

- (e) Explosives Crew Member for Uranium Processing Mill - I set explosive charges used to excavate a 10-acre retaining reservoir for liquid waste.

Integrity:

There are also things that I have not experienced. I think they are important considerations regarding my career.

- (a) I have never been sued in state or federal court by either a defendant I was prosecuting or a client.
- (b) I have never had a case overturned on Post Conviction Relief.
- (c) I had cases overturned on appeal due to evolving legal issues, but never for inappropriate actions, words, or conduct on my part.
- (d) I have never been censured or admonished by any court.
- (e) My conduct has never been questioned by any legal watchdog groups such as the ACLU or NAACP.

Demeanor:

As Deputy Solicitor and as Circuit Public Defender, I worked with many past and present judges. I quickly learned that they all do things a little differently. I gained a unique perspective on their different policies and personalities. I learned by observation what techniques worked best and what practices created problems.

I have observed judges who were respectful yet firm, and judges who did what needed to be done, even when it was not easy. I have also witnessed judges who were fair and courteous to everyone in the system and yet upheld the decorum and respect their courtroom deserved while meting out justice accordingly. Unfortunately, I have experienced opposite behaviors as well.

I believe that my work history, my life experience, and my personal demeanor would make me an effective, efficient, and productive jurist.

(11) Commission Members' Comments:

The Commission commended Mr. Gibbons on his excellent demeanor and temperament, as reflected in the BallotBox survey responses. The Commission noted Mr. Gibbons's vast experience with criminal law.

(12) Conclusion:

The Commission found Mr. Gibbons qualified, and nominated him for election to Circuit Court, Second Judicial Circuit, Seat 2.

David W. Miller
Circuit Court, Second Judicial Circuit, Seat 2

Commission's Findings: QUALIFIED, AND NOMINATED

(1) Constitutional Qualifications:

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

Mr. Miller was born in 1972. He is 51 years old and a resident of Aiken, South Carolina. Mr. Miller 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 2001.

(2) Ethical Fitness:

The Commission's investigation did not reveal any evidence of unethical conduct by Mr. Miller.

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

Mr. Miller reported that he has made \$130.66 in campaign expenditures for cards.

Mr. Miller 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.

Mr. Miller 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 Mr. Miller to be intelligent and knowledgeable.

Mr. Miller reported that he has taught the following law-related courses:

- (a) I have lectured at the S.C. Prosecution Commission's Prosecution Boot Camp each year from 2012 through 2022. At the Boot Camps, Senior Assistant and Deputy Solicitors are given specific topics to cover during instructional periods and all instructors participate in discussion and performance workshops. Instructors critique students on their performances with assigned fact patterns and lead group discussions. I taught the following individual classes to the participants over the years listed: Hearsay (2013, 2014, 2015) Sentencing Fundamentals (2013, 2014), Guilty Pleas: Negotiations, Agreements and Procedure (2016, 2017, 2018).
- (b) I made two presentations for the S.C. Bar's pro bono project, Legal Lessons: A series for the Public in 2012. The Legal Lessons series was a program to introduce members of the public to specific areas of the law by providing classes taught by lawyers with experience in that practice area. The courses were scheduled at the local technical college over the course of several consecutive weeks and included a one-hour class on each subject along with a question and answer period afterward. I presented an "Overview of the South Carolina State Courts" (09/17/2012) and "Criminal Law" (10/29/2012).

- (c) I have lectured at the S.C. Solicitor's Association Annual Conference since 2017. I have conducted classes covering several evidence-related topics. In 2017, I presented a lecture titled "Obtaining Evidence Lawfully" that focused on unusual or technical situations where prosecutors are called upon to obtain evidence in cases using specific types of court orders. This lecture was presented in coordination with Senior Deputy Attorney General Don Zelenka, who presented a companion lecture titled "Getting and Using Evidence- Problems, trends, and the Appellate Courts".
- (d) In 2018, I presented a lecture titled "Investigating and Prosecuting Animal Abuse Cases" that focused on the unique aspects of investigating and prosecution of animal abuse cases including societal attitudes that impact presentation of evidence to juries and the impact of social media and public outcry on courts' sentencing. I also presented a "follow-up" to the 2017 lecture called "Using Search Warrants, Subpoenas, and Court Orders". This lecture discussed the appropriate use of search warrants and court orders to obtain evidence in criminal prosecutions, focusing on ethical and procedural concerns and how those concerns impact communication with law enforcement agencies.
- (e) Following my lecture at the SCSA Annual Conference, I was invited to be a guest facilitator for a workshop on Investigating and Prosecuting Animal Abuse cases at the Southeast Animal Alliance Annual Conference in Augusta, Georgia. The workshop took law enforcement personnel through the process of investigating and documenting a complaint to testifying at trial, where I served alternately as the prosecutor and the defense attorney for various witnesses.
- (f) In 2019, I was a co-presenter in a two-hour block of training focused on issues concerning animal cruelty for the South Carolina Summary Court Judges' annual training.

