	Substitute Teacher	09/95 – 12/95	Greenville School District
(j)	Camp Counselor	06/95 – 08/95	Camp CoBeAc (MI)
(k)	Electrician's Asst	05/95	P.E. Collins Electric Co.
(l)	Courier	01/95 – 04/95	Mitchell Bouton Law Firm
(m)	Instructor	01/95 – 04/95	SC Dept of Juv. Justice
(n)	Usher	01/95 – 05/95	Bob Jones University
(o)	Banquet Server	08/94 – 09/94	Hyatt Regency Hotels
(p)	Comp. Lab Instructor	08/92 – 12/94	Bob Jones University
(q)	Food Service/Waiter	03/92 – 05/95	Greenville Country Club
(r)	Produce Delivery	17/92 – 37/92	Beason's Produce Co
(s)	Audio/Visual Director	08/91 – 05/92	BJU Academy Auditorium
(t)	Usher	04/91 – 08/91	Greenville Braves
(u)	Electrician's Asst	57/89 – 87/89	P.E. Collins Electric Co
(v)	Waiter/Cook	02/89 – 04/91	Swensen's Ice Cream Parl
(w)	Custodian	05/88 – 08/88	Bob Jones University

28. Are you now an officer or director or involved in the management of any business enterprise? Explain the nature of the business, your duties, and the term of your service. No (see question 47)
29. A current, complete financial net worth statement was provided to the Commission.
30. Describe any financial arrangements or business relationships that you have, or have had in the past, that could constitute or result in a possible conflict of interest in the position you seek.
My wife and I have a rental house that is rented to a physician's assistant and her husband. I would recuse myself if these renters were a party to any suit in Circuit Court, and I would disclose this relationship in any case in which their employers were a party in any suit before me and offer to recuse myself if either party believed there to be a conflict of interest due to my landlord-tenant relationship with our renters.
31. Have you ever been arrested, charged, or held by federal, state, or other law enforcement authorities for violation or for suspicion of violation of any federal law or regulation, state law or regulation, or county or municipal law, regulation, or ordinance, or any other law, including another country's law
I have never been placed in custodial arrest for any reason. I have received one or two tickets for speeding and one for, I believe, an improper lane change, but I do not recall the amount of the fines. I have not, as I recall, received a ticket for any reason since being admitted to the SC Bar.
32. Have you, to your knowledge, ever been under federal, state, or local

- investigation for possible violation of a criminal statute? No.
33. Has a tax lien or other collection procedure ever been instituted against you by federal, state, or local authorities? Have you ever defaulted on a student loan? Have you ever filed for bankruptcy? No.
34. Have you ever been sued, either personally or professionally, that is, have you ever been named as defendant or respondent in any court of law?
Yes. A former criminal defendant in a state case brought an action in Federal Court suing me, his attorney, the trial judge, the court reporter, the clerk of court, and others in connection to his guilty plea or conviction in state court. The defendant alleged a violation of his civil rights under 42 U.S.C. § 1983, the case was styled Anderson v. Miller et al, and the case docket number was 9:2008cv00743. The defendant filed this suit on March 6, 2008, and he was ordered by Federal Magistrate Judge George C. Kosko on May 5, 2008, to conform his pleadings to the proper form in 20 days or risk having his suit dismissed. On August 19, 2008, Judge Kosko issued a "Report and Recommendation" that this suit be dismissed by the District Court. In his report, Judge Kosko found specifically that the plaintiff failed to state a claim upon which relief could be granted and that the actions alleged by the complaint to have been by me were immune from suit pursuant to the protections afforded by prosecutorial immunity. Although this report does not qualify as a final disposition of this matter, the plaintiff has ten (10) days in which to file objections with the District Court. To my knowledge, no such objections have been filed. I believe I am no longer a party defendant in this action and have never been formally served with any pleadings in this matter.
36. Are you now or have you ever been employed as a "lobbyist," as defined by S.C. Code § 2-17-10(13), or have you acted in the capacity of a "lobbyist's principal," as defined by S.C. Code § 2-17-10(14)? No.
37. Since filing with the Commission your letter of intent to run for judicial office, have you accepted lodging, transportation, entertainment, food, meals, beverages, money, or any other thing of value as defined by S.C. Code § 2-17-10(1) from a lobbyist or lobbyist's principal? No.
38. S.C. Code § 8-13-700 provides, in part, that "[n]o public official, public member, or public employee may knowingly use his official office, membership, or employment to obtain an economic interest for himself, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated." Please detail any knowledge you have of any formal charges or informal allegations against you or any other candidate for violations of these provisions. I have no knowledge of any such charges or allegations.
39. S.C. Code § 8-13-765 provides, in part, that "[n]o person may use government personnel, equipment, materials, or an office building in an election campaign." Please detail any knowledge you have of any formal charges or informal allegations against you or any other candidate for violations of these provisions.

