

Judicial Merit Selection Commission

Report of Candidate Qualifications Spring 2013

Date Draft Report Issued: Thursday, April 25, 2013

Date and Time: 12:00 Noon

Final Report Issued: Tuesday, April 30, 2013

**Judicial candidates are not free to
seek or accept commitments until
Tuesday, April 30, 2013, at Noon.**

TABLE OF CONTENTS

INTRODUCTION.....4

QUALIFIED AND NOMINATED

Circuit Court

Sixth Judicial Circuit, Seat 1 The Honorable Brian M. Gibbons.....6

CONCLUSION.....12

Judicial Merit Selection Commission

Sen. Larry A. Martin, Chairman
Rep. Alan D. Clemmons, Vice-Chairman

Jane O. Shuler, Chief Counsel
Patrick Dennis

Rep. Bruce W. Bannister
Kristian M. Cross
John Davis Harrell
Sen. George E. Campsen, III
Rep. David J. Mack, III
Sen. Floyd Nicholson
H. Donald Sellers
Joseph Preston Strom, Jr.



Post Office Box 142
Columbia, South Carolina 29202
(803) 212-6623

April 25, 2013

Dear Members of the General Assembly:

Enclosed is the Judicial Merit Selection Commission's Report of Candidate Qualifications. This Report is designed to assist you in determining how to cast your vote. The Commission is charged by law with ascertaining whether judicial candidates are qualified for service on the bench. In accordance with this mandate, the Commission has thoroughly investigated all judicial candidates for their suitability for judicial service. The Commission found all candidates discussed in this Report to be qualified.

The Commission's finding that a candidate is qualified means that the candidate satisfies both the constitutional criteria for judicial office and the Commission's evaluative criteria. The attached Report details each candidate's qualifications as they relate to the Commission's evaluative criteria.

Judicial candidates are **prohibited** from asking for your commitment until **12:00 Noon on April 30, 2013**. **Members of the General Assembly are not permitted to issue letters of introduction, announcements of candidacy, statements detailing a candidate's qualifications, or commitments to vote for a candidate until Tuesday, April 30, 2013.** In sum, no member of the General Assembly should, orally or by writing, communicate about a candidate's candidacy until the time designated after release of the Judicial Merit Selection Commission's Report of Candidate Qualifications. If you find a candidate violating the pledging prohibitions or if you have questions about this report, please contact the Commission office at 212-6623.

Thank you for your attention to this matter.

Sincerely,

Sen. Larry A. Martin
Chairman

Rep. Alan D. Clemmons
Vice-Chairman

Judicial Merit Selection Commission

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April 25, 2013

Members of the SC General Assembly
SC State House
Columbia, SC

Dear Fellow Members:

This letter is written to call your attention to issues raised during the December 2003 Judicial Merit Selection hearings concerning a judicial candidate's contact with members of the General Assembly, as well as third parties contacting members on a candidate's behalf. It is also to remind you of these issues for the Spring 2013 screening.

Section 2-19-70(C) of the SC Code contains strict prohibitions concerning candidates seeking or legislators giving their pledges of support or implied endorsement through an introduction prior to 48 hours after the release of the final report of the Judicial Merit Selection Commission (Commission). The purpose of this section was to ensure that members of the General Assembly had full access to the report prior to being asked by a candidate to pledge his or her support. The final sentence of Section 2-19-70(C) provides that "the prohibitions of this section do not extend to **an announcement of candidacy by the candidate and statements by the candidate** detailing the candidate's qualifications" (emphasis added). Candidates may not, however, contact members of the Commission regarding their candidacy; please note that six members of the Commission also are legislators.

In April 2000, the Commission determined that Section 2-19-70(C) means **no member of the General Assembly should engage in any form of communication, written or verbal, concerning a judicial candidate before the 48-hour period expires following the release of the Commission's report.** The Commission would like to clarify and reiterate that until at least 48 hours have expired after the Commission has released its final report of candidate qualifications to the General Assembly, only candidates, and not members of the General Assembly, are permitted to issue letters of introduction, announcements of candidacy, or statements detailing the candidates' qualifications.