Mr. Miller reported that he has not published any books or articles.

(4) Character:

The Commission's investigation of Mr. Miller did not reveal evidence of any founded grievances or criminal allegations made against him.

The Commission's investigation of Mr. Miller did not indicate any evidence of a troubled financial status. Mr. Miller has handled his financial affairs responsibly.

The Commission also noted that Mr. Miller 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:

Mr. Miller reported that his rating by a legal rating organization, Martindale-Hubbell, is AV.

Mr. Miller reported the following military service:

1991-95 U.S. Marine Corps Active Duty, Corporal, Honorable Discharge

1995-96 USMC Reserve, Corporal, Honorable Discharge

Mr. Miller reported that he has never held public office.

(6) Physical Health:

Mr. Miller appears to be physically capable of performing the duties of the office he seeks.

(7) Mental Stability:

Mr. Miller appears to be mentally capable of performing the duties of the office he seeks.

(8) Experience:

Mr. Miller was admitted to the South Carolina Bar in 2001.

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

- (a) 2001-2002 Law Clerk for The Honorable Rodney A. Peeples
- (b) 2002-2004 Robert J. Harte, P.C. Associate attorney involved in general litigation matters representing plaintiffs and criminal and civil defendants.
- (c) 2004-2009 Smith, Massey, Brodie, Guynn & Mayes, P.C. Associate attorney involved in general litigation matters representing plaintiffs and criminal and civil defendants.
- (d) 2009-2013 Office of the Solicitor, 2nd Judicial Circuit - Assistant Solicitor prosecuting felonies and misdemeanors in the General Sessions and Magistrate courts, and handling appeals from magistrate and municipal courts.
- (e) 2013-2015 Office of the Solicitor, 2nd Judicial Circuit - Deputy Solicitor for Aiken County prosecuting felonies and misdemeanors in General Sessions, coordinating prosecution/docket management for Aiken County, and working special Information Technology projects for the Office. In this position my administrative tasks included management of staff and oversight of dockets for individual court terms.
- (f) 2015-Present Office of the Solicitor, 2nd Judicial Circuit - Deputy Solicitor for Barnwell and Bamberg Counties prosecuting felonies and misdemeanors in the General Sessions and Magistrate courts, continuing to work as needed on cases in Aiken County, and continuing implementation of technology initiatives throughout the Second Judicial Circuit. Administrative duties in this position increased to include input with the elected Solicitor on office personnel, budgetary needs, equipment and space issues, preparation of performance appraisals of employees, complete management of criminal dockets in both counties, and coordination of terms of court with incoming judges and other court personnel. Additionally, I coordinate training for law enforcement personnel throughout the circuit and in other jurisdictions while continuing to train other lawyers under my supervision.

Mr. Miller further reported regarding his experience with the Circuit Court practice area:

My first job as a member of the South Carolina Bar was working as a law clerk for The Honorable Rodney A. Peeples. I then practiced as a private attorney for seven years before becoming an Assistant Solicitor and, later, a Deputy Solicitor in charge of two

counties in our circuit. Through this experience, I have handled many different types of cases, both civil and criminal.

