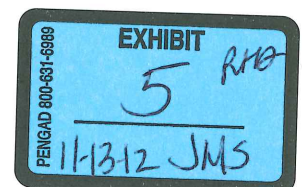


**JUDICIAL MERIT SELECTION COMMISSION
PERSONAL DATA QUESTIONNAIRE**

Court, Position, and Seat # for which you are applying:
Circuit Court, At-Large, Seat 14

1. NAME: Mr. R. Keith Kelly
BUSINESS ADDRESS: 421 Marion Avenue
Spartanburg, SC 29306
TELEPHONE NUMBER: (office): 864-582-3770
2. Date and Place of Birth: 1958; Spartanburg, SC
3. Are you a citizen of South Carolina? Yes
Have you been a resident of this state for at least the immediate past five years? Yes
5. Family Status: Married on December 28, 1985, to Cynthia (Cindy) Gail Jackson. Never divorced; three children.
6. Have you served in the military? Yes. May 16, 1981-May 16, 1984, US Army active duty, Honorable Discharge. May 17, 1984-Aug. 29, 1994, US Army Reserve, Honorable Discharge. Captain; XXX-XX-XXXX; no longer serving.
7. List each college and law school you attended, including the dates of your attendance, the degrees you received, and if you left an institution without receiving a degree, the reason for your departure.
(a) USC Spartanburg, 1977-81, BA History;
(b) Walter F. George School of Law, Mercer University, 1984-87, JD.
8. List the states in which you have been admitted to practice law and the year of each admission. Also list any states in which you took the bar exam but were never admitted to the practice of law. If you took the bar exam more than once in any of the states listed, please indicate the number of times you took the exam in each state.
SC, admitted Jan 4, 1988. I passed the SC Bar exam the first time. I have never taken another state's bar exam.
9. List the significant activities in which you took part during your attendance at college, graduate, and law school. Give the dates you were involved in these activities and list any leadership positions you held.
1978-81, Wofford College ROTC. USC Spartanburg has cross enrollment with Wofford College. I became the first Commander of the Wofford College ROTC unit that was not a Wofford student. While serving as the unit commander, I was awarded the George C. Marshall award and traveled to VMI to accept it. I am a Distinguished Military Graduate (DMG), and I accepted my Regular Army commission from Congress and reported to active duty immediately upon graduating from college. I worked to pay my way through college and law school, which limited my ability to participate in many activities.



10. Describe your continuing legal or judicial education during the past five years.
- | <u>Conference/CLE Name</u> | <u>Date(s)</u> |
|-------------------------------------|----------------|
| (a) 2011 Public Defender Conference | 09/26/11; |
| (b) Legislative Service Credit | 03/01/10; |
| (c) 2010 Public Defender Conference | 09/27/10; |
| (d) 2009 Hot Tips | 09/18/09; |
| (e) 2009 Solicitor's Association | 09/28/09; |
| (f) Defending DUI | 11/13/09; |
| (g) Essential Mitigation Tools | 03/28/08; |
| (h) New World DUI | 03/28/08; |
| (i) Hot Tips | 09/19/08; |
| (j) 2008 Public Defender Conference | 09/28/08; |
| (k) Hot Tips | 09/21/07; |
| (l) 2007 Title Insurance | 11/02/07; |
| (m) DUI on Trial | 11/09/07. |
11. Have you taught law-related courses or lectured at bar association conferences, educational institutions, or continuing legal or judicial education programs?
- I have made presentations to members of the bar at the annual Solicitor's Conference while serving as a member of the SC House Judiciary Committee.
 - I have made presentations to members of the bar at the annual Public Defender's Conference while serving as a member of the SC House Judiciary Committee.
 - I have made presentations to members of the bar at the annual Public Defender's Conference while serving as a member of the SC Sentencing Oversight Committee.
 - I have spoken to school students on career days about law in general and described our court system, both state and federal.
 - I taught a class to law enforcement officers on prosecuting DUI cases.
12. List all published books and articles you have written and give citations and the dates of publication for each.
- None
13. List all courts in which you have been admitted to practice and list the dates of your admission. Give the same information for administrative bodies that require a special admission to practice.
- Admitted to practice before the State Courts of SC Jan 4, 1988;
 - Admitted to practice before the Federal District Court May 23, 1990;
 - Admitted to practice before the Fourth Circuit Court of Appeals April 21, 1998.
14. Describe chronologically your legal experience since graduation from law school and include a list of all law firms with which you have been associated. Describe the general character of your practice and divide it into periods with dates if its character has changed over the years.

