

**JUDICIAL MERIT SELECTION COMMISSION
PERSONAL DATA QUESTIONNAIRE**

Court, Position, and Seat # for which you are applying: Administrative Law Court,
Seat 4

1. NAME: Ms. Deborah Brooks Durden
BUSINESS ADDRESS: P.O. Box 191
Columbia, SC 29202
BUSINESS NUMBER: (803) 737-1347

2. Date of Birth: 1961
Place of Birth: Columbia, 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.

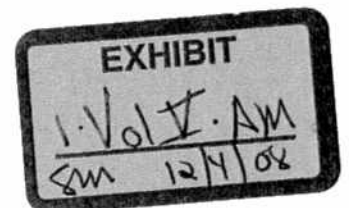
5. Family Status: Married on October 10, 1992, to Wiley Kevin Durden.
I was divorced from Charles Heins Burts on December 2, 1988. The decree was entered in Richland County Family Court. Charles Burts was the moving party and the grounds were one year of continuous separation.
Three Children.

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) Columbia College, *Magna Cum Laude* 1979-1983, Bachelor of Arts in English;
 - (b) University of South Carolina School of Law, 1988-1991, Juris Doctorate.

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.
 - (a) South Carolina, 1992;
 - (b) Alaska, 1993.

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.
Columbia College 1979-1983
 - (a) Order of the Purple Seal (academic honors society);
 - (b) Alpha Kappa Gamma (leadership fraternity);
 - (c) Sigma Tau Delta (English fraternity);
 - (d) Who's Who in American Colleges and Universities;



- (e) Columbian annual staff
 - (i) copy editor 1981-82;
 - (ii) photography editor 1982-83.

University of South Carolina School of Law 1988-1991

- (a) Student Bar Association
 - (i) Legislative Council 1988-1990;
 - (ii) Committee Chairman/Editor of student facebook directory 1989-90.;
- (b) Moot Court, Captain of Craven Competition Team;
- (c) American Jurisprudence Awards in Civil Procedure II and Trusts and Estates;
- (d) Wig and Robe Society.

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) SC Association of Counties Local Gov't Institute	12/12/03;
(b) SCDOT Condemnation Workshop	11/14/03;
(c) Revised Lawyer's Oath	9/14/04;
(d) Transportation Research Board	1/11-13/04;
(e) Attorney ECF Training, Federal District Court	7/5/05;
(f) SC Administrative and Regulatory Law Assn	9/23/05;
(g) SC Association of Counties Local Gov't Institute	12/9/05;
(h) Government Law Update	6/16/06;
(i) Criminal Practice in SC	11/10/06;
(j) Eminent Domain	9/18-19/06;
(k) Criminal Law Update	9/13/06;
(l) SC Administrative and Regulatory Law Assn	9/21/07;
(m) Federal Practice in SC	8/24/07;
(n) It's All a Game – Evidence	1/10/08;
(o) Judicial Selection in SC	9/17/08;
(p) SC Administrative and Regulatory Law Assn	9/19/08.

11. Have you taught law-related courses or lectured at bar association conferences, educational institutions, or continuing legal or judicial education programs?

- (a) August 27 and September 3, 2008
I taught training sessions for SCDOT staff on the effect of S.C. Act 114 of 2007 which restructured SCDOT and the SCDOT regulations promulgated in 2008 pursuant to that act.;
- (b) June 16, 2006 SC Bar Government Law Section
I taught a segment of the CLE on recent state legislative action related to Eminent Domain law.;
- (c) March 1, 2005, CLE International Eminent Domain Institute

Relocation Assistance, An Update on New Regulations -- I presented a segment of the CLE explaining the basics of relocation assistance benefits and how newly promulgated federal regulations would affect those benefits in the future.;

- (d) November 14, 2003, SCDOT Associate Counsel Workshop
Interplay Between Condemnation and Relocation Assistance Benefits -- I taught a segment of a CLE for attorneys who handle condemnation cases for SCDOT explaining relocation assistance benefits available to landowners and displaces and the interplay between those benefits and just compensation payments made in the condemnation litigation.;
- (e) November 2, 2001, SCDOT Associate Counsel Seminar
Handling FOIA and Discovery Requests – Strategies for Avoiding a Surprise at Trial.

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.

South Carolina State Courts, October 12, 1992

Alaska State Courts, June 22, 1993

Federal District Court, District of Alaska, June 22, 1993

Federal District Court, District of South Carolina, June 27, 1995

United States Court of Appeals for the Fourth Circuit, March 20, 1997.

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) 1991-1992 - Judicial Law Clerk

After graduation from USC law school and sitting for the South Carolina bar exam, I moved to Anchorage, Alaska where I served as law clerk to Alaska Superior Court Judge Karen Hunt from August 1991 to September 1992. Judge Hunt handled complex civil litigation and I performed legal research related to those cases and wrote memoranda of law and proposed orders on all motions to dismiss and motions for summary judgment. I also evaluated motions for injunctive relief filed with the court.

I served as law clerk to Alaska Superior Court Judge John Reese from December 1992 to April 1993 handling family court matters. I reviewed motions filed with the court and recommended action on those motions. During this time I studied for the Alaska Bar exam and took that exam in January, 1993.;

(b) 1993-1997 - Private Practice

In April 1993 I became an associate at Faulkner, Banfield, Doogan and Holmes' Anchorage office. Faulkner Banfield is a large firm with offices

in Juneau, Fairbanks and Anchorage, Alaska representing primarily business clients. During my association with the firm I worked on Workers Compensation matters, professional liability cases, and tort cases. Approximately 50% of the cases I worked on were in the Federal District Court. I also successfully argued an appeal of a constitutional issue before the Alaska Supreme Court.

In 1994 my husband's service commitment to the U.S. Air Force ended and I left Faulkner Banfield so that he and I could move to South Carolina. I became an Associate at Gergel, Nickles & Grant (the firm is now Gergel, Nickles and Solomon). During my association with the firm from 1994 to 1997, I represented teachers and other employees in employment matters and worked on motions and discovery in tort claims cases, Fair Labor Standards Act cases, and other civil litigation.

(c) 1997-Present - Government Service

In August, 1997 I accepted a position as Assistant Chief Counsel at the South Carolina Department of Transportation. While at SCDOT I have handled a wide variety of legal matters including condemnation cases, contract matters, legislative issues, environmental matters, and administrative law. I handle all contested cases at the Administrative Law Court for the department concerning environmental permits, the payment of relocation assistance benefits, and the certification of Disadvantaged Business Enterprises. I handle the drafting and promulgation of all agency regulations. SCDOT has adopted a philosophy of using associate counsel to litigate condemnation cases, so do not handle the litigation of those cases, but I frequently counsel agency staff and associate counsel on issues concerning condemnation and real estate law. My responsibilities at SCDOT also involve reviewing and analyzing legislation that is pending at the state legislature. I evaluate the effect of proposed statutory language, draft proposed legislation and amendments, and provide testimony before legislative subcommittees.

If you are a candidate for **Administrative Law Judge**, please provide a brief written description of your experience before an Administrative Law Judge, including any issues discussed and the frequency of your appearances before the Administrative Law Judge Division.

I handle all contested cases at the Administrative Law Court for the Department of Transportation concerning environmental permitting, the payment of Relocation Assistance benefits, and the certification of Disadvantaged Business Enterprises. I handle an average of two matters per month before the Administrative Law Court. Approximately 75% of those are settled prior to a hearing. My cases that go to a full hearing and decision by the Administrative Law Court normally take a full day to try. I recently handled an environmental permitting case that took a full week to try.

In Disadvantaged Business Enterprise cases the issue is frequently an appeal of an SCDOT decision denying certification of a particular business as a Disadvantaged Business Enterprise. Certification qualifies a business for special consideration in highway construction contracts and is intended to assist women and minority business owners get businesses established. The issues litigated in those cases revolve around whether the woman or minority individual who is applying for the certification actually owns and controls the business as required by the federal regulations. Litigation of these cases is important to protect the integrity of the D.B.E. program and prevent businesses that are not owned and controlled by disadvantaged individuals from usurping the benefits intended for those who are truly at a disadvantage. I recently handled the appeal in which an adverse decision of the ALC was reversed by the Court of Appeals on the issue of how a spouse can effectively renounce an interest in the property used to acquire an ownership interest in a business.

In Relocation Assistance cases the issues litigated revolve around whether SCDOT has paid the proper amount of Relocation Assistance benefits. Particular questions I have litigated include whether benefits are available to an individual whose primary residence is somewhere other than the acquired property; what constitutes a comparable dwelling; and whether a business has been displaced by a change of driveway access to the property.

In environmental permitting cases the issues I handle are related to whether SCDOT is entitled to a 401 Water Quality Certification or Navigable Waters Permit, and if so what conditions can properly be imposed on the permit by the Department of Health and Environmental Control. Issues I have litigated and won in the past year include:

- (a) whether the ALC has jurisdiction over a case if an appeal of the Notice Of Proposed Decision was not timely filed before DHEC;
- (b) whether DHEC loses its jurisdiction to impose permit conditions if it fails to issue a Notice of Proposed Decision within the time limits of its regulation;
- (c) whether DHEC has authority to require compensatory mitigation on a 401 Water Quality Certification where there are no Navigable Waters permit issues raised by the project.

SCDOT does not take its public hearings on regulations before the ALC; they are heard by the SCDOT Commission using the same procedure and standards that a hearing before the ALC would use. I am responsible for handling all aspects of promulgating regulations for the department, including issues related to hearings.

15. What is your rating in Martindale-Hubbell? I have never advertised in Martindale Hubbell and don't believe I have been rated by their publication.

