

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

Family Court
(New Candidate)

Full Name: John Lawrence Duffy, III

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1. Why do you want to serve as a Family Court Judge?

I am seeking this position as I have a strong desire to serve my community and the people of South Carolina. I am currently a municipal court judge for North Charleston, and I have enjoyed serving the city I live in. It is my desire to pursue a judicial career as I believe that this is the best use of my legal talents and temperament in giving back to the State and its people. Family Court is unique amongst the Circuit Courts as it has extremely nuanced statutes, requiring time and patience to fully understand and apply to a case's facts, and in that Family Court has a secondary set of Rules that must be applied in addition to, and in some cases modifies, the Rules of Civil Procedure. Family Court also operates without any jury assistance in determining the findings of fact. A Family Court judge must have a strong character and be willing to make unpopular and difficult decisions. I have learned these skills while serving on the bench in North Charleston, conducting countless non-jury bench trials, much like would be expected on the Family Court, and through my time as a practicing attorney. I have established a reputation for being efficient, fair and thorough; all qualities I believe are essential to serving on the Family Court Bench and which I would be able to apply to my service there.

2. Do you plan to serve your full term if elected?

Yes.

3. Do you have any plans to return to private practice one day?

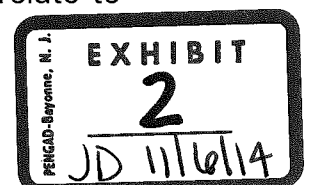
No; however, if elected I could not rule out some minimal practice after retirement.

4. Have you met the statutory requirements for this position regarding age, residence, and years of practice?

Yes.

5. What is your philosophy regarding *ex parte* communications? Are there circumstances under which you could envision *ex parte* communications being tolerated?

Ex parte communications, while permissible upon proper motion, should be limited in frequency and duration. As they relate to



Family Court, I fully support the practice in the Ninth Circuit of requiring that *ex parte* motion come through the Clerk's office and that litigants should only be permitted to speak with the Judge if there is a question the Court needs answered or the litigant truly believes that the pleadings cannot sufficiently convey the need for the *ex parte* motion. Outside of a properly filed *ex parte* motion I cannot envision a situation under which I would be able to tolerate an *ex parte* communication and not, thereafter, be forced to recuse myself from hearing any matter associated with the case that was the subject of the *ex parte* communication.

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

It is my belief that the Court should seek to minimize the appearance of impropriety in all matters. As such, it is extremely important to notify litigants of any potential conflicts of interest and seek their input into that possible conflict. I know of no special rule relating to the appearance of lawyer-legislators and would provide them with the same opportunity to appear before me in their capacity as an attorney representing their client. As to former associates, I have none that I am aware of other than those that have been my employers. In that instance I would recuse myself from hearing any case brought by a former employer. As to my law partner, she is my wife and the Clerk's office will be notified that they are not permitted to schedule any matter to which she is associated before me so that there is no need to recuse myself and delay her cases from proceeding. In the event one of her cases did get scheduled before me, I would ask that another judge be assigned the case in advance of the hearing, or order the matter continued and reset on an expedited basis. The Court serves and represents the people of South Carolina and as such, the Court must act in a manner that shows a conscious awareness of potential conflicts and biases.

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

All matters brought before me would be given proper consideration and deference. Any perceived bias or disregard of impropriety on the part of a Judge undermines the legal system. In theory the Court is not answerable to any other branch of Government so long as the law is applied as written and the Court conducts itself in a manner that promotes the public's confidence in the judicial system. To that end, should any movant request recusal for a legitimate reason, I will gladly recuse myself, as any negative ruling

against that litigant would bring the legitimacy of the judiciary into question. However, the request must be legitimate as the public cannot be permitted to “judge shop” by seeking recusal for frivolous and unsupported reasons.

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

While I hope I am aware of any potential conflict prior to the start of a trial, I know that it is possible that something may make an appearance before me that is improper. If at any point during a trial or hearing, an issue presented, I would recess the matter and have a bench conference with the attorneys (or all parties if there is a self represented litigant present) to notify them of the potential conflict. Should any party feel that there existed a potential conflict, then I would recuse myself and terminate the trial/hearing by Order of Recusal and Continuance directing that the matter be given priority in rescheduling. In the event that something is brought to my attention subsequent to the entry of an Order, I will be unlikely to vacate an order as neither the litigants nor I were aware at time I issued my ruling of the conflict. If the parties can show that I knew or should have known about the conflict, I would consider what detriment vacating my order would have on the parties, and whether it would be a grave injustice for a party to have to retry a case. In all matters, I would err on the side of caution and if there is the smallest chance that a litigant was denied due process by my error, I would grant vacating the Order.