I have no knowledge of any formal charges or informal allegations against myself or any other candidate for violations of these provisions.

40. Itemize (by amount, type, and date) all expenditures, other than those for travel and room and board, made by you, or on your behalf, in furtherance of your candidacy for the position you seek.

<u>FROM</u>	<u>TO</u>	<u>DESCRIPTION</u>	<u>QUANTITY</u>	<u>PRICE/UNIT</u>	<u>AMOUNT</u>	<u>TOTAL</u>
12/8/08	12/30/08	Cards (II)/Postage	17	0.662	\$11.25	
		Discards (Cards)	1	0.242	<u>\$0.24</u>	
		TOTAL			\$11.50	\$11.50
1/1/08	1/31/09	Cards (II)/Postage	16	0.662	\$10.59	
		Discards (Cards)	2	0.242	<u>\$0.48</u>	
		TOTAL			\$11.08	\$22.57
2/1/09	2/27/09	Cards (II)/Postage	15	0.662	\$9.93	
		Discards (Cards)	3	0.242	<u>\$0.73</u>	
		TOTAL			\$10.66	\$33.23
3/1/09	3/13/09	Cards (II)/Postage	6	0.662	\$3.97	
		Discards (Cards)	0	0.242	<u>\$0.00</u>	
		TOTAL			\$3.97	\$37.20

*For accounting purposes, an "expenditure" occurs at time of use and not purchase.

41. List the amount and recipient of all contributions made by you or on your behalf to members of the General Assembly since the announcement of your intent to seek election to a judgeship.

I have not made any contributions of this nature and I am not aware of, nor have I authorized, any such contributions on my behalf.

42. Have you directly or indirectly requested the pledge of any member of the General Assembly as to your election for the position for which you are being screened? Have you received the assurance of any public official or public employee that they will seek the pledge of any member of the General Assembly as to your election for the position for which you are being screened? No, to both questions.

43. Have you requested a friend or colleague to contact members of the General Assembly on your behalf?

I have not requested that any friends or colleagues contact members of the General Assembly on my behalf with respect to the seat I now seek.

Are you aware of any friends or colleagues contacting members of the General Assembly on your behalf? .

Except for contact properly taking place during my last candidacy when such contact was appropriate, no one has, to my knowledge, contacted any member of the General Assembly on my behalf.

44. Have you or has anyone acting on your behalf solicited or collected funds to aid in the promotion of your candidacy? No.
45. Have you or has anyone acting on your behalf contacted members of the Judicial Merit Selection Commission about your candidacy or intention to become a candidate?

I have not actively contacted any member of the Commission. I know that I have come into contact with members of the Commission in the course of attending legislative receptions. My contact with JMSC members during previous candidacies for judicial office was disclosed at that time.

46. List all bar associations and professional organizations of which you are a member and give the titles and dates of any offices you have held in such groups.

- (a) South Carolina Bar
 Member, SC BAR Nominating Committee 2007 - Present
 Member, House of Delegates 2002-03; 2006 - Present
 Member, Law Related Education Committee 2004 - Present

47. List all civic, charitable, educational, social, and fraternal organizations of which you are or have been a member during the past five years and include any offices held in such a group, any professional honors, awards, or other forms of recognition received and not listed elsewhere.

- (a) Colonel Elias Earle Historic District Association
 President 2008 - Present
 Vice President 2008
 Neighborhood Liaison to the City of Greenville 2008
 Member 2007 - Present
- (b) *Roper Mountain Science Center Association
 Member 2001 - Present
 President 2007 - 2008
- (c) Center for Developmental Services Children's Carnival
 Volunteer 2004 - 2007
- (d) Hampton Park Baptist Church
 Member 1986 - Present

*The RMSCA is a non-profit, eleemosynary "friends" group that supports the Roper Mountain Science Center (RMSC) through fundraising, volunteer recruitment and community involvement. The RMSC is a facility dedicated to the education of school-aged children and young people in the sciences and is owned and operated by the School District of Greenville County.

48. Provide any other information which may reflect positively or negatively on your candidacy, or which you believe should be disclosed in connection with consideration of you for nomination for the position you seek.