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: Once a year;
(b) state: once a month.
17. What percentage of your practice involved civil, criminal, and domestic matters during the last five years?
civil: 100%.
18. What percentage of your practice in trial court during the last five years involved matters that went to a jury?
(a) jury: 5%;
(b) non-jury: 95%.
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) L. A. Barrier v. SCDOT, 06-ALJ-19-0925
South Carolina Court of Appeals (DBE certification case). The Court of Appeals reversed a decision of the Administrative Law Court and affirmed SCDOT's position that a renunciation of interest by a spouse must be a prior renunciation of the jointly owned assets used to purchase an ownership interest in a DBE firm for that interest to be considered the sole property of the disadvantaged individual. This ruling is significant because allowing after-the-fact renunciations would undermine the requirement that the business be acquired by the real and substantial contribution of capital by the disadvantaged individual and threaten the integrity of the DBE program.;
- (b) SCDOT v. DHEC and Friends of the Congaree et al. ALC 2006-ALJ-07-0804
Administrative Law Court (U.S. 601 Bridge Replacement Permits). Final Order issued by Judge Ralph King Anderson, III on April 4, 2008 was appealed to the Court of Appeals, but dismissed by Appellants prior to a decision by the Court. This was an environmental permitting case in which SCDOT was seeking a 401 Water Quality Certification and Construction in Navigable Waters permit from DHEC for the replacement of four existing bridges on U.S. Highway 601 near the Congaree National Park. Three of the rulings in the case will have a long-term positive effect for both SCDOT and other entities seeking environmental permits from DHEC: 1) DHEC has no authority to require compensatory mitigation under a 401 Water Quality Certification where no navigable waters permit issues are presented by the projects; and 2) DHEC waives its right to dictate the terms of a permit if it fails to issue a Notice of Proposed Decision within the time limits set forth in its regulations; and 3) Feasible alternatives to a project are not the same as conditions that

DHEC seeks to impose to minimize the adverse effects of the project, but must be an alternative to the project.;

- (c) Southern Environmental Law Center v. DHEC, 07-ALJ-07-108
Administrative Law Court and pending in the Court of Appeals (Port Access Road Permits). Final order issued by Administrative Law Judge John Geathers on September 4, 2007 was appealed to the Court of Appeals where oral argument is scheduled in October 2008. This case is significant both because of the importance of the project and the legal issue involved. The Administrative Law Court dismissed the contested case brought by an environmental group holding it lacks subject matter jurisdiction to hear a case if the appeal of the permit is not first timely filed with DHEC. This case and the 601 case noted above, were also significant because they were two of the first cases heard by DHEC and the ALC following the passage of the 2007 law changing the procedures for challenging DHEC decisions on permits. My argument in those cases has shaped how DHEC and the ALC deals with procedural issues and under what circumstances a remand to agency staff from the DHEC Board will be allowed.;
- (d) Swanner v. Anchorage Equal Rights Commission; Supreme Court of Alaska; May 13, 1994. citation: 874 P. 2d 274 (Alaska, 1994) *Cert. denied by Swanner v. Anchorage Equal Rights Commission*, 513 U.S. 979, 115 S. Ct. 460, 130 L. Ed. 2d 368, 63 USLW 3341, 63 USLW 3345 (1994)
This case was significant because it dealt with constitutional questions of religious freedom as it relates to an individual's conduct in violating state prohibitions against housing discrimination based on marital status. I wrote the brief and made the argument before the state Supreme Court which ruled in favor of my client. A Westlaw keycite search reveals that this case has been cited in 29 subsequent cases and in 299 secondary sources and briefs.;
- (e) Rae's Cleaners v. SCDOT, South Carolina Administrative Law Court
Final Order issued by Judge Ralph King Anderson, III on January 3, 2006. This was a Relocation Assistance Benefits contested case in which SCDOT's finding that Rae's Cleaners was not a displaced business entitled to relocation assistance benefits was challenged. The issue was whether a change in access to the business site allowing only right turns in and out of the business constituted a displacement of the business which would have entitled the owner to relocation assistance benefits. The matter was significant in light of a line of cases issued by the South Carolina Court of Appeals creating controlling law at that time allowing damages related to restricted access to real property in condemnation cases. Judge Anderson affirmed SCDOT's decision denying benefits, holding that while a loss of access is a special injury that might entitle a landowner to just compensation in a condemnation

case, it is not an acquisition entitling the landowner to relocation benefits where the acquisition of property did not affect the continued operation of the business.

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.

(a) L. A. Barrier & Son Inc. v. SCDOT

S.C. Court of Appeals; July 21, 2008, not reported;

(b) Southern Environmental Law Center v. SCDHEC and SCDOT

Pending at S.C. Court of Appeals;

(c) SCDOT v. DHEC and Friends of the Congaree et al.

Appellants dismissed prior to decision of the Court;

(d) Swanner v. Anchorage Equal Rights Commission ; Supreme Court of Alaska; May 13, 1994. Citation: 874 P. 2d 274 (Alaska, 1994) *Cert. denied by Swanner v. Anchorage Equal Rights Commission*, 513 U.S. 979, 115 S. Ct. 460, 130 L. Ed. 2d 368, 63 USLW 3341, 63 USLW 3345 (1994);

(e) Allen et. al v. Loadholt

United States Court of Appeals for the Fourth Circuit. I briefed this Fair Labor Standards Act case which settled prior to argument before the Court of Appeals.

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.

22. Have you ever held judicial office? 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. N/A.

24. Have you ever held public office other than judicial office? 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. N/A.

26. Have you ever been an unsuccessful candidate for elective, judicial, or other public office?

I ran, unsuccessfully, for a seat on the Administrative Law Court in 2006. I was found qualified and nominated by the Judicial Merit Selection Commission, but withdrew from the race prior to the election by 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?

Prior to attending law school I worked as a claims examiner and then as a technical writer at Colonial Life and Accident Insurance Company from 1983 to

1988. The only jobs I held prior to that time were part-time or summer jobs I held while in high school and college.
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.
 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. None.
 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? 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.

- I have spent \$92 on stationary and printing.
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.
 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? No.
 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 Association;
 - (b) Alaska Bar Association;
 - (c) South Carolina Administrative and Regulatory Law 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) Trenholm Road United Methodist Church;
 - (b) Girl Scout Troop Leader, 2001 to 2008.
 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. This information may include how your life experiences have affected or influenced the kind or type of judge you have been or plan to be. None.
 49. References:
 - (a) Elizabeth S. Mabry
204 Old Carrington Parkway
Lexington, SC 29072
(803) 359-2127;
 - (b) Linda C. McDonald
SCDOT Chief Counsel
P.O. Box 191
Columbia, SC 29202

- (803) 737-1347;
- (c) Randolph R. Lowell
Willoughby & Hoefler
P.O. Box 8416
Columbia, SC 29202
(803) 252-3300;
 - (d) James A. Stuckey, Jr.
123 Meeting Street
Charleston, SC 29401
(843) 577-9323;
 - (e) Laura Griese
Banking Officer, BB&T
8910 Two Notch Road
Columbia, SC 29223
(803) 251-1651.

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/Deborah Brooks Durden

Date: 09/25/08

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

Administrative Law Court
(New Candidate)

Full Name: Deborah Brooks Durden
Business Address: P.O. Box 19
Columbia, SC 29201
Business Telephone: (803) 737-1347

1. Do you plan to serve your full term if elected?
Yes
2. Do you have any plans to return to private practice one day?
No
3. Have you met the Constitutional requirements for this position regarding age, residence, and years of practice?
Yes
4. What is your philosophy regarding *ex parte* communications? Are there circumstances under which you could envision *ex parte* communications being tolerated?
The only circumstance I would tolerate *ex parte* communications is to deal with scheduling issues or urgent procedural matters where both parties are not available for a telephone conference at the same time and which could not be handled by a law clerk or administrative assistant. Of course I would immediately communicate the substance of the conversation to the other party(ies) and offer them an opportunity to respond.
5. What is your philosophy on recusal, especially in situations in which lawyer-legislators, former associates, or law partners are to appear before you?
I believe it is important to carefully balance the interest in the prompt and efficient handling of the court's business with the need for all parties to have confidence that the judge hearing their case will be fair and impartial. I would recuse myself from any matter that I had personally handled or discussed while acting as a lawyer. In situations where my previous associates were appearing before me I would disclose the relationship and give the opposing attorney or party an opportunity to voice any concerns. I would recuse myself if any party has a reasonable question as to my impartiality in the matter. In situations where lawyer-legislators were appearing before me I would not expect there to be a reasonable question of my impartiality, but if one arose I would give careful consideration to whether it would be appropriate to recuse myself. The overriding consideration in my mind would be whether I believed the parties had legitimate doubts as to my ability to be impartial.

6. If you disclosed something that had the appearance of bias, but you believed it would not actually prejudice your impartiality, what deference would you give a party that requested your recusal? Would you grant such a motion?
I would give considerable deference to such a motion and would grant it unless I believed that it was made for purposes of delay or otherwise to gain an advantage in the matter rather than out of genuine concern about the potential of bias.
7. If elected, what standards would you set for yourself regarding the acceptance of gifts or social hospitality?
I would not accept gifts or hospitality which would give the appearance of affecting my impartiality in matters that might come before me.
8. How would you handle a situation in which you became aware of misconduct of a lawyer or of a fellow judge?
I would initiate a conversation with the affected lawyer or judge to hear from them concerning the circumstances of the situation. If after such a conversation I was convinced that misconduct had occurred I would report the misconduct to the appropriate disciplinary authority.
9. Are you affiliated with any political parties, boards or commissions that, if you are elected, would need to be re-evaluated?
No
10. Have you engaged in any fund-raising activities with any political, social, community, or religious organizations?
No
11. How would you handle the drafting of orders?
In matters where the parties are represented by counsel I would frequently request proposed orders at the close of a hearing, either from both attorneys or from one attorney and offer the other attorney an opportunity to respond to the proposed order. I would consider any proposed orders and comments and prepare an order reflecting my judgment in the matter. In matters where the parties are not represented by counsel I would draft the order myself.
12. What method would you use to ensure that you and your staff meet deadlines?
I would use a tickler system utilizing calendaring software to keep track of all deadlines.
13. What is your philosophy on "judicial activism," and what effect should judges have in setting or promoting public policy?
I do not believe that judges should engage in judicial activism, but should follow constitutional and statutory law and precedential decisions. Such an approach promotes predictability of results and encourages the private settlement of disputes rather than protracted litigation. It also avoids judicial interference in the powers reserved to the legislative branch of government.

14. Canon 4 allows a judge to engage in activities to improve the law, legal system, and administration of justice. What activities would you plan to undertake to further this improvement of the legal system?
I would be very interested in undertaking activities to improve the efficiency of the judicial system, especially related to promoting early settlement of cases and trial schedules that are more predictable for the parties.
15. Do you feel that the pressure of serving as a judge will strain personal relationships (i.e. spouse, children, friends, or relatives)? How would you plan to address this?
I do not believe that my service as a judge would strain my personal relationships in any way.
16. Are you involved in any active investments from which you derive additional income that might impair your appearance of impartiality? No
17. Would you hear a case where you or a member of your family held a *de minimis* financial interest in a party involved? It would depend on the type of party and interest involved and whether the *de minimis* interest could reasonably call my impartiality in the matter into question. I would evaluate each matter carefully, considering whether the interest was mine or that of a family member, the type of entity the party was, and any other circumstances such as the existence or absence of personal relationships with the party or officers of the party.
18. Do you belong to any organizations that discriminate based on race, religion, or gender?
No
19. Have you met the mandatory minimum hours requirement for continuing legal education courses?
Yes
20. What percentage of your legal experience has dealt with cases that appear before the Administrative Law Court? Please describe to the Commission your experience in these areas.
Approximately 60% of my experience during the last five years has been in matters before the Administrative Law Court. Approximately 25% of my total legal experience has been in matters that appear before the Administrative Law Court or other administrative bodies. As Assistant Chief Counsel for the South Carolina Department of Transportation I have been responsible for handling contested cases concerning environmental permits, certification of Disadvantaged Business Enterprises and Relocation Assistance Benefits. I have also been responsible for the promulgation of all SCDOT regulations under the Administrative Procedures Act.
21. What do you feel is the appropriate demeanor for a judge?
A judge's demeanor should be patient, considerate, and firm. It is important for a judge to create a climate in which litigants have confidence that their concerns will be fairly heard by a judge who is competent in the law and procedure and impartial and fair in applying them.