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

I would not accept gifts from any attorney, and would only accept gifts from persons that I knew were conflicted from appearing before me by virtue of their close personal relationship with me. Even as to those gifts, if I believed them to be a “couriered” gift, I would reject the same and ask that it be returned to the person that gifted it. If I am presented with a thank you gift for speaking in my capacity as a Judge I would accept the gift from the organizing body, and make claim on the proper filings as required by law. I would not accept social hospitality from any person that would present an appearance of impropriety. In the event of a large or formal social gathering, I would partake in the hospitality that is associated with that event, for example a wedding or funeral.

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

I would first reach out to the lawyer or judge to discuss my concerns and determine if there had been a violation that rose to the level of needing to be reported. In the event that it is evident that the

matter must be reported, I would notify the lawyer or judge, explaining my concerns at the time I sent notice to the proper governing body. Given the nature of judicial appointment and the public's opinion of the judiciary, I would always err on the side of caution and report if I was left with any feeling that something untoward had happened.

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

No.

12. Do you have any business activities that you would envision remaining involved with if elected to the bench?

This matter is one that is difficult to answer. I currently enjoy the ownership of my law firm with my wife, and by nature of our marriage would continue to have an equitable interest in the firm even if I am removed from the company. I have no involvement now in the management of the law firm, and I do not envision taking on a more active role if appointed to this position. However, I expect that I will continue to support my wife in her endeavors, and that it was be improper not to disclose the same to this governing body.

13. Since family court judges do not have law clerks, how would you handle the drafting of orders?

I would follow the current standard practice of having either the prevailing attorney draft the order, or where one party is not represented, having the attorney present draft the order. Where no attorneys are involved, I would utilize the Self Represented Litigant forms as supplied by Court Administration or by the drafting of my own order where the complexity of either the litigation or my order necessitated a more thorough and complete order than can be supplied by a form order. I would imagine that I will draft these orders as time permits (lunch time, chambers weeks and at home in the evening if necessary) to ensure timely submissions in compliance with the Rules.

14. If elected, what method would you use to ensure that you and your staff meet deadlines?

I would use a combined method of a 3 ring binder with 31 page dividers and a calendar on my computer and on my assistant's computer. I would have my staff manually check on a daily basis for any Order that is not submitted 20 days after the hearing. I would have my assistant call the attorney or litigant to check the status of the order and remind them of the deadline as provided in the Rules.

15. If elected, what specific actions or steps would you take to ensure that the guidelines of the Guardian Ad Litem statutes are followed during the pendency of a case?

I would require that an appointed Guardian be required to prepare a full order of appointment that outlines their duties and responsibilities. Additionally, I would review the file in each matter to

ensure that a Guardian, if necessary had been appointed, and to see that the Guardian has made the necessary disclosures. If the Guardian had not made proper disclosure, I would issue a specific order for compliance by the Guardian and lay out what punishment would be associated with continued failure to comply with the statutes (most likely that the Guardian would be removed from the case). Additionally, a review of prior orders would be made to ensure that the Guardian had investigated any matters the Court previously ordered investigated. The Guardian serves the Court and is an important part of the fact-finding process. The Guardian should be granted a good amount of latitude to conduct their investigation and when seeking assistance from the Court in obtaining information, and should be supported by the Court so long as the request is a reasonable one that is germane to the matters the Guardian is investigating. Additionally, if a party is noncompliant with the Guardian, I would order compliance from the party with very serious repercussions for continued noncompliance.

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

It is the duty of the judiciary to apply the law as written and enacted by the legislation and approved by the Governor. It is not the place of a Circuit Court judge to question the constitutionally (either federally or at the state level) of any law, but rather to order as the law requires and ensure that the record on the matter is clear and preserved so that the higher Courts can properly address any matter a litigant takes up on appeal. It is not permissible for a Judge to use his position to promote or further any cause in contradiction to the established law of this State.

17. 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?