I understand the distinction between the role of a judge and the role of an advocate. As a prosecutor, I advocate on behalf of the State. As a judge, I would have no advocacy role whatsoever. A judge has "no friends to reward nor enemies to punish." I would treat every litigant and attorney equally and

with the respect with which I would wish to be treated.

As a Christian, I have adopted an ethical code for my life that includes many of the principles reflected in the Rules of Professional Conduct and the Code of Judicial Conduct. One of these principles is treating others as I would like to be treated. My courtroom experience has taught me the importance of a level playing field where rules are consistently and fairly applied. My primary goal as a circuit judge would be to fairly, impartially and consistently apply the law.

The prospect of studying new areas of the law is exciting to me, as I have always enjoyed learning. I realize, however, that the academic aspect of the judicial process will not be my only concern. I want to perform my duties in an ethical manner that honors our system of justice.

My siblings and I were raised by my grandparents after my mother died of liver cancer. As educators, my grandparents taught us the value of hard work and a good education. They worked and sacrificed to provide us with the highest quality of life. My grandfather taught me to do my best, even in the little things, and to finish the job. He put our needs ahead of his own and was kind and helpful to everyone he met. Living and working in Greenville, I encounter his former students who remember him fondly and tell me how he profoundly and positively influenced their lives. I want to influence people as a circuit judge in the same positive and caring way that my grandfather did throughout his life.

As a trial attorney, I have observed many different lawyers, jurors and judges. I have waited for court to start, and I have had judges wait for my witnesses to appear. I have talked with witnesses about their fear of the courtroom and heard fellow attorneys concerned about the "mood" of the judge that day. Some judges have displayed extraordinary discernment and temperament in their roles, and others have failed to do so. Judges greatly influence the public perception of our justice system. Although few remember the lawyers involved in a particular case, most people remember the judge. I want to be the kind of judge who is the same both on and off the bench and who neither forgets the responsibilities nor violates the public trust of judicial office.

49. References:

- (a) Mr. Brett Robinson
Carolina First Bank
102 South Main Street
Greenville, SC 29601
(864) 255-7898
- (b) The Honorable Steve Loftis
Sheriff, Greenville County
4 McGee Street
Greenville, SC 29601
(864) 467-5284
- (c) Ms. Nell Stewart
26 East Montclair Avenue

Greenville, SC 29609
(864) 232-3392

(d) Mr. Frank Eppes, Esquire
Eppes & Plumblee, P.A.
1225 South Church Street
Greenville, SC 29605
(864) 235-2600

(e) Ms. Anne Culbreath, Esquire
609 Neely Farm Drive
Simpsonville, SC 29680
(864) 228-8338

YOUR SIGNATURE WILL BE HELD TO CONSTITUTE A WAIVER OF THE CONFIDENTIALITY OF ANY PROCEEDING BEFORE A GRIEVANCE COMMITTEE OR ANY INFORMATION CONCERNING YOUR CREDIT. I HEREBY CERTIFY THAT MY ANSWERS ARE TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

S/Allen O. Fretwell
Date: 03/13/09

ALLEN O. FRETWELL
8 JAMES STREET
GREENVILLE, SOUTH CAROLINA 29609

April 13, 2009

Jane O. Shuler, Chief Counsel
Judicial Merit Selection Commission
Post Office Box 142
Columbia, South Carolina 29202

Re: Circuit Court, Thirteenth Judicial Circuit, Seat 3

Dear Jane:

I wish to amend the following answers on my Personal Data Questionnaire:

- (1) Amendment to Question 40, to change answer to the following:

EXPENSE REPORT: JUDICIAL CANDIDACY (Spring 2009)


<u>FROM</u>	<u>TO</u>	<u>DESCRIPTION</u>	<u>QUANTITY</u>	<u>PRICE/UNIT</u>	<u>AMOUNT</u>	<u>RUN TOTAL</u>
12/8/08	12/30/08	Cards (II)/Postage	17	0.662	\$11.25	
		Discards (Cards)	1	0.242	<u>\$0.24</u>	
		TOTAL			\$11.50	\$12.19
1/1/08	1/31/09	Cards (II)/Postage	16	0.662	\$10.59	
		Discards (Cards)	2	0.242	<u>\$0.48</u>	
		TOTAL			\$11.08	\$23.93
2/1/09	2/27/09	Cards (II)/Postage	15	0.662	\$9.93	
		Discards (Cards)	3	0.242	<u>\$0.73</u>	
		TOTAL			\$10.66	\$35.22
3/1/09	3/13/09	Cards (II)/Postage	6	0.662	<u>\$3.97</u>	
		TOTAL			\$3.97	\$39.43
3/13/09	3/31/09	Cards (II)/Postage	9	0.662	\$5.96	
		Manila Envelope	1	0.2	\$0.20	
		Paper/Ink	71	0.062	\$4.40	
		Stationery	167	0.025	\$4.18	
		Stat. Env's	166	0.065	\$10.79	