Before joining the Solicitor's Office, I defended numerous criminal cases involving defendants charged with everything from murder and criminal sexual conduct to driving under the influence. Additionally, I represented both plaintiffs and defendants in civil matters while in private practice. As an associate attorney in a medium sized firm, I handled diverse civil litigation matters ranging from personal injury cases to contract disputes in Common Pleas and Magistrate courts. I was personally involved in the litigation involving the Estate of James Brown before leaving private practice. My civil practice was necessarily diverse because of my firm's limited market. Our firm did not advertise for personal injury cases, and most of the civil matters I handled were taken on an hourly fee basis. I handled contract disputes between businesses, land disputes and nuisance claims, will contests, mechanic's lien cases, and condemnation claims. I was also occasionally appointed by the Circuit Court as a Special Referee to hear non-jury civil claims.

I have prosecuted hundreds of cases as an Assistant, and now Deputy Solicitor, in the Second Judicial Circuit. Many of these cases were violent felonies including multi-defendant armed robbery cases, murders and home invasions. In the past five years, I have practiced exclusively in criminal court. During that time I have handled over one thousand cases, including several jury trials. In those cases, and cases that resulted in resolutions prior to trial, I have dealt with motions to suppress evidence, Neil v. Biggers hearings, Jackson v. Denno hearings, motions in limine, as well as other motions. I have been responsible for presenting expert witness testimony and have been called upon to cross examine expert witnesses called by the defense. I have frequently been asked to draft Orders for the Court following rulings on complex factual or legal issues.

My experience as a criminal defense attorney has shaped the way I prosecute cases throughout my career as a prosecutor. Lengthy, sometimes life-long prison sentences can be necessary to protect society from a particular person, but those situations are, fortunately, extremely rare. I pride myself in my ability to work with the defense bar and judges to come up with fair and just resolutions to cases. I also take pride in my reputation as a capable trial attorney if a resolution cannot be reached.

Mr. Miller reported the frequency of his court appearances as follows:

- (a) federal: 0%
- (b) state: 100%

Mr. Miller reported the percentage of his practice involving civil, criminal, domestic and other matters as follows:

- (a) Civil: 1% (Post Conviction Relief Actions)
- (b) Criminal: 85%
- (c) Domestic: 0%
- (d) Other: 14% (Administrative)

Mr. Miller reported their practice in trial court as follows:

- (a) 85% was in trial court, including cases that settled prior to trial;
- (b) 30 (estimated) cases went to trial and resulted in a verdict;
- (c) 0 cases went to trial and resolved after the plaintiff's or State's case;

(d) 0 cases settled after a jury was selected but prior to opening statements.

Mr. Miller provided that during the past five years he most often served as chief counsel, but also frequently appeared as associate counsel when one of the junior lawyers under his supervision was trying a case.

The following is Mr. Miller's account of his five most significant litigated matters:

- (a) *David Mark Hill v. State of SC*, 377 S.C. 462, 661 S.E.2d 92 (2008). This case was a Capital PCR where the Petitioner ultimately waived his rights to appeal and was put to death. This case is significant to me for many reasons. It was the first and only time I argued a case before the South Carolina Supreme Court. I was criticized for helping Hill waive his appeals and proceed with imposition of the death sentence by other lawyers that handled capital litigation. Although I disagreed with Hill's decision to waive his appeals, I had no doubt Hill was competent to make that decision, so I was obligated to assist him seeking the waiver. But the most impactful thing about the case was that my client requested that I be one of his witnesses when the sentence was carried out, so I ultimately watched my client be put to death on June 6, 2008.
- (b) *State of SC v. Honorio Gurrero*, 382 S.C. 620, 677 S.E.2d 603. This was an extremely complex case logistically because it involved four defendants (none of whom spoke English) and four different defense attorneys. All of the defendants were tried together. This case is also significant to me because it was the first criminal case I ever defended in General Sessions Court. It was also the first case that I had overturned on appeal when the South Carolina Supreme Court agreed with me that a directed verdict in favor of my client should have been granted at the close of the State's case.
- (c) *State of SC v. Michael Paul Buckmon*. Michael Paul Buckmon and Matthew Bolen sexually assaulted and killed Donna Dempsey in Barnwell County on November 1, 2013. Her home was set on fire in an attempt to conceal the sexual assault and subsequent burglary of the residence. The SLED investigation of the crime spanned from Allendale County to Pickens County and resulted in a nearly 800 page investigative report. The SLED arson investigator and several SLED analysts were qualified as experts in the case and offered testimony concerning the evidence collected during the investigation. There were very few lay witnesses in the case because many people were fearful of Buckmon. He had previously been convicted of murder and sentenced to life but later had his conviction overturned by the Supreme Court. The case was very difficult to organize and present to the jury in a logical fashion because of the sheer volume of evidence to be presented. Buckmon was convicted of murder, arson in the first degree, and criminal sexual conduct in the first degree at trial and sentenced to life.
- (d) *State of SC v. Leon Amos Jason James*. This was a multi-defendant armed robbery in Bamberg County. I tried the case against two of the most respected lawyers in Bamberg and was able to obtain a conviction on all charges. The Defendant was sentenced to life pursuant to S.C. Code 17-25-45 because he had prior convictions for armed robbery. I also convicted one of the co-defendants in a separate trial. He was given a life sentence because he had several prior armed robbery convictions.