22. 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?

Judges are public figures who are constantly observed and scrutinized by those they come in contact with in both their public and private lives. I believe that a judge must act with dignity, patience and fair dealing at all times to prevent undermining public respect and confidence that litigants in the courtroom will be treated with fairness and impartiality.

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

I do not believe that displays of anger are appropriate on the part of a judge. Litigants who believe that a judge is, or has been, angry with them would reasonably fear that the judge's impartiality in handling their case could be compromised. I do believe, however, that a judge must at times be firm with litigants in expressing the standards of the courtroom and in refusing to tolerate inappropriate behavior.

24. 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 spent \$92 on stationary and printing.

25. If you are a sitting judge, have you used judicial letterhead or the services of your staff while campaigning for this office?

N/A

26. Have you sought or received the pledge of any legislator prior to this date?

No

27. Have you sought or been offered a conditional pledge of support by any legislator pending the outcome of your screening?

No

28. 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

29. Have you contacted any members of the Judicial Merit Selection Commission?

No

30. 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/Deborah Brooks Durden

Sworn to before me this 25th day of September, 2008.
Notary Public for S.C.
My Commission Expires: 8/29/2010

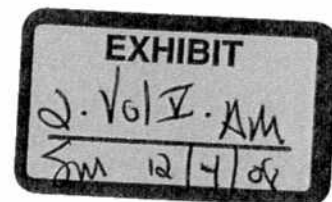
**JUDICIAL MERIT SELECTION COMMISSION
PERSONAL DATA QUESTIONNAIRE**

Court, Position, and Seat # for which you are applying: Administrative Law Court,
Seat 4

1. NAME: Mr. Christopher McGowan Holmes
 BUSINESS ADDRESS: 222 W. Coleman Blvd.
 Mt. Pleasant, SC 29464
 BUSINESS NUMBER: (843) 388-2966

2. Date of Birth: 1949
 Place of Birth: Charleston, 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 on July 30, 2005, to Patricia Ann Martin Holmes. Divorced on August 25, 2004; Elizabeth Graham Holmes; Charleston County; one year continuous separation. 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 South Carolina 1968-1973;
 - (b) University of South Carolina School of Law 1975-1978.
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 1978.
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) Order of Wig and Robe;
 - (b) South Carolina Law Review.
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) Lunch & Learn	5/18/07;
(b) 2007 SCAARLA Conference	9/21/07;
(c) 4 th Annual "What Works"	12/20/07;
(d) SCAARLA Seminar	9/22/06;
(e) SC Bar Admin. & Reg. Comm.	11/3/06;
(f) Charleston Bar "What works for me"	12/1/06;
(g) Charleston Bar "What works for You"	12/15/06;



- (h) Attorney ECF Training 9/7/05;
 - (i) SCAARLA Educational Seminar 9/23/05;
 - (j) Anatomy of a Trial 11/29/05;
 - (k) What Works for Me 12/9/05;
 - (l) What Works for You 12/16/05;
 - (m) Revised Lawyer's Oath CLE 7/22/04;
 - (n) SCAARLA Annual Meeting 10/1/04;
 - (o) SCARLA Safari: Finding Answers 9/26/03;
 - (p) Mold in the Indoor Environment 12/04/03;
 - (q) Annual CLE Part I 12/05/03;
 - (r) Annual CLE Part II 12/12/03.
11. Have you taught law-related courses or lectured at bar association conferences, educational institutions, or continuing legal or judicial education programs?
I lectured on coastal zone management issues at a joint North Carolina/South Carolina seminar in the late 1980's. I have given presentations to various professional groups and associations in the Charleston area on issues relating to regulations of wetlands and dock permitting.
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) All South Carolina Courts 1978;
 - (b) U. S, District Court, District of South Carolina 1979;
 - (c) U. S. Fourth Circuit Court of Appeals 1990;
 - (d) United States Claims Court 1990.
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) 1978-1979
Partner with Gene W. Dukes, St. George, SC. General practice including civil, criminal, domestic, administrative and estate planning;
 - (b) 1979-1985
Hired in September 1979 as staff attorney for newly created South Carolina Coastal Council; promoted to General Counsel in 1983 and Deputy Director in 1984. Advised agency staff and Board members on legal and regulatory matters, drafted regulations, reviewed contracts, represented agency at administrative hearings and in circuit and appellate courts. As Deputy Director, headed up agency's Charleston office supervising a staff of approximately 25 professional and clerical employees;
 - (c) 1985-1993
Associate with McNair Law Firm in Columbia and Charleston; member of administrative and regulatory section, representing clients in variety of environmental and regulatory matters;

- (d) 1994-present
Private law practice in Charleston and Mt. Pleasant. Primary focus on representing clients before administrative agencies and Administrative Law Court and appellate courts on issues involving environmental permits.

If you are a candidate for **Administrative Law Judge**, please provide a brief written description of your experience before an Administrative Law Judge, including any issues discussed and the frequency of your appearances before the Administrative Law Judge Division.

Since establishment of the Administrative Law Court, approximately 90% of my practice has been before that tribunal. With the exception of Judge Gossett, I have appeared before every current and former ALJ. Virtually all matters I have handled have involved DHEC's coastal zone, water quality, air quality or stormwater permits. Approximately one-half of the time my client's position has been allied with the agency and the other half in opposition. Over the last ten years, I have averaged approximately four to five appearances before the ALC annually.

15. What is your rating in Martindale-Hubbell? Not listed for unknown reasons.
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: 3-4 times a year.
17. What percentage of your practice involved civil, criminal, and domestic matters during the last five years?
(a) civil: 98%;
(b) criminal: 0%;
(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: 0%;
(b) non-jury: 100%.

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) Guerard v. Whitner, 276 SC 521, 280 SE2d 539 (SC 1981)
First case interpreting the SC Coastal Zone Management Act standard of review. The Court held that, notwithstanding statutory statement that review was *de novo*, the substantial evidence test is to be applied in judicial review.;
- (b) Carter v. SC Coastal Council, 281 SC 201, 314 SE2d 327 (SC 1984)
First case challenging agency regulation of privately owned wetlands as

unconstitutional "taking." The Court held that agency's action was a legitimate exercise of police powers to prevent public harm and not a regulatory "taking";

- (c) Brown v. SCDHEC, 348 SC 527, 560 SE2d 410 (SC 2002)
First case setting forth the proper standard of review by an agency Board on appeal from the Administrative Law Court. The Court held that the ALJ was the finder of facts and the DHEC Board, as a reviewing tribunal, lacked authority to make its own factual findings. The case effectively led to adoption of legislation (2006 Act No. 387) eliminating agency board and circuit court review of ALJ decisions which now go directly to Court of Appeals;
 - (d) Setzer and Gilgen v. SC DHEC, Case No. 03-CP-15-980, June 2004
Following denial of permit and affirmation of decision by ALJ, plaintiffs appealed to circuit court (Hon Jackson V. Gregory) successfully arguing decision was improperly based on agency policies never promulgated and adopted as regulations as required by APA.;
 - (e) Concerned Citizens of Jamestown v. Southern Aggregates
Actually four different circuit court cases alleging trespass and nuisance against a limestone quarry and administrative appeals of mining permits before the Mining Council. The various proceedings went on for nearly four years and were resolved by negotiated payment of substantial damages and an agreement to significantly modify future mining methods to minimize impacts on surrounding lands.
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.
- (a) Brownlee v. SCHEC
SC Court of Appeals, January 29, 2007, 372 SC 119, 641 SE2d 45;
 - (b) Brown v. SCDHEC
SC Supreme Court, February 25, 2002; 348 SC 527, 560 SE2d 410;
 - (c) Concerned Citizens, etc. v. SC Coastal Council, et al
SC Supreme Court, November 9, 1992; 310 SC 267, 423 SE2d 134;
 - (d) State ex rel Medlock v. SC Coastal Council, et al
SC Supreme Court, July 28, 1986; 289 SC 445, 346 SE2d 716;
 - (e) Carter v. SC Coastal Council
SC Supreme Court, March 26, 1984; 281 SC 201, 314 SE2d 327.
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. NA.
22. Have you ever held judicial office? 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.
24. Have you ever held public office other than judicial office? N/A.
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. N/A.
26. Have you ever been an unsuccessful candidate for elective, judicial, or other public office?
Yes. In February of 2006 I filed as a candidate for Administrative Law Court, Seat 5. I was found qualified but not nominated.
 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? Explain the nature of the business, your duties, and the term of your service. 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. None.
 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?
Yes. In 1966, I was charged with DUI. I believe the fine was less than \$125; however, I disclosed this information to the Committee on Character and Fitness prior to being admitted to the SC Bar in 1978.
 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.
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.
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? No.
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) SC Bar Administrative and Regulatory Committee;
 - (c) SC Administrative and Regulatory Law Association;
 - (d) Charleston County Bar.
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. None.
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. This information may include how your life experiences have affected or influenced the kind or type of judge you have been or plan to be.
- I have practiced in a small town (St. George) and large cities (Charleston and Columbia). I have represented a state agency, and I have represented members of the regulated public. I have worked in a government setting, a large law firm setting, and as a sole practitioner. For the last twenty nine years, the majority of my practice has been in the administrative law setting. My experiences in these various roles have provided me with a broad perspective of the legal environment likely to be encountered by an Administrative Law Judge, both in terms of issues and personalities, I know how the agency attorneys are often stretched to their maximum in

the variety and quantity of matters they have pending at any particular time, from contested case hearings, administrative and judicial appeals and providing general counsel to agency staff and commissions or boards.

I am familiar with the intense environment under which attorneys in large firms operate and the difficulties encountered by small firm and solo practitioners with more limited resources to draw upon.

I have represented large, well financed clients as well as individual citizens with limited means, and I have represented the agency viewpoint. I believe this prepares me to be open minded with the various positions that will be presented in a given case.

In addition to appearing before all but one of the past and present Administrative Law Judges, I have appeared before a number of state and federal court judges since joining the Bar in 1978. I would strive to emulate those characteristics of the judges who made me feel welcome in their courtroom and who were attentive of the position I was advocating. Those characteristics are courtesy, respect, a knowledge of the applicable law and a familiarity with the pleadings and issues. I understand today, more than ever, how difficult and demanding the practice of law is, and I would endeavor to make the parties - and especially their counselors - leave feeling whatever the outcome, they had a full, complete and fair hearing.