		Envelopes	5	0.05	\$0.25	
		Resumes	200	0.425	\$85.00	
		Ink	339	0.05	\$16.95	
		Stamps	167	0.42	<u>\$70.14</u>	
		TOTAL			\$197.87	\$249.17
4/1/09	4/10/09	Cards (H)/Postage	4	0.662	\$2.65	
		Discards (Cards)	0	0.242	\$0.00	
		Paper/Ink	9	0.062	\$0.56	
		Envelopes	6	0.05	\$0.30	
		Ink	6	0.05	\$0.30	
		Stamps	3	0.42	<u>\$1.26</u>	
		TOTAL			\$5.07	\$254.54

*For accounting purposes, an "expenditure" occurs at time of use and not purchase.

Thank you for the opportunity to revise my questionnaire with this information.

Respectfully,

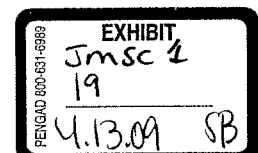

Allen Fretwell

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

Circuit Court
(New Candidate)

Full Name: Allen Oliver Fretwell
Business Address: 305 E. North Street, Suite 325
Greenville, SC 29601
Business Telephone: (864) 467-8789

1. Why do you want to serve as a Circuit Court judge?
I want to serve as a Circuit Court judge because I am proud of the American system of justice and I respect the rule of law. I believe I possess the strength of character to remain impartial and to treat people fairly. The life of a Circuit Judge demands constant travel and a strong work ethic and I have the energy and the inclination for both. As a prosecutor, I have spent a considerable amount of time in the courtroom. I have appeared before judges who exhibit the highest ideals of professionalism, fairness and integrity and I have appeared before those who do not. Trial judges are the "face" of the judicial system and greatly affect not only those appearing before them, but also the jurors whose limited interaction with the legal system forms a lasting impression. Most attorneys who are eligible to practice law in this state and have any experience in trial work can learn the rules, interpret the law and apply the rules and the law in any given situation. Character, however, is not something you pick up from a rule book. Integrity is not something that you put on or take off like a robe. Because I highly value character and integrity in my own life, I want to help maintain these crucial elements of the judicial system by becoming a Circuit Court judge. I understand the sacrifices judges must make to preserve their impartiality and the difficulty involved in treating all people fairly. I know what it means to place justice and fairness above self-advancement and popularity and I am prepared to conduct myself without bias or prejudice in the exercise of my judicial responsibilities.
2. Do you plan to serve your full term if elected? Yes
3. Do you have any plans to return to private practice one day? No
4. Have you met the Constitutional requirements for this position regarding age, residence, and years of practice? Yes
5. 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 violate the very nature of legal advocacy and have no place in our system of justice. In limited



circumstances, *ex parte* communications may be appropriate for scheduling, emergencies, administrative functions, settlement resolution and where specifically authorized by statute. In all such instances, the judge should examine the wisdom and necessity of these communications and fully inform all parties involved.

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

I will recuse myself in any matter in which my impartiality could reasonably be questioned unless all parties to the action waive my disqualification after full disclosure. I have prosecuted cases defended by lawyer-legislators without respect to their office. As a circuit judge, I will treat all litigants and their counsel fairly and impartially.

7. 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?

I will grant a motion for recusal where any appearance of bias exists.

8. How would you handle the appearance of impropriety because of the financial or social involvement of your spouse or a close relative?

I will grant any motion for recusal in this circumstance. I will maintain diligent efforts to be informed of these involvements and fully disclose them in every appropriate situation.

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

I will not accept any gift, bequest, loan or favor from anyone except as permitted by Canon 4D(5).

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

I would refer the misconduct of any judge that raises a substantial question as to that judge's fitness for office to the Commission on Judicial Conduct. I would refer the misconduct of any lawyer that raises a substantial question as to the lawyer's honesty, trustworthiness or fitness for the profession to the Commission on Lawyer Conduct or the Office of Disciplinary Counsel.

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

I am not currently affiliated with a political party in a leadership, fundraising or public advocacy role. Upon election to the Circuit Court, I would discontinue past practices of attending political gatherings.