The Commission would again like to remind members of the General Assembly that a violation of the screening law is likely a disqualifying offense and must be considered when determining a candidate's fitness for judicial office. Further, the law requires the Commission to report any violations of the pledging rules by members of the General Assembly to the House or Senate Ethics Committee, as may be applicable.

Should you have any questions regarding this letter or any other matter pertaining to the judicial screening process, please do not hesitate to call Jane O. Shuler, Chief Counsel to the Commission, at 212-6629 (M-Th).

Sincerely,

Sen. Larry A. Martin
Chairman

Rep. Alan D. Clemmons
Vice-Chairman

INTRODUCTION

The Judicial Merit Selection Commission is charged by law to consider the qualifications of candidates for the judiciary. This report details the reasons for the Commission's findings, as well as each candidate's qualifications as they relate to the Commission's evaluative criteria. The Commission operates under the law that went into effect July 1, 1997, and which dramatically changed the powers and duties of the Commission. One component of this law is that the Commission's finding of "qualified" or "not qualified" is binding on the General Assembly. The Commission is also cognizant of the need for members of the General Assembly to be able to differentiate between candidates and, therefore, has attempted to provide as detailed a report as possible.

The Judicial Merit Selection Commission is composed of ten members, four of whom are non-legislators. The Commission has continued the more in-depth screening format started in 1997. The Commission has asked candidates their views on issues peculiar to service on the court to which they seek election. These questions were posed in an effort to provide members of the General Assembly with more information about candidates and the candidates' thought processes on issues relevant to their candidacies. The Commission has also engaged in a more probing inquiry into the depth of a candidate's experience in areas of practice that are germane to the office he or she is seeking. The Commission feels that candidates should have familiarity with the subject matter of the courts for which they offer, and feels that candidates' responses should indicate their familiarity with most major areas of the law with which they will be confronted.

The Commission also used the Citizens Committees on Judicial Qualifications as an adjunct of the Commission. Since the decisions of our judiciary play such an important role in people's personal and professional lives, the Commission believes that all South Carolinians should have a voice in the selection of the state's judges. It was this desire for broad-based grassroots participation that led the Commission to create the Citizens Committees on Judicial Qualifications. These committees, composed of people from a broad range of experiences (lawyers, teachers, businessmen, bankers, and advocates for various organizations; members of these committees are also diverse in their racial and gender backgrounds), were asked to advise the Commission on the judicial candidates in their regions. Each regional committee interviewed the candidates from its assigned area and also interviewed other individuals in that region who were familiar with the candidate either personally or professionally. Based on those interviews and its own investigation, each committee provided the Commission with a report on their assigned candidates based on the Commission's evaluative criteria. The Commission then used these reports as a tool for further investigation of the candidate if the committee's report so warranted. Summaries of these reports have also been included in the Commission's report for your review.

The Commission conducts a thorough investigation of each candidate's professional, personal, and financial affairs, and holds public hearings during which each candidate is questioned on a wide variety of issues. The Commission's investigation focuses on the following evaluative criteria: constitutional qualifications, ethical fitness, professional and academic ability, character, reputation, physical health, mental health, and judicial temperament. The Commission's investigation includes the following:

- (1) survey of the bench and bar;
- (2) SLED and FBI investigation;
- (3) credit investigation;
- (4) grievance investigation;
- (5) study of application materials;
- (6) verification of ethics compliance;
- (7) search of newspaper articles;

- (8) conflict of interest investigation;
- (9) court schedule study;
- (10) study of appellate record;
- (11) court observation; and
- (12) investigation of complaints.

While the law provides that the Commission must make findings as to qualifications, the Commission views its role as also including an obligation to consider candidates in the context of the judiciary on which they would serve and, to some degree, govern. To that end, the Commission inquires as to the quality of justice delivered in the courtrooms of SC and seeks to impart, through its questioning, the view of the public as to matters of legal knowledge and ability, judicial temperament, and the absoluteness of the Judicial Canons of Conduct as to recusal for conflict of interest, prohibition of ex parte communication, and the disallowance of the acceptance of gifts. However, the Commission is not a forum for reviewing the individual decisions of the state's judicial system absent credible allegations of a candidate's violations of the Judicial Canons of Conduct, the Rules of Professional Conduct, or any of the Commission's nine evaluative criteria that would impact a candidate's fitness for judicial service.