49. References:

- (a) Ellison D. Smith, IV
SMITH BUNDY BYBEE & BARNETT, PC
P.O. Box 1542
Mt. Pleasant, SC 29465-1542
(843)881-1623;
- (b) Hugh C. Lane, Jr.
Bank of South Carolina
P.O. Box 538
Charleston, SC 29402
(843)724-1500;
- (c) Mary D. Shahid
McNAIR LAW FIRM, PA
P.O. Box 1431
Charleston, SC 29402
(843)723-7831;
- (d) Leslie S. Riley
McNAIR LAW FIRM, PA
P.O. Box 1431
Charleston, SC 29402
(843)723-7831;
- (e) Duncan C. Newkirk
Newkirk Environmental Consultants
1887 Clements Ferry Rd.
Charleston, SC 29492
(843)388-6585.

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/Christopher McGowan Holmes

Date: 09/24/08

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

Administrative Law Court
(New Candidate)

Full Name: Christopher McGowan Holmes
Business Address: 222 W, Coleman Blvd.
Mt. Pleasant, SC 29464
Business Telephone: (843)388-2966

1. Do you plan to serve your full term if elected? Yes
2. Do you have any plans to return to private practice one day? No
3. Have you met the Constitutional requirements for this position regarding age, residence, and years of practice? Yes
4. What is your philosophy regarding *ex parte* communications? Are there circumstances under which you could envision *ex parte* communications being tolerated? *Ex parte* communications between a judge and one party without the knowledge and participation of all parties are unacceptable. Even if the matters discussed do not go to the merits and are not "prejudicial," they raise the specter of bias and lack of impartiality in the mind of the absent party.
5. What is your philosophy on recusal, especially in situations in which lawyer-legislators, former associates, or law partners are to appear before you? My philosophy on recusal is that if any party feels grounds for recusal exist and timely moves for recusal before the tribunal, the motion should be granted.
6. If you disclosed something that had the appearance of bias, but you believed it would not actually prejudice your impartiality, what deference would you give a party that requested your recusal? Would you grant such a motion?
I would give strong deference to any party seeking my recusal; however, whether the motion would be granted would depend on a number of factors such as at what stage of the proceedings the disclosure and motion are made. It would seem that the earlier in the process the less potential there would be for prejudice to the other parties in obtaining a timely hearing if recusal was granted. However, if I only became aware of the information leading to the disclosure just prior to a scheduled hearing I would have to consider the prejudice any delay would have on the non-moving party, the reason the information was late in being disclosed and the reasons for, and sincerity of, the objections.
7. If elected, what standards would you set for yourself regarding the acceptance of gifts or social hospitality? If I felt the invitation was extended solely because of my position (and was not a general

- invitation extended to all ALJ's), I would decline to accept. As far as gifts are concerned, at my age I know who gives me gifts on special occasions. Gifts from any others would be declined or returned.
8. How would you handle a situation in which you became aware of misconduct of a lawyer or of a fellow judge? ? I would first consult with the person to see if I had correctly perceived the conduct as improper and explain why I felt so. If the person agreed that misconduct was involved, I would strongly counsel disclosure to the appropriate authority or oversight board with the understanding that if not self reported I would have a duty to report it. If the person disputed that the conduct was improper, I would seek counsel from an attorney or judge to confirm that I was correctly construing the conduct as improper, and if there was concurrence I would repeat my advice to the person involved.
 9. Are you affiliated with any political parties, boards or commissions that, if you are elected, would need to be re-evaluated? No.
 10. Have you engaged in any fund-raising activities with any political, social, community, or religious organizations? No.
 11. How would you handle the drafting of orders? If the issues were clear, the facts not disputed and my decision apparent to me at the conclusion of the hearing, I would ask the prevailing attorney to prepare and submit a proposed order with a copy to the opposing counsel who would be given an opportunity to make any suggested revisions. I would then determine if the proposed order correctly reflected my reasoning and correctly stated the law, and if it did, I would sign it. Otherwise, I would make my own corrections. If the facts or applicable law (or both) were in dispute, I would ask both parties to prepare proposed orders which I would then use to help reach a final decision and as a framework to craft an order.
 12. What method would you use to ensure that you and your staff meet deadlines? I would keep a regular calendar and a computer log which would contain all cases assigned to me and their current status and deadline. My assistant would also keep a calendar and we would meet at least once a week to go over the calendar and schedule upcoming activities and tasks.
 13. What is your philosophy on judicial activism, and what effect should judges have in setting or promoting public policy? ? I firmly believe that each branch of government has its functions and should refrain from intruding into those of the others. While the term "judicial activism" is somewhat ambiguous, I tend to prefer Black's Law Dictionary definition as a "[j]udicial philosophy which motivates judges to depart from strict adherence to judicial precedent in favor of progressive and new social policies which are not always consistent with the restraint expected of appellate judges." An Administrative Law Judge's duty, primarily, is to apply statutes and regulations to the facts as he finds them to be. I believe the promotion of public policy

- is, as a general rule, more properly left to the legislative branch for codification and to the executive branch for implementation.
14. Canon 4 allows a judge to engage in activities to improve the law, legal system, and administration of justice. What activities would you plan to undertake to further this improvement of the legal system? I would continue to actively participate in the Bar's Administrative and Regulatory Law committee and to interact with the SC Administrative and Regulatory Law Association. I would make myself available to speak at public functions on the role of the Administrative Law Court in particular and the judiciary in general.
 15. Do you feel that the pressure of serving as a judge will strain personal relationships (i.e. spouse, children, friends, or relatives)? No. How would you plan to address this? I cannot conceive of how my service as an ALJ could strain personal relationships.
 16. Are you involved in any active investments from which you derive additional income that might impair your appearance of impartiality? No.
 17. Would you hear a case where you or a member of your family held a de minimis financial interest in a party involved? Not unless the parties were informed and agreed to my going forward.
 18. Do you belong to any organizations that discriminate based on race, religion, or gender? No.
 19. Have you met the mandatory minimum hours requirement for continuing legal education courses? Yes.
 20. What percentage of your legal experience has dealt with cases that appear before the Administrative Law Court? Please describe to the Commission your experience in these areas. Since establishment of the ALC, approximately 90% of my practice has been before that tribunal. With the exception of one tax appeal, all matters I have handled have dealt with DHEC's coastal zone, water quality or air quality permits. Approximately half of the time my client's position has been allied with the agency and the other half in opposition. Over the last five (5) years, I have averaged approximately four to five cases annually before the ALC.
 21. What do you feel is the appropriate demeanor for a judge? A judge should at all times be fair and objective and enter each proceeding with an open mind as to the merits of all parties' positions. All parties, witnesses and counsel should be treated with courtesy and patience. However, a judge must be in control of his courtroom, which requires firmness at times.
 22. 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? I would apply these rules year round.
 23. Do you feel that it is ever appropriate to be angry with a member of the public who would appear before you? No. Is anger ever appropriate in

- dealing with attorneys or a pro se litigant? No. I believe a judge can be firm without exhibiting anger.
24. How much money have you spent on your campaign? Zero. If it is over \$100, has that amount been reported to the House and Senate Ethics Committees? N/A
 25. If you are a sitting judge, have you used judicial letterhead or the services of your staff while campaigning for this office? N/A
 26. Have you sought or received the pledge of any legislator prior to this date? No.
 27. Have you sought or been offered a conditional pledge of support by any legislator pending the outcome of your screening? No.
 28. 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? No. Are you aware of any friends or colleagues contacting members of the General Assembly on your behalf? No.
 29. Have you contacted any members of the Judicial Merit Selection Commission? No.
 30. 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/Christopher McGowan Holmes

Sworn to before me this 24th day of September, 2008.

Notary Public for S.C.

My Commission Expires: 10/10/2013

**OPENING STATEMENT TO JUDICIAL MERIT SELECTION COMMISSION
CHRISTOPHER MCGOWAN HOLMES**

I appreciate the opportunity to appear before you today in support of my candidacy for a seat on the Administrative Law Court. I know you have been provided the sworn statement and personal data questionnaire I submitted, so I will try not to be repetitive in this statement but will, of course, respond to any questions you may have.

I have practiced law in South Carolina since 1978 in a variety of settings, from a very diverse practice in a small town, as counsel for a state agency, as part of a very large firm with offices throughout the state, and for the last 14 years as a sole practitioner in Charleston and Mt. Pleasant. The great majority of my practice has been in the area of environmental and administrative law, although I also have engaged in some lengthy and complex litigation involving class action suits and representation of large communities for trespass, nuisance and product liability claims.

When I began representation of the Coastal Council in 1979, the agency was in its infancy. Regulations were being drafted and revised and no one was certain whether what we were doing was going to be upheld. The first appellate case I was involved with at the agency dealt with the standard of review for agency decisions. The statute said circuit court review was to be *de novo*, but the Supreme Court agreed with us that despite that language the “substantial evidence” standard was to be applied. That established the agency as the trier of facts. The next big case involved denial of a permit to fill in privately owned wetlands to create property that could be built upon. There was a lot of concern that the permit decision might be viewed as a “taking” which would result in either invalidation of the regulation or subject the state to

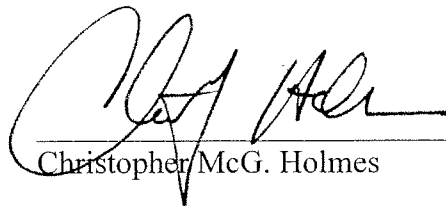
substantial liability. Again, the Supreme Court ruled in the agency's favor. In 1984 I was named Deputy Director of the Coastal Council as well as General Counsel and, in the former capacity, had responsibility for managing the Charleston office where most of the agency staff were based.

In the course of my private practice, I have represented clients before DHEC's Coastal Resources branch as well as its air and water quality divisions. I have also represented clients with matters before the Corps of Engineers involving navigable waters and Clean Water Act permits. A great many of these cases resulted in mutually agreeable resolution of the issues with no contested case proceedings being necessary. In those cases that did go through administrative proceedings, my clients' positions were allied with that of the agency roughly fifty percent of the time. I mention that because I have heard some people feel I would bring some anti-agency bias to the Court. Nothing could be further from the truth. My only concern has been that the statutes and regulations are fairly and consistently applied. I believe that is borne out by the fact that approximately 40% of the cases I filed in the Administrative Law Court were settled by Consent Orders, and, of the remaining 60%, the position I advocated prevailed more than 80% of the time, either before the ALJ or in the appellate courts.