Upon election to the Circuit Court, I will resign my position as a member of the Roper Mountain Science Center Association Board of Directors, as the primary purpose of this organization involves fundraising. I will resign my office with my neighborhood association and examine whether my continued membership in this association presents any

- conflict with my judicial responsibilities.
12. Do you have any business activities that you would envision remaining involved with if elected to the bench? No, other than our rental house.
13. If elected, how would you handle the drafting of orders?
After fully articulating its contents on the record, I would typically have the prevailing party draft the order and forward it to opposing counsel for review before I reviewed and signed it. Where circumstances are not practical to follow this procedure, either my law clerk or I would draft an order for review by counsel prior to issuance. If time restraints required, I would draft and issue an order without specific input by counsel as to its wording, but this would not be my preferred method of handling orders and would occur only in limited circumstances.
14. If elected, what methods would you use to ensure that you and your staff meet deadlines?
I would employ the use of electronic calendars with automatic reminders and back this system up to an archival network. I would periodically review the efficacy of this system and consider any suggestions by my staff, fellow judges and their staffs, or others for improving my calendaring system.
15. What is your philosophy on "judicial activism," and what effect should judges have in setting or promoting public policy?
Judges have no role in setting or promoting public policy. The judge's responsibility is to simply interpret and apply the law within the constitutional framework.
16. Canon 4 allows a judge to engage in activities to improve the law, legal system, and administration of justice. If elected, what activities do you plan to undertake to further this improvement of the legal system?
As a member of the SC Bar's Law Related Education Committee and as an attorney coach for mock trial programs, I have participated in many areas of law-related education for non-lawyers. As a judge, I would continue to engage in activities to educate and excite young people and non-lawyers about the practice of law and their legal rights and responsibilities. I would continue to speak to schools and civic groups about the law, its history and its practice whenever possible. I agree that the requirements of an independent judiciary do not include isolating members of the bench from the community in which they live and I believe it is important for judges, as well as other lawyers, to give back to the community in a positive way that engenders respect and appreciation for the judicial system.
17. 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 address this?
Although I cannot be certain how judicial service might strain my personal relationships, I know that my wife strongly supports my decision and is as committed to the successful fulfillment of my judicial

responsibilities as I am. Should my personal life ever create an obstacle to the proper performance of my judicial responsibilities, I would take every step to alleviate the obstacle and, if unsuccessful, I would resign.

18. The following list contains five categories of offenders that would perhaps regularly appear in your court. Discuss your philosophy on sentencing for these classes of offenders.
- a. Repeat offenders: Consistent with legislative enhancements for recidivism, repeat offenders would be subject to enhanced sentencing. I would evaluate each case, however, as to the nature and manner of the offense, the seriousness and longevity of the defendant's criminal history and other factors unique to the defendant, such as education, life experience and mental capacity. Additionally, the sentence should serve to protect present and future victims and members of society as a whole as well as properly addressing the consequences of the defendant's repeated actions.
 - b. Juveniles (that have been waived to the circuit court): With the exception of applying the Youthful Offender Act when appropriate, I would treat juvenile offenders the same as other offenders in circuit court. Their juvenile status becomes part of the analysis in considering their sentence, and rightly so, but will not serve as an excuse for criminal behavior.
 - c. White collar criminals: The sentencing of offenders for different types of crimes varies to the degree that those sentencing ranges are provided by the legislature. Although the legislature does not often establish mandatory minimum incarceration periods for "white collar" crimes, as opposed to some drug trafficking offenses, the effect of white-collar crime is no less harmful to its victims. I would sentence these offenders within the statutorily prescribed framework and consider the same factors I would for offenders of any other type of crime.
 - d. Defendants with a socially and/or economically disadvantaged background: Of any factor to consider in determining a defendant's sentence, I would expect this to be the least. Although a difficult circumstance or upbringing may mitigate the degree of sentencing in some respects, one's socioeconomic background should never be a factor in enhancing a defendant's sentence or treating that person adversely from someone without those disadvantages.
 - e. Elderly defendants or those with some infirmity: This category is similar to those of a young age or, to a lesser degree, socioeconomic disadvantage in that these are factors to consider in possible mitigation, but not excuse, for criminal conduct. This category, especially, requires a case-by-case analysis to determine what impact, if any, one's seniority or infirmity has on

his or her conduct. Considering these factors, however, still requires careful attention to fashioning a sentence that serves the interests of justice and protects society.