As a member of the judiciary I would feel it important to make myself available to bench bars and other committees that seek to improve the legal system as a whole, but not those organizations with a specific agenda. I would certainly make myself available to any member of the legislation to supply feedback on what is working and what is not working, and therefore in need of change. I believe that I would partake in committees sponsored by Court Administration and the State Bar, and would be available as a speaker to the law schools and community as a whole. I don't believe that I would join any group or organization that espoused any position on any matter even if I was supportive of the position taken by those groups; a member of the judiciary should not be a figurehead for “hot button” issues and the bench should seek to distance itself accordingly.

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

I have discussed this exact topic in great detail with my wife, and I believe that she is as committed to my service in this capacity as I am. We both are firmly committed to our daughter, and I know that my wife will protect her and promote my relationship with her, even when traveling. Additionally, it is my intent to be better able to spend time with my family if awarded this position. I do not believe that there are any relatives that would feel strain from my appointment, nor any friends. I have become accomplished at keeping work away from my personal life as it relates to my family and friends. My wife and I, as law partners, continuously analyze our cases, however, when we were not working together we were better able to keep work and home separate.

19. Would you give any special considerations to a *pro se* litigant in family court?

It is the requirements of the Rules that self represented litigants are to be held to the same standard as a formally trained attorney. I would grant only more patience to the self represented litigant for errors made related to nuanced legal rules, proceedings and proper decorum. No special consideration would be given to lack of knowledge of the law for a self represented litigant and I would expect them to be present and appearing, ready to go at the start of any hearing just as I would an attorney.

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

No, the only other source of income I anticipate having is from my wife's work at her law firm. As she would be prohibited from appearing before me, I do not believe my benefiting from her income would affect my appearance of impartiality.

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

No, as a litigant is entitled to know that they received a fair hearing without any external pressure on the judge from an outside source as to the outcome of the case.

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

I am a member of the Hibernian Society of Charleston, it is a men's organization and does not permit female membership. However, the organization encourages the involvement of the wives and daughters of members in participating in event planning and in actual attendance at the many social events put on during the year.

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

Yes.

24. What percentage of your legal experience (including experience as a special appointed judge or referee) concerns the following areas? If you do not have experience in one of these areas, can you suggest how you would compensate for that particular area of practice?

a. Divorce and equitable distribution:

b. Child custody: 35%

c. Adoption: 2%

d. Abuse and neglect: 35%

e. Juvenile cases: 2%

f. To answer on compensating for lack of experience, I would suggest that the percentage of my practice devoted to any one area or lack of percentage as the case may be, is a matter addressed much the same as it would be if I were acting in the capacity of a lawyer. I would rely on the statutes as enacted by the General Assembly and conferences with fellow judges as to how to handle an unfamiliar matter.

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

A judge should be assertive in their rulings, polite and courteous to all litigants and parties, gracious in acknowledging an error and grateful for the opportunity to correct any error. A judge should be humbled by the privilege they are afforded in serving the people and should be aware of the power that they are given over a party's life and situation and be judicious and fair in applying that power. A judge is likely to be the only member of any branch of government a person will come into direct contact with, and the behavior of the judiciary should leave the public with confidence as to the judicial process and the fairness of the application of the law.

26. 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 believe that a judge should always act in a manner befitting his or her office. A judge should be polite and courteous at all times, but permitted to establish clear boundaries with the legal community and the general public.

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

No, if the feeling of anger is present, than a judge cannot claim that there is no bias. The criminal status of a litigant has nothing to do with whether a judge should angry with someone appearing before

him. Every person is entitled to fair judgment and if I were able to express an emotion associated with any case or person, I believe that I would need to recuse myself. I do not believe that it is ever appropriate for a judge to act out in anger to an attorney, self represented litigant or other person in their Courtroom. I have found that the most proper course of action when frustrated with someone or something is to recess to calm down, and upon reconvening to explain, in detail, what behavior was unacceptable and my expectations on decorum and respectfulness going forward.

28. How much money have you spent on your campaign? If the amount is over \$100, has that been reported to the House and Senate Ethics Committees?
\$219.15. Yes it has been reported.
29. If you are a sitting judge, have you used judicial letterhead or the services of your staff while campaigning for this office?
No.
30. Have you sought or received the pledge of any legislator prior to this date?
No.
31. Have you sought or been offered a conditional pledge of support by any legislator pending the outcome of your screening?
No.
32. 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.
33. Have you contacted any members of the Judicial Merit Selection Commission?
No.
34. 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/ John Duffy

Sworn to before me this 6 day of August, 2014.

Abigail Duffy

(Print name)

Notary Public for South Carolina

My commission expires: January 30, 2022