The Commission expects each candidate to possess a basic level of legal knowledge and ability, to have experience that would be applicable to the office sought, and to exhibit a strong adherence to codes of ethical behavior. These expectations are all important, and excellence in one category does not make up for deficiencies in another.

Routine questions related to compliance with ethical Canons governing ethics and financial interests are now administered through a written questionnaire mailed to candidates and completed by them in advance of each candidate's staff interview. These issues were no longer automatically made a part of the public hearing process unless a concern or question was raised during the investigation of the candidate. The necessary public record of a candidate's pledge to uphold the Canons, etc. is his or her completed and sworn questionnaire.

Written examinations of the candidates' knowledge of judicial practice and procedure were given at the time of candidate interviews with staff and graded on a "blind" basis by a panel of four persons designated by the Chairman. In assessing each candidate's performance on these practice and procedure questions, the Commission has placed candidates in either the "failed to meet expectations" or "met expectations" category. The Commission feels that these categories should accurately impart the candidate's performance on the practice and procedure questions.

This report is the culmination of weeks of investigatory work and public hearings. The Commission takes its responsibilities seriously, as it believes that the quality of justice delivered in SC's courtrooms is directly affected by the thoroughness of its screening process. Please carefully consider the contents of this report, as we believe it will help you make a more informed decision.

This report conveys the Commission's findings as to the qualifications of the candidate currently offering for election to the Circuit Court.

CIRCUIT COURT QUALIFIED AND NOMINATED

Brian M. Gibbons
Circuit Court, Sixth Judicial Circuit, Seat 1

Commission's Findings: QUALIFIED AND NOMINATED

(1) Constitutional Qualifications:

Based on the Commission's investigation, Judge Gibbons meets the qualifications prescribed by law for judicial service as a Circuit Court Judge Gibbons.

Judge Gibbons was born in 1966. He is 46 years old and a resident of Chester, South Carolina. Judge Gibbons provided in his application that he has been a resident of South Carolina for at least the immediate past five years and has been a licensed attorney in South Carolina since 1992.

(2) Ethical Fitness:

The Commission's investigation did not reveal any evidence of unethical conduct by Judge Gibbons.

Judge Gibbons demonstrated an understanding of the Canons of Judicial Conduct and other ethical considerations important to Judge Gibbons, particularly in the areas of ex parte communications, acceptance of gifts and ordinary hospitality, and recusal.

Judge Gibbons reported that he not made any campaign expenditures.

Judge Gibbons testified he has not:

- (a) sought or received the pledge of any legislator prior to screening;
- (b) sought or been offered a conditional pledge of support by a legislator;
- (c) asked third persons to contact members of the General Assembly prior to screening.

Judge Gibbons testified that he is aware of the Commission's 48-hour rule regarding the formal and informal release of the Screening Report.

(3) Professional and Academic Ability:

The Commission found Judge Gibbons to be intelligent and knowledgeable. His performance on the Commission's practice and procedure questions met expectations.

Judge Gibbons described his past continuing legal or judicial education during the past five years as follows:

<u>Conference/CLE Name</u>	<u>Date</u>
(a) Annual Judicial Conference for past 6 years	August of each year;
(b) SC Conference of FC Judges past 6 years	April of each year;
(c) SC Bar Convention – Seminar	January of each year;
(d) Family Court Bench/Bar Seminar	December of each year.

I have always carried over the full slate of CLE hours since I have been a judge.