I would suppose that there could be some concern that my area of practice has been too limited to environmental matters whereas an Administrative Law Judge hears diverse matters and may be sitting as a trier of fact or in an appellate capacity. However, I believe the focus should be on the Court's procedures. Whether it's a contested case or an appeal, the hearing procedures are established, and I feel I have a more than adequate grasp of those. I also believe I possess sufficient ability to read and understand the statutes and regulations specific to a particular agency involved in an appeal, and I am certain counsel for the parties will direct my attention to

what they believe are the controlling authorities, and I feel I have the capability to review and evaluate those substantively. Also, a major function of the Administrative Law Judge is to make factual findings in cases where testimony conflicts. I believe my experience has prepared me to be a good judge of witnesses and exhibits. Often, the legal conclusions will flow from the facts.

I am aware that this Commission is mandated to consider a number of factors in deciding which candidates to nominate, including diversity and "other demographic factors." In that respect, I would point out there has yet to be an Administrative Law Judge from the coastal area of the State. While I would not rest my candidacy on that factor, I believe I would contribute to the diversity on the Court.



Christopher McG. Holmes

December 4, 2008

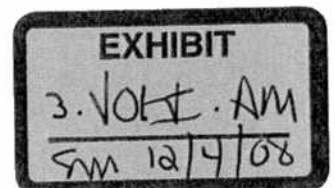
**JUDICIAL MERIT SELECTION COMMISSION
PERSONAL DATA QUESTIONNAIRE**

Court, Position, and Seat # for which you are applying: Administrative Law Judge,
Seat 4

1. NAME: Ms. Melody L. James
BUSINESS ADDRESS: 718 Lafayette Avenue
Camden, SC 29020
BUSINESS NUMBER: (803) 425-0012

2. Date of Birth: 1963
Place of Birth: Camden, 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: Divorced on August 31, 1987, Richland County (South Carolina) Family Court, Mark Heard was the moving party, One year's separation. No 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 South Carolina - September, 1980 to May, 1984 - (B.S.) Accounting;
 - (b) University of South Carolina - September, 1984 to May, 1987 - (J.D.) Law.
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 - 1987.
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) Phi Beta Kappa (approx. 1983 to 1984);
 - (b) Women in Business (approx. 1983 to 1984).
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) Domestic Violence Seminar	04/24/08;
(b) Annual Summary Court Seminar	03/05/08;



- (c) 17th Annual Criminal Practice 10/05/07;
- (d) The ABC's of DUI 07/23/07;
- (e) Criminal Domestic Violence 01/30/07;
- (f) Judges & Attorneys Substance Abuse Seminar – MUSC 12/01/06;
- (g) Ethics Roadshow 2006 12/13/06;
- (h) 2006 SC Ultimate Trial Notebook 11/17/06;
- (i) Mandatory ADR Training 09/08/06;
- (j) The Unforgiving Minute 12/10/05;
- (k) The Criminal Trial from Start to Finish 12/12/05;
- (l) DUI Trial Advocacy from A to V 07/20/05;
- (m) Summary Court Annual Meeting (and Judicial Oath of Office) 09/9/04;
- (n) Revised Lawyer's Oath CLE 08/27/04;
- (o) DUI Trial Advocacy 08/19/04;
- (p) DUI Trial from A to V 03/11/04;
- (q) 13th Annual Criminal Practice 11/21/03;
- (r) Ethics Seminar 11/07/03;
- (s) Ethics Seminar 05/13/03;
- (t) Annual Convention Summary Ct. 09/07/03.

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.
South Carolina Bar – November 1987.
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) August, 1987 - August, 1997 - Setzler, Chewing & Scott (law firm); firm later became Setzler & Scott; West Columbia, SC. I practiced as an associate in general practice firm;
 - (b) August, 1997 - October, 1999 - Barnes, Alford, Stork, & Johnson (law firm); Columbia, SC. I practiced as an associate lawyer in an insurance defense firm in the area of workers' compensation defense;
 - (c) October, 1999 - present - Mazingo & James (law firm); Camden, SC Partner and practicing attorney in a general practice firm with strong emphasis in workers' compensation.

If you are a candidate for **Administrative Law Judge**, please provide a brief written description of your experience before an Administrative Law Judge,

including any issues discussed and the frequency of your appearances before the Administrative Law Judge Division.

My experience with administrative law is not through the Administrative Law Court, but is through my experience before another administrative body, the South Carolina Workers' Compensation Commission. I have substantial experience before the Commission in addressing procedural, factual and legal issues. The contested hearings are held before a single commissioner. I appear at the trial level (single commissioner), review level (Full Commission), and have handled matters on appeal to the Circuit Court (*), and Court of Appeals. The procedure for hearings is provided through a set of administrative laws and rules. The standard of review of an appeal from the Workers' Compensation Commission to the Court of Appeals is the same standard for administrative appeals heard before the Administrative Law Court and appeals from the Administrative Law Court. The standard of review of is set forth in the Administrative Procedures Act.

(*Pursuant to 2007 reform of the Act, cases involving injuries occurring on or after July 1, 2007 are appealed directly to the Court of Appeals, instead of the Circuit Court.)

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: ;

(b) state: Hearings set would be an average of one time a week on various matters, including workers' compensation matters and domestic matters. After various consent orders or other resolutions prior to the court date, actual appearances would average once every two to three weeks. (Also, as a municipal court judge, I preside over bench trials once a week, and jury trials are set for twice a week.)

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

(a) civil: 60;

(b) criminal: ;

(c) domestic: 40.

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

(a) jury: 0%;

(b) non-jury: 100%.

Did you most often serve as sole counsel, chief counsel, or associate counsel in these matters? Chief 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) Hunter v. Werner Enterprises, et al

This case involved a trucking liability case in which suit was filed, and I was involved in the negotiation of a settlement that protected the interests of an individual that lost an eye and had other significant impairment.

(b) Vargas v. Sitton Buick

This was a workers' compensation claim. I represented the Defendants in trial and subsequent requests for review and appeal. The Defendants were successful and the case was denied. This is matter that would have involved the payment of substantial sums if the claim was found compensable.

(c) Branham v. Kohn Construction Co.

This was a workers' compensation claim in which I represented the Claimant. As well as other issues, the matter involved contested matters of non-insurance and whether the employer was subject to the Act. The employer was found to be subject to the Act. The Claimant suffered a severe injury to his back and as a result of the trial, he was able to get the medical treatment he needed, including surgery, and all benefits that he was entitled to.

(d) All Carolina Temporary v. Smith

This was workers' compensation matter in which I represented the Defendants. The main issue in this matter was whether the claimant engaged in horseplay. The procedures of braking and using a large trash truck in a residential neighborhood were also peripheral issues. The Defendants were successful and the case was denied with a finding of horseplay. If found compensable this matter would have involved the payment of substantial sums.

(e) Catoe v. Lynches River

This case was a civil liability case that involved an accident with a large utility truck. Co-counsel and I represented the family of the driver of the other vehicle, who died as a result of the collision. After suit was filed and extensive discovery, the matter was resolved through settlement that protected the interests of the deceased family (which included a young child).

With the numerous workers' compensation matters that I have handled this is an extremely hard question to answer. There are a large number of legal/factual issues that I have handled that have a significant impact on a workers' compensation matter. Many of these matters result in the case changing in substantial value.

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.
- (a) Melton v. Melton
S.C. Court of Appeals; January 10, 2005, (Unpublished opinion);
 - (b) Beard v. Aiken Regional Medical Center
March 8, 2000, (Unpublished opinion);
 - (c) Lovelace v. Anderson Steel Erection, Inc., et al
S. C. Court of Appeals; June 2006, (Unpublished opinion);
 - (d) Loyd's Inc. v. Good, et al
S.C. Court of Appeals; December 2, 1991; 306 S.C. 450; 412 S.E.2d 441 (Ct. App. 1991);
 - (e) Soaper v. Hope Industries, Inc.
S.C. Court of Appeals - January 6, 1992; S.C. Supreme Court - November 30, 1992; 306 S.C. 531, 413 S.E.2d 38 (Ct. App. 1991) aff'd 309 S.C. 438, 424 S.E.2d 493 (1992) This matter was handled with co-counsel. I participated in trial and latter argued the matter at the Court of Appeals level.
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.
None.
22. Have you ever held judicial office? Describe the jurisdiction of each of the courts and note any limitations on the jurisdiction of each court.
- (a) City of Cayce Municipal Court - Associate Judge from August, 1988 until 1994;
 - (b) Chief Judge from 1994 until present (appointed by City Counsel).
Jurisdiction is over cases arising under the ordinances of the City, and all offenses which are subject to a fine not exceeding \$500.00 or imprisonment not exceeding 30 days, or both, which occur within the City limits. There are also various statutes that provide jurisdiction for municipal court in criminal matters exceeding these limits. (Example, DUS 2nd and above (non-DUI related).) Also, the Court has authority to issue arrest warrants, search warrants, and conduct preliminary hearings on all criminal matters.
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. At the summary court level there is rarely a written order, and the matters tried are mainly alleged traffic violations, and first level criminal offenses. Therefore, I am unable to quote any significant orders or opinion, and am not aware of any cited orders or opinions.
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.

As I am a part-time municipal judge, the only other employment would be in the practice of law, as reflected in answer to question number 14.

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? No.
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.
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.
- My current law partner does not appear in the Administrative Law Court, but if she did it would be a conflict of interest. I would advise all parties of the relationship, and recuse myself from hearing any cases handled by her.
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? 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?
- A pro se plaintiff brought suit against the City of Cayce with allegations that the officers detained him without an executed search warrant. He listed me as a party as I was the judge issuing the search warrant. After a summary judgment hearing, the case against all defendants was dismissed.
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 charges or allegations against myself or any other candidate.
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 charges or allegations against myself or any other candidate.
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 to date.
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.
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? No.
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 since 1987;

- (b) 11th Judicial Circuit Representative in Young Lawyers' Division.
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. None.
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. This information may include how your life experiences have affected or influenced the kind or type of judge you have been or plan to be.
49. References:
- (a) Beth Lee-Moeller
First Citizens Bank
1111 Broad Street
Camden, SC 29020
(803) 432-1995;
 - (b) Andrew N. Safran, Esquire
P.O. Box 12089
Columbia, SC 29211
(803) 256-6689;
 - (c) Weldon R. Johnson, Esquire
P.O. Box 8448
Columbia, SC 29202
(803) 799-1111;
 - (d) Elizabeth A. May, Esquire
Kershaw County GAL Program
1111 Broad Street, Suite 3C
Camden, SC 29020
(803) 425-0012;
 - (e) Thomas Neal, Esquire
P.O. Drawer 90405
Columbia, SC 29290
(803) 931-0028.