The third co-defendant in the case pled guilty but did not testify in either trial for the State.

- (e) *State of SC v. Demetrius Boyd*. This was a home invasion case where I was appointed to represent the Defendant. He was charged with Burglary 1st Degree, Kidnapping, and Assault and Battery with Intent to Kill. The case is significant to me because the Defendant was one of the most difficult criminal defendants I ever represented, but I was convinced he was not guilty of the crimes he was charged with. Less than two weeks before the trial, I received the State's notice of intent to seek life without parole. We tried the case and the jury found the defendant not guilty on all charges.

The following is Mr. Miller's account of one civil appeal he has personally handled: *David Mark Hill v. State of SC*, 377 S.C. 462, 661 S.E.2d 92 (2008). South Carolina Supreme Court, April 28, 2008.

Mr. Miller reported that he has not personally handled any criminal appeals.

Mr. Miller further reported the following regarding unsuccessful candidacies:

I was a candidate for Circuit Judge, At-Large Seat 14, in the Fall of 2012. I was found to be qualified but not nominated by the Judicial Merit Selection Commission.

I was a candidate for Circuit Judge, At-Large Seat 1, in the Fall of 2016. I withdrew from the race before the Judicial Merit Selection Commission reported on my candidacy.

I was a candidate for Resident Circuit Court Judge for the Second Judicial Circuit, Seat 1, in the Spring of 2019. I withdrew from the race after being found qualified and nominated by the Judicial Merit Selection Commission.

I was a candidate for Circuit Judge, At-Large Seat 12, in the Fall of 2020. I was found to be qualified but not nominated by the Judicial Merit Selection Commission.

(9) Judicial Temperament:

The issue of temperament was raised in the complaints filed against Mr. Miller, and several of the BallotBox surveys questioned the suitability of Mr. Miller's temperament for the bench. The Commission reviewed the BallotBox survey responses for Mr. Miller and there were multiple concerns regarding his temperament. However, overall, the BallotBox comments regarding Mr. Miller's judicial temperament were more positive than negative.

Mr. Miller was questioned about temperament extensively at the public hearing and he testified that he is passionate about the positions he takes in the courtroom, and, as a solicitor, he is the end of the line. He stated that sometimes when trying to find a reasonable compromise, there are times when he has to "draw a line in the sand", which can sometimes be interpreted poorly. He recognizes that when sitting on the bench, you're not an advocate for either side, and have better control over what's going on in in the courtroom. The Commission believes that Mr. Miller's temperament is adequate for someone seeking election as a judge.

(10) Miscellaneous:

The Midlands Citizens Committee reported Mr. Miller to be “Qualified” in the evaluative criteria of constitutional qualifications, ethical fitness, physical health, and mental stability; and “Well-Qualified” in the evaluative criteria of professional and academic ability, character, reputation, experience, and judicial temperament. The Committee noted: “Very qualified and with his past experience will be an asset to the judiciary!”

Mr. Miller is not married and has no children.