Judge Gibbons reported that he has taught the following law-related courses:

<u>Course/ Lecture Name</u>	<u>Date</u>
(a) Presented at the 2010 SC Bar Program “Bridge the Gap” for new lawyers as part of a panel dealing with Family Court.	2010;
(b) National Business Institute “What Family Court Judges want you to know.”	May 2010 Panel and May 2012 Panel;
(c) SC Rules of Family Court	2/08, 2/10;
(d) SC Bar - Rules, Rules, Rules Seminar I have also presented and moderated at the Family Court Bench/Bar seminars broadcast statewide	December 2010 & 2011;
(e) SCAJ Convention – Participated in a panel discussion on Family Court matters	2009.

Judge Gibbons reported that he has not published any books or articles.

(4) Character:

The Commission’s investigation of Judge Gibbons did not reveal evidence of any founded grievances or criminal allegations made against him. The Commission’s investigation of Judge Gibbons did not indicate any evidence of a troubled financial status. Judge Gibbons has handled his financial affairs responsibly.

The Commission also noted that Judge Gibbons was punctual and attentive in his dealings with the Commission, and the Commission’s investigation did not reveal any problems with his diligence and industry.

(5) Reputation:

Judge Gibbons reported that his last available rating by a legal rating organization, Martindale-Hubbell, was BV.

Judge Gibbons reported that he has held the following public offices:

[Held] appointed Town/City attorney positions from 1994 through May 2005. These were appointed positions.

(6) Physical Health:

Judge Gibbons appears to be physically capable of performing the duties of the office he seeks.

(7) Mental Stability:

Judge Gibbons appears to be mentally capable of performing the duties of the office he seeks.

(8) Experience:

Judge Gibbons was admitted to the South Carolina Bar in 1992.

He gave the following account of his legal experience since graduation from law school:

- (a) Associate–Hamilton, Hamilton & Delleney, PA - August 1992 - December 1993;
- (b) Partner - Hamilton, Delleney & Gibbons, PA - 1994-May 25, 2005;
- (c) City Attorney – Chester 1994-2000;
- (d) Town Attorney – Great Falls 1997-May 2005;
- (e) Town Attorney – Fort Lawn 1998-January 2005.

Prior to being elected to the Family Court Bench, I was involved in a general practice law firm. I primarily practiced in the areas of Family Law, Criminal, and Personal Injury for almost thirteen

(13) years prior to being elected to the Family Court bench. I have represented clients in civil litigation in Common Pleas and Magistrate Courts—both plaintiff and defense. I have represented many criminal defendants ranging in seriousness from DUI offenses to Armed Robbery. Being from a small, rural county, I was able to practice law in many different areas, which I believe has trained me to be a good judge who would understand all the different areas of practicing law, thus ensuring fairness and justice for litigants, defendants, and lawyers.

I have represented the Municipalities of Chester, Great Falls, and Fort Lawn in various litigations, in addition to drafting ordinances and assisting in running the meetings.

In May of 2005, I was elected to the Family Court bench. I run an efficient and proper courtroom, and I am confident I will continue to do so.

Judge Gibbons further reported regarding his experience with the Circuit Court practice area:

Experience in Criminal Matters:

When I started practicing law back in 1992, the court appointment process was different than it is now. We had a public defender, but many cases were sent out to the local bar. Being the new associate at a law firm and since there were only 7 lawyers in Chester County in private practice (3 in my law firm), I learned to juggle a large criminal defense caseload while I was building my private practice. I have handled an extensive number of appointed cases as well as retained cases. I have defended people charged with misdemeanors and felonies. I have represented people in Municipal Court, Magistrate Court, Family Court and Circuit Court. I have argued all types of evidentiary motions and have tried many jury trials. I have visited the local jail to meet with clients. I have negotiated plea deals with the Solicitor. I have extensive criminal experience.

Experience in Civil matters:

I also enjoyed a healthy caseload of civil matters. As mentioned earlier, I was the City Attorney for Chester, Great Falls, and Fort Lawn. At various times while employed in this capacity, lawsuits were either filed against us, or we pursued litigation against other entities.