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/Melody L. James

Date: 09/26/08

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

Administrative Law Court
(New Candidate)

Full Name: Melody L. James
Business Address: 718 Lafayette Avenue
Camden, SC 29020
Business Telephone: (803) 425-0012

1. Do you plan to serve your full term if elected? Yes
2. Do you have any plans to return to private practice one day? No
3. Have you met the Constitutional requirements for this position regarding age, residence, and years of practice? Yes
4. What is your philosophy regarding *ex parte* communications? Are there circumstances under which you could envision *ex parte* communications being tolerated?
A judge should not engage in *ex parte* communications. I can not envision a set of circumstances in which *ex parte* communications should be tolerated. (The Code of Judicial Conduct does provide for that conversations for scheduling or administrative purposes that do not deal with substantive matters or issues on the merits are authorized as long certain conditions are met. It would be best to see if all parties could be contacted at the same time by conference call or in person to address any scheduling or administrative matters.)
5. What is your philosophy on recusal, especially in situations in which lawyer-legislators, former associates, or law partners are to appear before you?
I believe that all parties should be made aware of the relationship or previous relationship. If the relationship is close in time, the Judge should recuse themselves. If a great number of years has passed, a judge could reveal this to the parties, and ask them to consider this outside the presence of the judge as to whether they have an objection or wish to waive. Any waiver should be on the record. However, at this time I could not envision any passage of years in which I would feel comfortable hearing any matter handled by my law partner.
6. If you disclosed something that had the appearance of bias, but you believed it would not actually prejudice your impartiality, what deference would you give a party that requested your recusal? Would you grant such a motion?
I would give great deference to the party that requested the recusal because the court's impartiality would be questioned. Judges should

promote the public confidence in impartiality. I would grant the motion.

7. If elected, what standards would you set for yourself regarding the acceptance of gifts or social hospitality?
I would not accept any gifts.
8. How would you handle a situation in which you became aware of misconduct of a lawyer or of a fellow judge?
The conduct should be reported to the respective disciplinary body.
9. Are you affiliated with any political parties, boards or commissions that, if you are elected, would need to be re-evaluated? No
10. Have you engaged in any fund-raising activities with any political, social, community, or religious organizations? No
11. How would you handle the drafting of orders?
Where there are two or more parties and the parties are represented by counsel, then the prevailing party may be asked to prepare a proposed order for review of the judge. The order needs to be circulated by the preparing party to all other parties prior to submission to the judge. If all parties have no objections then the order should be submitted to the judge. If a party has objections to provisions of the proposed order, then the judge should set a time where all parties are present to review and present argument concerning the order provisions.
12. What method would you use to ensure that you and your staff meet deadlines? There should be a dual calendaring system for all deadlines.
13. What is your philosophy on "judicial activism," and what effect should judges have in setting or promoting public policy?
Judges should not have an outside agenda. They are to fairly and impartially interpret the law, not make law. A judge should not interject political views within their conduct or decisions. A judge should not legislate from the bench.
14. Canon 4 allows a judge to engage in activities to improve the law, legal system, and administration of justice. What activities would you plan to undertake to further this improvement of the legal system?
If invited I would speak at a bar program. If other opportunities were presented that would promote the legal system, I would have to first review each situation to see if it was within the confines of the Code of Judicial Conduct.
15. Do you feel that the pressure of serving as a judge will strain personal relationships (i.e. spouse, children, friends, or relatives)? How would you plan to address this?
I do not believe that the pressure of serving would strain any personal relationships.

16. Are you involved in any active investments from which you derive additional income that might impair your appearance of impartiality?
No
17. Would you hear a case where you or a member of your family held a de minimis financial interest in a party involved? No
18. Do you belong to any organizations that discriminate based on race, religion, or gender? No
19. Have you met the mandatory minimum hours requirement for continuing legal education courses? Yes
20. What percentage of your legal experience has dealt with cases that appear before the Administrative Law Court? Please describe to the Commission your experience in these areas.

My experience with administrative law is not through the Administrative Law Court, but is through my experience before another administrative body, the South Carolina Workers' Compensation Commission. I have substantial experience before the Commission in addressing procedural, factual and legal issues. The contested hearings are held before a single commissioner. I appear at the trial level (single commissioner), review level (Full Commission), and have handled matters on appeal to the Circuit Court (*), and Court of Appeals. The procedure for hearings is provided through a set of administrative laws and rules. The standard of review of an appeal from the Workers' Compensation Commission to the Court of Appeals is the same standard for administrative appeals heard before the Administrative Law Court and appeals from the Administrative Law Court. The standard of review of is set forth in the Administrative Procedures Act.

(*Pursuant to 2007 reform of the Act, cases involving injuries occurring on or after July 1, 2007 are appealed directly to the Court of Appeals, instead of the Circuit Court.)

21. What do you feel is the appropriate demeanor for a judge?
A Judge's demeanor should always convey impartiality and integrity. Their behavior should promote confidence in the judicial system.
22. Would the rules that you expressed in your previous answer apply only while you are on the bench or in chambers, or would these rules apply seven days a week, twenty-four hours a day? These rules should apply seven days a week, twenty-four hours a day.
23. Do you feel that it is ever appropriate to be angry with a member of the public who would appear before you? Is anger ever appropriate in dealing with attorneys or a pro se litigant?
No. Anger would never be an appropriate response.

24. 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? None to date.
25. If you are a sitting judge, have you used judicial letterhead or the services of your staff while campaigning for this office? No
26. Have you sought or received the pledge of any legislator prior to this date? No
27. Have you sought or been offered a conditional pledge of support by any legislator pending the outcome of your screening? No
28. 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
29. Have you contacted any members of the Judicial Merit Selection Commission? No
30. 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/Melody L. James _____

Sworn to before me this 26th day of September, 2008.

Notary Public for S.C.

My Commission Expires: 1/15/2013 _____

MELODY L. JAMES, ESQUIRE

P.O. Box 1195
718 Lafayette Avenue
Camden, South Carolina 29020
Phone: (803) 425-0012 (Office)
Fax: (803) 432-1332
Cell: (803) 917-4774

December 3, 2008

Hand Delivered

Judicial Merit Selection Commission
104 Gressette Building
1101 Pendleton Street
Columbia, S.C. 29201

RE: Amendment to Personal Data Questionnaire Addendum

Dear Members:

I am submitting the following amendments to my Personal Data Questionnaire Addendum "PDQ Addendum":

Answer to Question Number 3 of the PDQ Addendum:

No, I have never been disciplined or cited. At the time of the filing of my application there was a pending matter with the Commission on Judicial Conduct. I indicated that the tape of the trial had been reviewed by Office of Disciplinary Counsel and that I expected a decision soon. After review of the tape of the trial, the matter was dismissed by the Commission.

Answer to Question Number 4 of the PDQ Addendum:

See 3 above. In twenty years, I have only been criticized once. I was accused of making personal comments in the courtroom. At the time of my filing of my application the matter was pending with the Office of Disciplinary Counsel. The tape of the trial had been reviewed and I expected a decision soon. I also indicated that I would update my response to this question. After review of the tape of the trial, the matter was dismissed by the Commission.

December 3, 2008

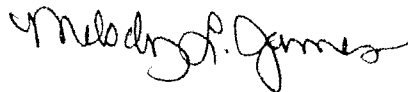
Page 2

Answer to Question Number 5 of the PDQ Addendum:

I do not accept any of the above items from any attorney, group of attorneys, or individuals. I have in the past attended social gatherings that are permissible under the Code of Judicial Conduct.

With kindest regards, I am

Sincerely,

A handwritten signature in black ink that reads "Melody L. James". The signature is written in a cursive style with a large initial "M".

Melody L. James

/mlj

MELODY L. JAMES, ESQUIRE

P.O. Box 1195
718 Lafayette Avenue
Camden, South Carolina 29020
Phone: (803) 425-0012 (Office)
Fax: (803) 432-1332
Cell: (803) 917-4774

December 3, 2008

Hand Delivered

Judicial Merit Selection Commission
104 Gressette Building
1101 Pendleton Street
Columbia, S.C. 29201

RE: Amendment to Personal Sworn Statement

Dear Members:

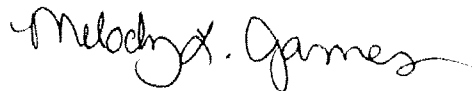
I am submitting the following amendments to my Sworn Statement:

Question Number7: If elected, what standards would you set for yourself regarding the acceptance of gifts or social hospitality?

I would not accept any gifts. With regards to social hospitality, I would only attend ordinary social functions as provided by the Code of Judicial Conduct.

With kindest regards, I am

Sincerely,



Melody L. James

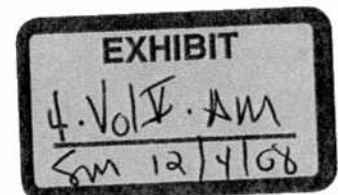
/mlj

**JUDICIAL MERIT SELECTION COMMISSION
PERSONAL DATA QUESTIONNAIRE**

Court, Position, and Seat # for which you are applying: South Carolina
Administrative Law Court, Administrative Law Judge Seat No. 4

1. NAME: Mrs. Carol Ann Isaac McMahan
BUSINESS ADDRESS: PO Box 12265
Columbia, S.C. 29211
E-MAIL ADDRESS: mcmahac@sctax.org
BUSINESS NUMBER: (803) 240-8511

2. Date of Birth: 1953
Place of Birth: Washington, D.C.
3. Are you a citizen of South Carolina? Yes, I am a citizen and resident of South Carolina.
Have you been a resident of this state for at least the immediate past five years? Yes, I have been a citizen and resident of South Carolina since my honorable discharge from the United States Army in 1977.
5. Family Status: Married on January 5, 1980, to George Carroll McMahan. Never divorced. Three Children.
6. Have you served in the military?
From 1974 to 1977 I served in the United States Army Security Agency. I achieved the rank of E-4 and in 1977 I was honorably discharged.
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 South Carolina School of Law, 12/31/1985, Juris Doctor;
 - (b) University of South Carolina Spartanburg; 8/1981, B.S. in Interdisciplinary Studies w/ a Concentration in Accounting;
 - (c) College of Charleston; 1979; No degree obtained;
 - (d) Winthrop College; Fall/1971; No degree obtained.
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, 1986 (one sitting for the bar exam).
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.
USC Spartanburg Activity
Work/Study participant with the Internal Revenue Service



USC School of Law Activity

Phi Alpha Delta Law Fraternity

Employee of the Internal Revenue Service in Columbia, South Carolina.