Mr. Miller reported that he was a member of the following Bar and professional associations:

- (a) Aiken County Bar, 2001 - Present, President 2004-06;
- (b) South Carolina Trial Lawyers Association, 2001 - 2008, Member, Board of Governors 2005-08;
- (c) South Carolina Association for Justice, 2014-Present (Public Sector Member)

Mr. Miller provided that he was recognized by the following awards:

- (a) Ernest Hollings Award for Excellence in State Prosecution (2020)
- (b) J. Strom Thurmond Prosecutor of the Year for the Second Judicial Circuit (2011)

Mr. Miller further reported:

There are several moments in my career that have helped shape who I am. In 2006, I was appointed lead counsel on the Post-Conviction Relief Application for David Mark Hill, who was sentenced to death after he murdered three people in Aiken County in 1996. Ultimately, Hill decided to waive his appeals and asked that his death sentence be imposed. Following our appearance on the case before the South Carolina Supreme Court, Hill asked that I be present as his witness at his execution. I spent the last twelve hours of David Hill's life with him in a small cell at the Capital Punishment Facility of the South Carolina Department of Corrections. I witnessed his execution that evening.

In November of 2008, Strom Thurmond was elected Solicitor of the Second Judicial Circuit. In late December, he asked me to become an Assistant Solicitor for his office. It was a difficult decision for me because I had gotten married just a few weeks after his election. In less than ninety days, I went from a single, relatively successful private attorney living in a rented townhouse, to a married Assistant Solicitor living in my first home with my new wife and two children. In retrospect, there is no question I made the right decision when I joined Solicitor Thurmond's staff. Working as an Assistant Solicitor allowed me to be in the courtroom where I always dreamed I'd be. In addition to my prosecutorial duties, I was allowed to work with new attorneys in the office and formally mentor several of our lawyers through the SC Bar's lawyer mentoring program.

In December of 2011, Aiken Department of Public Safety Master Public Safety Officer Edward Scott Richardson was shot and killed by Stephon Carter. Two months later, Aiken Department of Public Safety Master Corporal Sandra Rodgers was shot and killed by Joshua Jones. These murders devastated our community. Solicitor Thurmond assigned me as the lead counsel in the Stephon Carter case and assigned Deputy Solicitor Beth Ann Young as the lead counsel in the Joshua Jones case. In November of 2012, Solicitor Thurmond determined our office would seek the death penalty against Stephon Carter.

For the next two and a half years, I was the lead attorney dealing with all matters involved in the case. Ultimately, we offered a plea agreement to Caner that would require him to spend life in prison without the possibility of parole. The decision to make the plea offer, and the defense's decision to accept the offer, was only possible because of the countless hours spent working the case and communicating with the officers at ADPS and family members of Officer Richardson.

During my time as an Assistant Solicitor and now as a Deputy Solicitor, I have taken on more administrative functions. Since May of 2015, I have been in charge of our "lowcountry" offices in Barnwell and Bamberg Counties. I have developed strong relationships with the defense bar, court personnel, and law enforcement agencies there. I have also managed the criminal dockets in both counties.

When I ran for Circuit Court Judge previously, I was asked many questions about my tenure as the law clerk for Judge Rodney Peeples. Judge Peeples was an incredible judge and remains an amazing person. I continue to love and respect him; he is like a father to me, as he is for all of his former clerks. He had a style that was not unique when he came to the bench, but the world changed a lot in the three decades on the bench. Unfortunately, he did not always change the way he did things with the times. As much as I love and respect him, I would have a different demeanor on the bench. Academically, Judge Peeples had few equals. Some of the most influential and ground-breaking cases in South Carolina over the last half century have his name attached to them. In my experience, he dispassionately applied the facts to the law, and when the result wasn't fair, he said so, but he still followed the law. Occasionally, that resulted in the law changing, but his decision was going to be based on the law and the facts of the case as he understood them. This is the influence I hope Judge Peeples would have on me as judge. I know that I will be faced with tough decisions, but I will always do what I believe the law requires, even if I am not happy about the result. Judges should apply the law, not seek to change it.

Many other Judges have influenced the demeanor I would hope to have on the bench and are a model for judges. For example, Judge Thomas W. Cooper of Manning is the ultimate "lawyer's judge" to me. He commands control of the courtroom without anger or intimidation. He is fair to all litigants, and their lawyers. He makes informed, timely decisions without unnecessarily commenting on the matters before him. He is kind and courteous, and that civility extends from him to the opposing parties in the courtroom. As I have worked as a solicitor, and before in private practice, I have had the opportunity to appear before dozens of circuit court judges. The best of them have similarities that I have noticed and hope to emulate. Of particular note is the judicial demeanor of Judge William Keesley, Judge Clifton Newman, Judge Early and Judge Casey Manning. Each of them, in their own way, display the best of judicial demeanor and temperament and watching them has prepared me for the challenge of becoming a circuit court judge.