I represented people injured in automobile accidents or in premises liability claims. If their cases did not settle, I filed suit and represented them throughout the litigation process, including discovery and defending and arguing motions non-jury. I have represented people in medical and dental malpractice lawsuits and I have represented contractors foreclosing on mechanics liens. I have been appointed and represented many convicted people filing PCR applications. I am intimately familiar with the SC Rules of Civil Procedure. Most of my civil practice was on the Plaintiff's side ranging from Magistrate Court to Circuit Court, even to Administrative Law Court. I also filed and represented people in Chapter 7 Bankruptcy Petitions.

Judge Gibbons reported the frequency of his court appearances prior to his service on the bench as follows:

- (a) federal: less than 10%;
- (b) state: 90% plus, ranging from Municipal Court to Magistrates to Family Court and Circuit Court.

Judge Gibbons reported the percentage of his practice involving civil, criminal, and domestic matters prior to his service on the bench as follows:

- (a) civil: 10%;
- (b) criminal: 20%;
- (c) domestic: 70%.

When Judge Goldsmith was elected to the Family Court Bench 2001, my domestic practice dramatically increased. Prior to that, my practice was about 50/50 between civil/criminal and domestic.

Judge Gibbons reported the percentage of his practice in trial court prior to his service on the bench as follows:

- (a) jury: 30% most settled;
- (b) non-jury: 70%.

Judge Gibbons provided that prior to his service on the bench he most often served as sole counsel.

The following is Judge Gibbons' account of his five most significant litigated matters:

- (a) Wagner v. Wagner.
Family court case which went all the way up to South Carolina supreme court. Won every step of the way. Had numerous contempt hearings. Client was awarded significant amounts of real estate and custody. SCDSS became intertwined as well. Significant because just about all areas of family law were covered in this one case. Everything was contested. Husband had to be ruled in for contempt on numerous occasions. SCDSS got involved with abuse and neglect issues. Per curiam unpublished decisions in both the court of appeals and supreme court in favor of client.
- (b) Toth v. Toth.
Significant equitable apportionment case which settled at trial. Dealt with valuation of a construction company where the husband was the sole shareholder. Both parties had competing CPAS. Matter was litigated for three years and involved almost all areas of domestic practice.
- (c) Town of Fort Lawn vs. IRF, Budget and Control Board. The town was sued by its ex-police chief on both a contract theory and tort theory. Town's carrier refused to cover alleging contractual in nature. We sued in a declaratory judgment action and won the case mandating coverage. IRF had to provide coverage, hired an employment law expert and the case was dismissed in favor of the town six months later.
- (d) State of South Carolina vs. Camille Hankins.
I tried this case back in 1995. My client was charged with cruelty to animals. She had in excess of 80 dogs and cats in her house. A representative of PETA charged her and we had a day long trial in magistrate's court in front of a jury. The 6th circuit solicitor actually prosecuted the case due to the media scrutiny. Significant for the intense media scrutiny, both regional and national with PETA. Client convicted, received a small fine and last I heard is still rescuing animals in North Carolina.
- (e) Darla Wynne vs. Town of Great Falls.
I represented the town in this litigation brought by a wiccan seeking a court order restraining the types of prayer offered at public meetings. Intense media scrutiny. This case was tried in federal court and was heard on appeal by the US Court of Appeals for the 4th Circuit. We petitioned for certiorari to the US Supreme Court but were unsuccessful.

The following is Judge Gibbons' account of five civil appeals he has personally handled:

- (a) Wagner v Wagner; SC Supreme Court, SC Court of Appeals.
Per Curiam Unpublished Decisions. Ended May 2000;
- (b) Scott v Scott; SC Court Of Appeals. Unpublished;
- (c) Ewing v Ewing; SC Court Of Appeals. Unpublished;
- (d) Sladek v Sladek; Pending In Court of Appeals;
- (e) Adkins v Piedmont Medical Center; Settled in US Court of Appeals.

Judge Gibbons reported that he has not personally handled any criminal appeals. He stated, "I have filed the notices and then would send the information to the SC Office of Appellate Defense."

Judge Gibbons reported that he has held the following judicial office:

Elected May 25, 2005, to Seat One of the Family Court, Sixth Judicial Circuit. Serving continuously since. Re-elected in 2/07. Re-elected on 1/30/13 for another six year term to expire in 2019.

