

Judicial Profile

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Hon. Henry M. Herlong Jr. U.S. District Judge, District of South Carolina

TO JUDGE HENRY Michael Herlong Jr., his position as a U.S. district judge for the District of South Carolina is “not just making a living, but it’s making a difference.” The Herlong family has roots in Edgefield County, S.C., but during World War II, Judge Herlong’s father was commissioned to work at the Pentagon. In 1944, when the family was living in Washington, D.C., Henry Herlong Jr. was born. However, just three years following his birth, the family returned to Edgefield County.

Judge Herlong remained in Edgefield County until he moved to Clemson, S.C., to attend Clemson University. The decision of where to attend college was not an easy one. Judge Herlong received football scholarships from several small schools in South Carolina, but the Herlong family’s history of attending Clemson University tugged at his loyalty to tradition. Judge Herlong found himself in the best of both worlds—attending Clemson University and walking onto the freshman football team.

After a year of studying mechanical engineering, Judge Herlong was drawn to a discipline that would allow him to pursue a legal career. Immediately following his graduation from Clemson with a B.A. in English, Judge Herlong went to the University of South Carolina School of Law, graduating in 1970 as the first lawyer in his family. Ironically, this is precisely the career for which high school aptitude tests, taken many years before, revealed he was most suited.

After law school, Judge Herlong was offered a position on Sen. Strom Thurmond’s legal staff in Washington, D.C. He declined the position, however, to serve his commission as a lieutenant in the Army. Judge Herlong served about six months and, because the Vietnam conflict was winding down, was then put on inactive reserve status. Judge Herlong immediately contacted Sen. Thurmond to see if the position he had previously been offered was still available—it was. For two years, Judge Herlong served as a legislative assistant to the senator and served on the Senate Judiciary Subcommittee on Administrative Practices and Procedures. In this position, among other duties, Judge Herlong visited several cities with Sen. Edward



Kennedy (D.-Mass.) investigating the administrative handling of mass demonstrations. The subcommittee also held hearings throughout the West investigating Indian affairs. In addition, Judge Herlong was responsible for monitoring and advising Senator Thurmond on pending legislation.

Before being appointed a U.S. magistrate judge in Columbia, S.C., in 1986 and then being appointed a U.S. district judge by President George H.W. Bush in 1991, Judge Herlong had varied legal experiences. From 1972 to 1976, he served as an assistant U.S. attorney in the Greenville Criminal Division. In this capacity, Judge Herlong was the prosecutor in the first pirated tape case in South Carolina as well as the prosecutor in a number of cases involving bank robberies. One notable conviction involved a difficult in-court lineup. The victim in that case had not previously identified the defendant; therefore, the defense attorney stacked the lineup with individuals whom even Judge Herlong had difficulty distinguishing. Nevertheless, the victim easily identified the defendant, who was ultimately convicted.

After leaving the U.S. attorney's office in 1976, Judge Herlong entered private practice in Edgefield County. For almost eight years, he was involved in a wide array of criminal and civil cases in both state and federal court. Judge Herlong obviously was not biased by his position as assistant U.S. attorney: he was successful in gaining acquittals for a number of his clients.

Looking for a change, from 1983 to 1986, Judge Herlong once again served as assistant U.S. attorney, this time in the Columbia Civil Division. In this position, he represented the United States in a number of medical malpractice cases.

On the federal bench, there is no typical day for Judge Herlong. Rather, on any given day, he will hear both criminal and civil matters in court or spend his time in chambers working on issues raised in pleadings and motions. Given that a large majority of criminal cases are drug-related, Judge Herlong enjoys spending time on cases that are out of the ordinary, such as those involving embezzlement. Judge Herlong also enjoys cases that pose challenging legal issues, many of which arise in the civil arena. His most recent notable case resulted in a \$7 million jury verdict against an automobile manufacturer involving a Furman University student who was injured in a rollover accident. Interestingly, the plaintiff presented evidence that his injuries had prevented him from becoming a professional soccer player.

Judge Herlong's practice in executing his judicial duties is to "rule quickly." He understands from attorneys that even if they are expecting to get an unfavorable ruling, they would rather know the outcome sooner as opposed to later.

Judge Herlong also serves as chair of the Criminal Justice Act Committee for the District of South Carolina and is a member of the Criminal Law Committee of the U.S. Judicial Conference. In the aftermath of the *Booker* decision, when the U.S. Sentencing Guidelines became advisory instead of mandatory, Judge Herlong and the Criminal Law Committee held numerous conferences and training related to the anticipated effects of this decision. Currently, the committee is tracking decisions subsequent to *Booker*, and judges around the country, including Judge Herlong, are re-sentencing defendants who were sentenced after *Booker*.

Judge Herlong does have a life away from the courtroom. He and his wife enjoy riding their horses, and he is an avid hunter and fisherman. Currently, Judge Herlong is a grandfather of two, but his grandfatherly duties will more than double shortly with three more grandchildren on the way.

Judge Herlong has been invited to sit on the Fourth Circuit Court of Appeals and has done so many times. While he enjoyed himself on the appellate court and appreciates the work that these appellate judges perform, he prefers the district court bench, where he has the opportunity to interact with individuals on the trial court level. Judge Herlong believes that the best part



of being a federal judge is "the quality of the work[,] ... the issues in the lawsuits[,] ... the quality of the lawyers that appear before [him,] and the personnel that [he] works with."

Judge Herlong notes that one significant change during his time on the bench is the use of mediation to resolve issues. Today, most cases are resolved through mediation. In his opinion, mediation is great—it not only manages his caseload but also allows the issues to be explored and a compromise to be reached from an economic standpoint. However, he is concerned that young lawyers are not getting the courtroom experience they did before the widespread use of mediation.

Judge Herlong is well respected by his peers in the legal community. Members of the bar with both civil and criminal practices consistently describe Judge Herlong as efficient in the courtroom, experienced, fair-minded as well as respectful, professional, and courteous to attorneys, witnesses, jurors, and litigants alike. Assistant U.S. Attorney Jeanne Howard had this to say about Judge Herlong:

Judge Herlong expects lawyers to be prepared, and commands an efficient courtroom. Even though he is decisive and fair to all parties, I have heard him comment that sentencing a defendant is one of the hardest decisions he makes as a judge. After observing hundreds of sentencing hearings, it is clear Judge Herlong carefully considers the defendant's criminal history, the harm to the victims of the crime, and the nature of the criminal conduct in determining a sentence. He is also known for being very fair to defendants who have accepted responsibility and been truthful about their involvement in criminal activity.

W. Howard Boyd Jr., a shareholder at Gallivan, White, & Boyd P.A. with 30 years of experience trying civil cases, has commented: "What has always impressed me about Judge Herlong is that he is not afraid to make difficult decisions where the case de-

mands that those decisions be made.”

Judge Herlong “believe[s] in our system” and is proud to have the opportunity to participate in it as a judge. He enjoys federal court issues and the lawyers that come before him. In his words, lawyers “know how to get to the point with an issue, get it resolved and find out the truth of the matter.” To Judge Herlong, pinpointing the truth is what makes his position challenging, essential, and rewarding. **TFL**

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