My desire to ascend to the Circuit Court bench is driven by my desire to improve the judicial system in South Carolina. I have learned and always tried to emulate the best attributes of the lawyers and judges I have known. Being a solicitor has allowed me a great opportunity to observe many judges in the courtroom. In each judge, I looked for the things they did that I would want to do if I was in their position. I feel I am ready to take on that challenge, and to become an example to the lawyers that will follow in my footsteps. My desire to be a Circuit Court Judge is not "the next step", it is the culmination of the career of a trial attorney. That certainly does not mean I don't have room to grow, just that I have

never been and do not seek to be an appellate lawyer or judge. I want to be the best circuit court judge in South Carolina.

(11) Commission Members' Comments:

Two complaints against Mr. Miller were heard by the Commission. The first from Sarah Ford, attorney for the victims in the underlying case. The second from Karl Stoller, the father of one of the victims in the underlying case. The complaints allege, in relative part, that Mr. Miller failed to properly communicate with victims as required by law. The Commission reviewed the complaints, Mr. Miller's written response, and heard testimony from the parties. Based on the testimony, the Commission requested, received, and reviewed emails between Complainant Ford and Mr. Miller.

The evidence as well as the testimony of the complainants shows that the victims were represented by counsel during the time in question, and there is no evidence or testimony of consent from the victims' lawyer or authorization as a matter of law or court order allowing Mr. Miller to communicate directly with the victims. The Commission concludes that Mr. Miller only communicated with the victims through their lawyer (Complainant Ford), and that his communication is consistent with Rule 4.2 of the South Carolina Rules of Professional Conduct, which prohibits direct communication with any person the lawyer knows to be represented by another lawyer without the consent of that other lawyer or authority to do so by law or a court order.

Multiple emails as well as testimony at the hearing show that the victims' counsel made sure the victims were informed throughout the case by arranging meetings, coordinating calls and conversations, and informing the victims of hearings and other pending matters. Communication seemed consistent between Mr. Miller and Complainant Ford, the victims' attorney, throughout the pendency of the matter and this same communication seemed consistent with the rules of professional responsibility.

In the nine days leading up to the final hearing, Mr. Miller wrote multiple emails to Complainant Ford explaining the desire to dispose of the entire case, the plea deal and its exact terms, and even the rationale behind the plea. The email evidence indicates that Mr. Miller communicated fully and completely with Complainant Ford, as was his obligation. One victim had a zoom call on the Tuesday before the hearing to discuss the case. The other victim had a zoom call on Wednesday to explain that the State would be dropping the indictment, but not until after the hearing on Friday to ensure they had the opportunity to be heard in court. The victims and their counsel, Complainant Ford, were present at the hearing on Friday. The emails show that Mr. Miller communicated openly and candidly with Complainant Ford regarding the plan to dispose of the case.

Testimony from Complainant Stoller indicates that he was unaware of the plea arrangement until arriving in the Courtroom on the Friday of the hearing. The Commission unanimously found his claims in his complaint to be credible; however, the evidence also clearly and indisputably indicates that the victims' counsel (Complainant Ford) was fully aware of the existence of a plea arrangement and its precise terms prior to Friday. The evidence also indicates that Mr. Miller had no ability under the rules of professional responsibility to

communicate with the victim, but only through their counsel, which he did on multiple occasions. The Commission is unable to determine why Complainant Ford, who was the victims' counsel, did not communicate the information that was clearly in her possession to Complainant Stoller prior to Friday's hearing, despite her having more than adequate notice, explanation, and information from Mr. Miller to do so. Given the clear and irrefutable record of emails between Mr. Miller and the Complainant well before the Friday hearing, the Commission found Complainant Ford's testimony at the public hearing claiming otherwise to be both misleading and extremely troubling.

In conclusion, in assessing the veracity of the complaints and all the evidence before the Commission, the claims that Mr. Miller failed to communicate with the victims as required by law are baseless, unreliable, and without merit.

(12) Conclusion:

The Commission found Mr. Miller qualified, and nominated him for election to Circuit Court, Second Judicial Circuit, Seat 2.