Judge Gibbons provided the following list of his most significant orders or opinions:

- (a) Pittman v. Pittman (07-DR-46-967) SC Court of Appeals Opinion 4858;
- (b) Pappas v. Pappas (08-DR-46-2324);
- (c) Doe v. Lingerfelt, Creel, and Baby Girl B (11-DR-11-11);
- (d) Purser v. Owens (05-DR-29-496) SC Ct. App Opinion 4898;
- (e) Miles v. Miles (06-DR-24-439) SC Sup. Ct. Opinion 26980 (a).

Judge Gibbons reported that he did not have any employment other than his judicial office while he was serving as a judge.

(9) Judicial Temperament:

The Commission believes that Judge Gibbons' temperament has been and would continue to be excellent.

(10) Miscellaneous:

The Piedmont Citizen's Committee on Judicial Qualification found Judge Gibbons to be "Qualified" in the evaluative criteria of constitutional qualifications, physical health, and mental stability. They found him "Well qualified" in the remaining evaluative criteria of ethical fitness, character, professional and academic ability, reputation, experience and judicial temperament. The Committee stated in summary, "We find him well qualified overall."

Judge Gibbons is married to Lorena Crouch Gibbons. He has three children.

Judge Gibbons reported that he was a member of the following bar associations and professional associations:

- (a) SC Bar- Sixth Circuit Representative – Young Lawyers Division;
- (b) SC Trial Lawyers Association – Board of Governors, Sixth Circuit Representative;
- (c) Chester County Bar – Sec/Treas;
- (d) Municipal Attorneys Association;
- (e) SC Conference of Family Court Judges;
- (f) National Conference of Juvenile and Family Court Judges.

Judge Gibbons provided that he was a member of the following civic, charitable, educational, social, or fraternal organizations:

- (a) Chester Rotary Club/Past President, Paul Harris Fellow;
- (b) Chester YMCA Board/Past President;
- (c) Chester/Fairfield Citadel Club – Past President, Sec/Treas;
- (d) Blackstock Bluegrass Inc. – Past President;
- (e) The Citadel Alumni Association;
- (f) Richard Winn Academy – Board member;
- (g) Palmetto Boys State Staff;

(h) Board of Deacons, Chester ARP Church – Past Chairman/Current Chairman.

Judge Gibbons further reported:

I have always been very involved in my church and community. I coach all of my children in their various sports. I have been actively involved with American Legion Palmetto Boys State program for the past almost 28 years.

(11) Commission Members' Comments:

The Commission commented on Judge Gibbons' outstanding performance on the Commission's Practice and Procedure test and noted his broad legal experience would serve him well on the Circuit Court bench.

(12) Conclusion:

The Commission found Judge Gibbons qualified and nominated him for election to the Circuit Court.

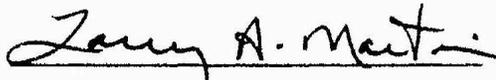
CONCLUSION

The Judicial Merit Screening Commission found the following candidate QUALIFIED AND NOMINATED:

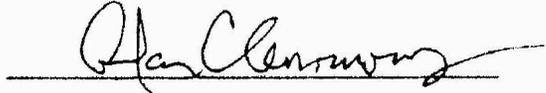
Circuit Court

Sixth Judicial Circuit, Seat 1.....The Honorable Brian M. Gibbons

Respectfully submitted,



Senator Larry A. Martin



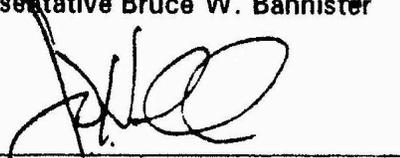
Representative Alan D. Clemmons



Representative Bruce W. Bannister



Ms. Kristian M. Cross



Mr. John Davis Harrell



Senator George E. Campsen III



Representative David J. Mack, II



Senator Floyd Nicholson



Mr. H. Donald Sellers



Mr. Joseph Preston Strom, Jr.