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)	SCARLA Seminars (2003 not in my records)	9/21/2007; 9/22/2006; 9/23/2005; 10/1/2004; 9/20/2002;
(b)	Dramatic Changes in Criminal Law	7/13/2007;
(c)	Ethics Roadshow	12/10/2007;
(d)	Top Trial Lawyers Tackle Evidence	2/8/2008;
(e)	Domestic Violence	5/31/2006;
(f)	The Truth About Opinions	11/21/2006;
(g)	Secrecy and the Courts	4/19/2005;
(h)	Managing Litigation w/Technology	12/19/2005;
(i)	SC Assoc. of Counties	12/9/2005;
(j)	Advocacy	12/10/2004;
(k)	Beyond the Bar II	11/05/2004;
(l)	Circuit Court Arbitration	02/15/2002.

11. Have you taught law-related courses or lectured at bar association conferences, educational institutions, or continuing legal or judicial education programs?

As part of a South Carolina Bar program, "Law School for Non-Lawyers," I taught "An Overview of South Carolina Courts" on September 11, 2007 in Anderson, South Carolina. I also taught a tax course at Tri-County Technical College in Pendleton, South Carolina.

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

Authored

- (a) "Client Alert Effects of the 2% Withholding Tax" - South Carolina Lawyer, July/Aug. 1990;
- (b) "Withholding Whammies in South Carolina" - 1991 Tax Commentaries, S.C. Association of CPAs;
- (c) "Are Settlement Procedures the Way to Resolve Tax Nexus Issues" - Journal of Multistate Taxation, Nov/Dec, 1992;
- (d) "Are Settlement Procedures the Way to Resolve Tax Nexus Issues" - South Carolina Lawyer, May/June 1993;
- (e) "One-Stop Business Shopping": - Business & Economics, Jan/Feb/Mar, 2003.

Co-Authored

- (a) "What's the Use Tax" - South Carolina Lawyer, July/Aug, 1991;
 - (b) "The Taxation of Multistate Corporations in South Carolina" - 1991 Tax Commentaries, S.C. Association of CPAs;
 - (c) "What's in a Use Tax" - 1991 Tax Commentaries, S.C. Association of CPAs;
 - (d) "Manufacturing and Business personal Property Tax Returns, Did You Know" - 1992 Tax Commentaries, S.C. Association of CPAs;
 - (e) "Katie Bar The Door, The Tax Person Is Here" - 1992 Tax Commentaries, S.C. Association of CPAs.
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) South Carolina:(Admission to the Bar): September/1986;
 - (b) South Carolina Federal Court.
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.
- Upon graduation from USC Law School I was employed by Price Waterhouse in Columbia, South Carolina as a Tax Consultant. This involved research and application of various federal and state tax laws. In December/1988 I was employed by the South Carolina Department of Revenue as a Tax Analyst. At that time I conducted legal research and represented the Field Services Division of the Department (at that time "Tax Commission") before the Tax Commissioners. In the Fall of 1995 I began preparing Department Determinations regarding regulatory violation and licensing issues and eventually tried such matters as contested cases before the ALC in 1996. In July of 2006 I was also assigned as counsel to various tax matters. I represented the Department in these contested cases before the ALC. In August, 2007 I also served as an Asst. Attorney General for tax matters in the absence of Thomas McDermott (military duty in Iraq). To date I assist as counsel in criminal tax matters as needed.
- If you are a candidate for **Administrative Law Judge**, please provide a brief written description of your experience before an Administrative Law Judge, including any issues discussed and the frequency of your appearances before the Administrative Law Judge Division.
- On a monthly, at times weekly basis I represent the South Carolina Department of Revenue in contested case hearings relating to all matters administered by the Department to include, tax, licensing and regulatory matters. For the most part I serve as sole counsel in such representation. I also serve as counsel on the appeal of such matters to the Court of Appeals and Supreme Court (previously appeals were taken to circuit court).
15. What is your rating in Martindale-Hubbell?
- My visibility rating in Martindale-Hubbell provides: "327 out of 2120 in

Columbia, 122689 out of 889357 overall." I would note that my research indicates that the other attorneys at the Department have this rating as well.

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?

During the last five years I have appeared monthly, at times weekly in South Carolina Courts, to include the Administrative Law Court. I have not appeared in federal court.

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

As an attorney for the S.C. Department of Revenue, the vast majority of my case load are administrative, regulatory and civil matters. In the last year I have also appeared in General Sessions for guilty pleas in criminal tax matters.

18. What percentage of your practice in trial court during the last five years involved matters that went to a jury? Did you most often serve as sole counsel, chief counsel, or associate counsel in these matters?

My entire legal experience is in the non-jury arena. With the exception of two cases, Lexington Medical vs. South Carolina Department of Revenue and Anonymous Taxpayer v. South Carolina Department of Revenue, I have served as 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) McNickel:s Inc. V. S.C. Dept. of Revenue, 351 S.C. 629, 503 S.E.2d 723 (1998)

This case is of note as the issue involved the validity of a Department regulation. The Supreme Court sustained the Department's position. Also, this was my first oral argument before the Supreme Court.;

(b) Sonoco Products Company v. S.C. Dept. of Revenue, S.C. __, __, S.E.2d, __, 2008 WL 2329754 (2008)

(I handled the oral argument only). This was a property tax matter involving the meaning of the word "contiguous" in relation to determining the applicable tax base for an office building. This was significant in that it involved the application of a property tax statute with implications as to other taxpayers similarly situated.;

(c) Video Gaming Consultants Inc. v. S.C. Dept. of Revenue, 358 S.C. 647, 595 S.E.2d 890 (CA, 2004)

(I handled the oral argument only). The Court of Appeals ruled that the Department of Revenue was not required to pay attorneys fees for

"pressing its claim" in this case because the underlying issue was the constitutionality of a statute.

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.
- (a) McNickel:s Inc. V. S.C. Dept. of Revenue
351 S.C. 629, 503 S.E.2d 723 (1998);
 - (b) Sonoco Products Company v. S.C. Dept. of Revenue
__ S.C. __, __, S.E.2d, __, 2008 WL 2329754 (2008);
 - (c) Video Gaming Consultants Inc. v. S.C. Dept. of Revenue
358 S.C. 647, 595 S.E.2d 890 (CA, 2004);
 - (d) Evans v. S.C. Dept. of Revenue
(Unpublished, Court of Appeals);
 - (e) S.C. Dept. of Revenue v. Stardust Amusement Co.
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.
I have not handled any criminal appeals during my career.
22. Have you ever held judicial office? Not applicable.
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? Not Applicable.
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? This application is my first candidacy for any elective office.
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?
Set forth below are the positions that I have held since receiving my undergraduate degree from USC-Spartanburg.
- (a) 1980-1985 Internal Revenue Service, Spartanburg and Columbia, S.C.;
 - (b) 1986-1988 Price Waterhouse, Columbia, South Carolina.
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, I am not an officer or director or involved in the management of any business enterprise.
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 do not believe that I have had in the past nor do I currently participate in any business relationships that might potentially present a conflict of interest.
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 not 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, etc other than a traffic ticket for exceeding the speed limit in 1984 or 1985. I disclose this because I do not recall the fine imposed.
32. Have you, to your knowledge, ever been under federal, state, or local investigation for possible violation of a criminal statute?
No, I am not aware of ever having been investigated by federal, state, or local authorities for a violation of a criminal statute.
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?
I do not recall a tax lien or other collection procedure ever having been instituted against me.
34. Have you ever been sued, either personally or professionally?
Yes, my husband and I contracted to build our current home. We terminated the services of the contractor. He filed a mechanics lien against our home. He then filed bankruptcy. We counterclaimed. The suit was dismissed.
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, I have never been a lobbyist.
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?
I have not received anything of value as defined by S.C. Code Ann. Section 2-17-10(1) from a lobbyist or lobbyist's principal.
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.

To date I have no knowledge of any conduct of the type set forth in No. 38.

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.

To date I have no knowledge of any conduct of the type set forth in No. 39.

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.

Expenditures for my candidacy to date approximate \$15.00.

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.

I have not made any contributions as envisioned by Question No. 41.

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?

I have not requested, directly or indirectly the pledge of any member of the General Assembly as to my election to Seat No. 4 of the Administrative Law Court.

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?

I have not requested any friend, relative, or other third party to contact any member of the General Assembly regarding my election to Seat No. 4 of the South Carolina Administrative Law Court.

44. Have you or has anyone acting on your behalf solicited or collected funds to aid in the promotion of your candidacy?

I have not solicited or collected funds to aid in the promotion of my candidacy. To my knowledge, no one acting on my behalf has solicited or collected funds to aid in the promotion of my candidacy.

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 (nor anyone acting on my behalf) have not contacted any members of the

Judicial Merit Selection Commission regarding my candidacy or any other matter.

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.
South Carolina Bar Association, Delegate, 2006/2007.
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) School Improvement Council, Pendleton High School;
 - (b) St. Joseph's Catholic Church, Catechist (Sunday School Teacher);
 - (c) St. Andrews Catholic Church;
 - (d) Teakwood Plantation Homeowners Assoc. (Bd. Member (2003-2007); President (2004);
 - (e) Special Olympics, 2008.
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. This information may include how your life experiences have affected or influenced the kind or type of judge you have been or plan to be.
49. References:
 - (a) Henry and Mary Jane Campbell
1326 Clarendon Ave.
Florence, South Carolina
(843) 665-5554;
 - (b) Elizabeth Harrison
200 Fants Grove Rd.
Anderson, S.C. 29625
(864) 646-0016;
 - (c) Pam and Warren Wheeler
102 Moorehead Pl.
Pendleton, S.C. 29670
(864) 261-9405;
 - (d) Stephen D. Kirkland, CPA, CMC, CFC
220 Stoneridge Dr., Suite 402
Columbia, S.C. 29210-8013
(803) 477-5973;

(e) Tara E. Brock, Asst. Vice Pres.
BB&T Bank
4007 Clemson Blvd.
Anderson, S.C. 29621
(864) 261-4014.

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/Carol Ann Isaac McMahan

Date: 09/25/08

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

Administrative Law Court
(New Candidate)

Full Name: Carol Ann Isaac McMahan
Business Address: PO Box 12265
Columbia, S.C. 29211
Business Telephone: (803) 240-8511

1. Do you plan to serve your full term if elected?
Response: Yes, if elected I plan to serve my full term.
2. Do you have any plans to return to private practice one day?
Response: I have no plans to go into private practice. However, I do plan to work in the legal community as a teacher, volunteer and/or consultant.
3. Have you met the Constitutional requirements for this position regarding age, residence, and years of practice?
Response: Yes, I have met the Constitutional requirements regarding age, residence and years of practice required to be eligible for the position of South Carolina Administrative Law Judge.
4. What is your philosophy regarding *ex parte* communications? Are there circumstances under which you could envision *ex parte* communications being tolerated?
Response: My philosophy regarding *ex parte* communications is based on Canon 3 (B)(7), South Carolina Code of Judicial Conduct that requires in pertinent part: "[a] judge shall not initiate, permit, or consider *ex parte* communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding." (Emphasis added). Although I would endeavor to avoid all *ex parte* communications under limited circumstances such communications may be necessary. These exceptional circumstances are as provided by Canon 3, Section (B) (7), SCJC, for communications regarding matters other than substantive issues or matters involving the merits of the case to include an emergency, calendar issues or administrative matters. I would make these exceptions only where I "reasonably believed no party would gain an advantage due to such *ex parte* communication and I timely and promptly make arrangements to notify all other parties regarding such *ex parte* communication, Canon 3 (B) (a), SCJC.
5. What is your philosophy on recusal, especially in situations in which lawyer-legislators, former associates, or law partners are to appear before you?