19. Are you involved in any active investments from which you derive additional income that might impair your appearance of impartiality?
My wife and I have a rental house that is rented to a physician's assistant and her husband. I would recuse myself if these renters were a party to any suit in Circuit Court, and I would disclose this relationship in any case in which their employers were a party in any suit before me and offer to recuse myself if either party believed there to be a conflict of interest due to my landlord-tenant relationship with our renters.
20. Would you hear a case where you or a member of your family held a *de minimis* financial interest in a party involved?
No. Irrespective of my ability to act impartially, hearing a case under those circumstances could give the appearance of impropriety that Canon 2 expressly forbids.
21. Do you belong to any organizations that discriminate based on race, religion, or gender? Not of which I am aware; I would discontinue my membership in any organization that discriminated in this manner. Of course, membership in my church is limited to those of like faith in the same manner in which other churches and religious organizations prescribe the nature of their respective membership.
22. Have you met the mandatory minimum hours requirement for continuing legal education courses? Yes
23. What do you feel is the appropriate demeanor for a judge?
Pursuant to the judicial oath, a judge must "listen courteously, sit impartially, act promptly, and rule after careful and considerate deliberation." I believe a judge should treat anyone that comes before him or her with the same fair, impartial and consistent manner with which that judge would wish to be treated.
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?
A judge does not "give up" the responsibilities of his or her office when the robe is not on or when outside of the courthouse setting. The demeanor with which a judge, or anyone, should act applies every moment of every day.
25. Do you feel that it is ever appropriate to be angry with a member of the public, especially with a criminal defendant? Is anger ever appropriate in dealing with attorneys or pro se litigants? No, anger is never appropriate in a courtroom setting, whether directed towards a litigant, attorney, court security officer, bailiff, juror, courthouse staff or anyone else. The judge should set the example for proper courtroom decorum and enforce this decorum through firm, yet reasoned, direction.

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?

<u>FROM</u>	<u>TO</u>	<u>DESCRIPTION</u>	<u>QUANTITY</u>	<u>PRICE/UNIT</u>	<u>AMOUNT</u>	<u>RUN TOTAL</u>
12/8/08	12/30/08	Cards (II)/Postage Discards (Cards)	17 1	0.662 0.242	\$11.25 \$0.24	\$11.50
		TOTAL			\$11.50	\$11.50
1/1/08	1/31/09	Cards (II)/Postage Discards (Cards)	16 2	0.662 0.242	\$10.59 \$0.48	\$11.08
		TOTAL			\$11.08	\$22.57
2/1/09	2/27/09	Cards (II)/Postage Discards (Cards)	15 3	0.662 0.242	\$9.93 \$0.73	\$10.66
		TOTAL			\$10.66	\$33.23
3/1/09	3/13/09	Cards (II)/Postage Discards (Cards)	6 0	0.662 0.242	\$3.97 \$0.00	\$3.97
		TOTAL			\$3.97	\$37.20

*For accounting purposes, I consider an "expenditure" to occur at the time of use, rather than purchase.

27. If you are a sitting judge, have you used judicial letterhead or the services of your staff while campaigning for this office? N/A
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?
I have not asked anyone to contact members of the General Assembly on my behalf with respect to the seat I now seek.
With the exception of contact properly made during my last candidacy when such contact was appropriate, no one has, to my knowledge,

- contacted any member of the General Assembly on my behalf.
31. Have you contacted any members of the Judicial Merit Selection Commission? I have not actively contacted any member of the Commission. I know that I have come into contact with members of the Commission in the course of attending legislative receptions. My contact with JMSC members during previous candidacies for judicial office was disclosed at that time.
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/Allen O. Fretwell

Sworn to before me this 11th day of March, 2009.

Notary Public for S.C.

My Commission Expires: 4/30/2018

ALLEN O. FRETWELL
8 JAMES STREET
GREENVILLE, SOUTH CAROLINA 29609

April 13, 2009

Jane O. Shuler, Chief Counsel
Judicial Merit Selection Commission
Post Office Box 142
Columbia, South Carolina 29202

Re: Circuit Court, Thirteenth Judicial Circuit, Seat 3

Dear Jane:

I wish to amend the following answers on my Sworn Statement:

- (1) Amendment to Question 26, to change answer to the following:

I have spent \$254.54 on stationery, cards, envelopes, printing and postage for my campaign, and I reported an amount of \$252.62 to the House and Senate Ethics Committees on April 2, 2009.

Thank you for the opportunity to revise my statement with this information.

Respectfully,


Allen Fretwell