Dissenting Opinion by Rep. Micah Caskey and Mr. Pete Strom

We write to dissent in the opinion of the majority of the Judicial Merit Selection Commission finding Mr. Miller qualified and nominated for service on the Circuit Court Bench. There is no question that Mr. Miller is an excellent and ethical attorney and prosecutor as evidenced by the glowing recommendations of giants in his local bar. However, we must respectfully dissent in the finding of the majority; because, although we find that he meets and exceeds the standards of several evaluative criteria, we do not believe that he has the requisite judicial temperament to serve on the Circuit Court bench. We believe that now is the time for the Judicial Merit Selection Commission to send a strong and consistent message to judges, those who want to be judges, and to each member of the General Assembly, as well as the public at large, that there is no place in our state for judges who have poor temperament.

The sole issue here for us is Mr. Miller's temperament. Although a complaint was filed against Mr. Miller, we agree with the others on the Commission that the complaint was meritless and that instead of indicating issues with Mr. Miller, it instead highlighted his adherence to ethical rules of lawyers and his professional ability. However, a recurring theme in his current and past screenings has been that he has a poor temperament, which mirrors concerns by members of the bench and bar that his temperament negatively impacts his ability to be a judge. Mr. Miller has himself acknowledged that his temperament has on some occasions been poor because of his need to be a zealous advocate as a prosecutor on behalf of the State of South Carolina, and he promises that it will be better in the future in his different role as an impartial judge. Unfortunately, we cannot buy into his promise that electing him will place a different man inside the black judicial robe. Do occasional bad days or isolated episodes showing a failing in temperament warrant a finding that the candidate is unqualified for judicial service? Perhaps not. We are all human, and we all make mistakes. However, we are not confronted with a temporary lapse in temperament or a single bad day. We are instead faced with a recurring theme, over several screenings and

over many years, of poor temperament. We cannot rely on a candidate's election promise when we firmly believe that a person's past actions are the best predictor of his future ones. Mr. Miller has had years to correct the concerns raised about him, and it appears, by the same concerns still being made, that he has either chosen not to correct them or he cannot correct them. If Mr. Miller is elected as a judge and we accept the majority's belief that he will be a better judge than he was a lawyer, then we are stuck with that decision for at least six years if the majority are wrong. That risk is simply too great to take.

Most South Carolinians are rarely if ever part of our judicial system. But a judge with a bad temperament could result in a litigant or party who only has one interaction with our judicial system, losing faith in it because of the actions of a bad judge. Judges are trustees of the legal system, and their actions which carry so much weight must always be above reproach. Because of this, we must be extraordinarily careful with whom we entrust this power over our friends and neighbors. We must set very high standards for those who want to be judges and we must hold them to those standards consistently and without regard to who they are. Our stringent review needs to send a signal to those who want to be judges that they cannot have a bad day and lose their temper or have a substantive lapse in concentration, because of what that means for those who appear before the judge. If the judge is short or rude to a litigant or their attorney, a litigant can reasonably worry that the judge is not going to be fair to their case. If there is doubt about the impartiality of a judge, there will be no faith in the verdict meted out by that judge. Our society is based on people trusting in the administration of justice. It is only the trust in the process and in those who carry it out that allows us to be governed by the stroke of the pen rather than the point of the bayonet.

Our guiding directive, in keeping faith with those who are given the responsibility to screen candidates for the bench, is that people can rely on the quality and integrity of judges. This candidate fell short of the standard we must expect from someone who seeks to be a judge and wield the enormous power given to them. Instead of making excuses, it is time that we make a stand that those with poor temperament will not be allowed to serve our state as judges. We feel compelled to make our stand here. Because of the continued failure in his temperament and the failure to correct that shortcoming over the years despite knowing of those concerns, we must conclude that Mr. Miller is not qualified for judicial office. Therefore, we respectfully dissent from the Commission's decision that he is qualified and nominated.

Martha M. Rivers Davisson
Circuit Court, Second Judicial Circuit, Seat 2

Commission's Findings: QUALIFIED AND NOMINATED

(1) Constitutional Qualifications:

Based on the Commission's investigation, Ms. Rivers Davisson meets the qualifications prescribed by law for judicial service as a Circuit Court judge.