Response: As a judge, I "shall" disqualify myself in any proceeding where my impartiality might reasonably be called into question." Canon 3(E), SCJC. Any information relevant to the consideration of disqualification must be disclosed on the record. However appearances by lawyer-legislators, former associates or law partners in my court, without more, would not disqualify me from hearing the case. Instances that would require such disqualification would include but not be limited to a situation where my former law partner is appearing before me on a case I previously served as the lawyer, or based on my former association I have knowledge of certain evidentiary matters. Additionally, where I was disqualified under the provisions of 3(E) I would disclose such disqualification "on the record" and may well ask the parties/lawyers to waive the disqualification and proceed with the case in a timely manner. See Canon 3(F), "Remittal."

6. If you disclosed something that had the appearance of bias, but you believed it would not actually prejudice your impartiality, what deference would you give a party that requested your recusal? Would you grant such a motion?

Response: Under the situation presented I would disclose on the record information that I believe the parties/lawyers may consider relevant to the question of disqualification. At that time, also on the record, I would request the parties/lawyers consider waiving the disqualification, by considering such out of my presence. If the parties/lawyers waived such disqualification I would timely proceed with the case. Absent such remittal, I would grant counsel's motion. See Canon 3(E) and (F), SCJC.

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

Response: If elected I would follow the mandatory language at Canon 4(D) (5) SCJC That is, I would not accept gifts and I would encourage family members residing in my home not to accept gifts except as specifically provided in Sections 4(D)(5)(a) through (i).

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

Response: In a situation where I received information of the substantial likelihood of the misconduct of an attorney or judge I should take "appropriate action." This action may be discussing the conduct with the attorney/judge and/or reporting such misconduct to the appropriate authority. On the other hand, where I have knowledge that a violation has been committed and that such misconduct raises a substantial question as to the attorney/judge's fitness, I am required to report the misconduct to the appropriate authority, Canon 3(D)(1) and (2), SCJC.

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

Response: No I am not.

10. Have you engaged in any fund-raising activities with any political, social,

community, or religious organizations?

Response: Yes I have assisted my daughter in raising funds for various activities at Riverside Middle School and the March of Dimes. On an annual basis I send out pre-prepared letters to the other residents on Compass Pointe, for donations to the March of Dimes. I also assisted my daughter in fundraising (this year cookie dough) for the cheer and girls soccer teams.

11. How would you handle the drafting of orders?

Response: As an Administrative Law Judge I would be required to issue orders setting forth specific findings of fact and conclusions of law, S.C. Code Ann. Section 1-23-350. At times I may request that the parties draft such orders and submit them to me for consideration with copies to opposing counsel. I would also request each party submit their exceptions to such proposed orders with copies to opposing counsel within a specified time frame, See Canon 3 (B)(7), SCJC ("A judge may request a party to submit proposed findings of fact and conclusions of law, so long as the other parties are apprised of the request and are given an opportunity to respond to such proposals").

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

Response: To ensure that all deadlines were met I would set up a computer calendar, perhaps in "Outlook" tracking the pretrial, trial, and post trial motions and pleadings in a particular case. A hard copy of this tracking system would also be kept in the respective case file.

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

Response: I whole heartedly encourage "judicial activism" to the extent that it fosters the improvement of the law, legal system and administration of justice.

14. Canon 4 allows a judge to engage in activities to improve the law, legal system, and administration of justice. What activities would you plan to undertake to further this improvement of the legal system?

Response: In order to further improvement of the law, legal system and administration of justice I would endeavor to speak and teach at both lawyer and law related seminars for nonlawyers, to include elementary and high schools.

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

Response: I don't believe that serving as a judge will provide additional strain on my family, relatives and friends. That is not to say that life is not at times, hectic, but as long as we continue to work as a team, pray together, break bread together and LISTEN to one another we will be fine.

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

Response: No, I am not involved in any active investments from which I derive additional income that would impair my appearance of impartiality.

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

Response: Although Canon 3(E)(1) (c) and (d)(iii), SCJC provide that a 'de minimis' interest would not require recusal, depending on the particular case before me and the issues presented, I may recuse myself as "appearing to lack impartiality" despite the fact that the rules do not specifically prohibit such recusal.

18. Do you belong to any organizations that discriminate based on race, religion, or gender?

Response: No, I am not aware that I belong to any organization that discriminates based on race, religion, or gender. However, should I determine that any organization that I belong to does so discriminate I would follow Canon 2(C), SCJC and use my best efforts to encourage the organization to cease such discriminatory practices. If the organization failed to take such action I would as required, resign from the organization.

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

Response: I have met the mandatory minimum hours requirement for continuing legal education courses for all prior years of practice. I have not yet met such requirements for the current year but plan to do so by the end of the year.

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

Response: The vast majority of my courtroom experience has been appearing before the Administrative Law Court ("ALC") on behalf of the South Carolina Department of Revenue ("Department"). I began trying cases before the ALC for the Department in 1996. Such cases included bingo, video poker, and alcohol licensing and violation matters. In 2006 I began representing the Department in tax matters as well. In 2007 I also assisted in criminal tax matters and continue to provide counsel on such cases on an as needed basis.

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

Response: A judge shall conduct all business, whether judicial or extra-judicial in a manner respecting the parties with whom the judge is dealing. This is readily apparent in the language of Canon 4(B)(4) which provides that a judge 'shal be patient, dignified, and courteous." Further, Canon 4(A) (2) provides a judge shall conduct the judge's extra-judicial activities so as not to demean the judicial office. Historically judges are the individuals the public looks to to set an example. Certainly courtesy and patience to all litigants is jthe udge's rule of demeanor.

22. 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?

Response: The rules regarding a lawyers and a judges behavior apply across the board, twenty-four hours a day. See Canon 4(A) (2), SCJC, "a judge shall conduct all of the judge's extra-judicial activities so that they do not: . . . (2) demean the judicial office."

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

Response: First, whether judge, public official or state employee, we serve the public, the taxpayer. Anger breeds anger. It is never appropriate and a judge shall not by word, deed or mannerism express anger towards a member of the public. See Canon 3(B)(4), SCJC.

24. 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?

Response: I have spent approximately \$15.00 on my campaign for Seat No. 4 of the ALC. These funds were used to purchase paper and folders.

25. If you are a sitting judge, have you used judicial letterhead or the services of your staff while campaigning for this office?

Response: Not Applicable.

26. Have you sought or received the pledge of any legislator prior to this date?

Response: No, I have not sought nor received the pledge of any legislator prior to this date, September 26, 2008. I do not plan to seek, directly or indirectly the pledge of any legislator prior to 48 hours after qualification by the Judicial Selection Commission. I understand that the only contact I may have with any legislator is to introduce myself and provide my qualifications for the judicial position sought.

27. Have you sought or been offered a conditional pledge of support by any legislator pending the outcome of your screening?

Response: I have not sought or been offered a conditional pledge of support by any legislator pending the outcome of my screening. I do not plan to seek such support prior to 48 hours after qualification by the Judicial Selection Commission. as required by S.C. Code Ann. Section 2-19-70(C).

28. 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?

Response: No, I have not requested third parties to contact members of the General Assembly on my behalf before the final and formal screening report has been released. Furthermore, I am not aware of any friends or colleagues contacting membes of the General Assembly on my behalf. I am aware that these acts violate the language and spirit of S.C. Code Ann. Section 2-19-70(C).

29. Have you contacted any members of the Judicial Merit Selection Commission?
Response: No, I have not contacted any members of the Judicial Merit Selection Commission.
30. 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?
Response: I am familiar with the 48 hour rule as provided by S.C. Code Ann. Section 2-19-70(C) and Rule 24, JMSC.

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

s/Carol Ann Isaac McMahan

Sworn to before me this 26th day of September, 2008.

Notary Public for S.C.

My Commission Expires: 5/27/2018

December 3, 2008

Judicial Merit Selection Commission
Attn: Jane O. Shuler, Chief Counsel
P.O. Box 142
Columbia, S.C. 29202

**RE: Amendments to Sworn Statement for Administrative Law Judge, Seat No. 4
Carol Ann Isaac McMahan**

Dear Ms. Shuler:

Please allow this correspondence to serve as an amendment to my Sworn Statement as set forth above. Please delete the original responses submitted for the following questions and replace such responses to reflect the following:

Amendment to Question No. 13:

Response: Black's Law Dictionary Fifth Edition, at p. 760 defines the phrase "judicial activism" as:

Judicial philosophy which motivates judges to depart from strict adherence to judicial precedent in favor of progressive and new social policies which are not always consistent with the restraint expected of appellate judges. It is commonly marked by decisions calling for social engineering and occasionally these decisions represent intrusions into legislative and executive matters.

As an administrative law judge I will not engage in, promote or seek to foster judicial activism. Such a philosophy flies in the face of an administrative law judge's role as specifically enunciated by the General Assembly in Title 1, Chapter 23. As recently noted by the South Carolina Court of Appeals in SGM-Moonglo v. S.C. Dept. of Revenue, 378 S.C. 293, 662 S.E.2d 487(Ct. App. 2008): "[a]n administrative agency has only the powers conferred on it by law and must act within the authority for that purpose.(citing Bazzle v. Huff, 319 S.C. 443, 445, 462 S.E.2d273, 274 (1995)).

Amendment to Question No. 15:

Response: I don't believe that serving as a judge will provide additional strain on my family, relatives and friends. They fully support me in this endeavor.

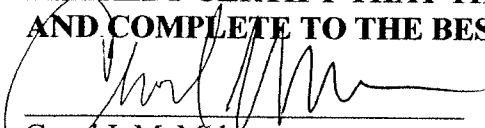
Many thanks for your assistance in this matter.

Sincerely,

Carol I. McMahan
304 Compass Pointe
Anderson, S.C. 29625
Email: g_mcmaha@bellsouth.net
Telephone: (864) 287-7832

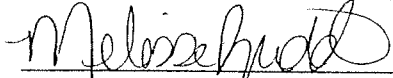
c: Bonnie Goldsmith, Esquire

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



Carol I. McMahan

Sworn to before me this 3 day of December, 2008.



Notary Public for S.C.

My Commission Expires: 9/19/09.