- (a) Brooks Law Associates, Spartanburg, SC, 1988-99; General practice of law including criminal, civil and family law.
- (b) R. Keith Kelly Law Firm, Spartanburg, SC, 1999-01; General practice of law including criminal, civil and family law.
- (c) Lister, Flynn & Kelly, PA, Spartanburg, SC, since 2001; General practice of law including criminal, civil and family law.

14.(b) If you are a candidate for Circuit Court, please provide a brief written description of your experience in criminal matters, including any cases handled over the past five years and include a brief description of the issues involved. Further, please provide a brief written description of your experience in civil matters, including any cases handled over the past five years and include a brief description of the types of matters handled, issues involved, and procedural history. Please include information such as the primary areas in civil court in which you practice, whether you represent plaintiffs or defendants, or both. You may go back further than five years if you feel it would assist the Commission with its assessment of your experience. If you lack experience in an area, describe how your background has prepared you to preside over such matters as a Circuit Court Judge, or how you would compensate for your lack of experience in this area.

I routinely practice in the trial courts of this state, including circuit court. I have been on four death penalty cases and tried one death penalty case to a jury as second chair to the public defender. I was on another death penalty case tried to a jury but I played a lesser role. Two other death penalty cases resulted in pleas to life without parole. I have tried to a jury at least two felony DUI cases, death involved. I have tried to a jury murder cases, and I currently have two murder cases pending. Additionally, I have tried hundreds of lesser criminal cases across the state, including those cases before magistrate and municipal courts. As to civil matters, I have tried cases in the circuit court, family court, probate court, municipal and magistrate court. Approximately 40% of my law practice is in family court and family court is governed by the rules of civil procedure where not specifically noted otherwise. And, I routinely represent both plaintiffs and defendants in family court.

- 15. What is your rating, if any, by any legal rating organization, such as, Best Lawyers, Chambers, Legal 500, Martindale-Hubbell, Who's Who Legal, Super Lawyers, etc.? If you are currently a member of the judiciary, list your last available rating, if any.
Martindale-Hubbell, BV.
- 16. What was the frequency of your court appearances during the past five years?
 - (a) federal: None;
 - (b) state: Weekly, 20 to 25 times per month.
- 17. What percentage of your practice involved civil, criminal, domestic, and other matters during the past five years?
 - (a) civil: 20%;
 - (b) criminal: 40%;

- (c) domestic: 40%;
 (d) other: 0%.
18. What percentage of your practice in trial court during the past five years involved matters that went to a jury, including those that settled prior to trial?
 (a) jury: 40%;
 (b) non-jury: 60%.
- Did you most often serve as sole counsel, chief counsel, or associate counsel in these matters?
 Most often sole counsel, except in death penalty cases. I was associated by other lawyers to assist in trial approximately 10%.
19. List five of the most significant litigated matters you have personally handled in either trial or appellate court or before a state or federal agency. Give citations if the cases were reported and describe why these matters were significant.
 (a) State v. Moore: death penalty case;
 (b) State v. Samples: death penalty case;
 (c) State v. Connor: death penalty case;
 (d) State v. Brown: death penalty case;
 (e) US v. Troy Rolle: interstate drug trafficking case.
20. List up to five civil appeals you have personally handled. Give the case name, the court, the date of decision, and the citation if the case was reported.
 I don't remember handling a civil appeal in the last five years. I have never done much appellate work.
21. List up to five criminal appeals that you have personally handled. Give the case name, the court, the date of decision and the citation if the case was reported.
 (a) State v. Porter Johnson, 396 SC 424, 721 SE2d 786 (SC App., 2012)
 (b) State v. Connor, appeal from Magistrate Court to Circuit Court, Greenville Cty.
- I don't remember handling another criminal appeal in the last five years. I have never done much appellate work.
22. Have you ever held judicial office? No.
23. If the answer to question 22 is yes, describe or list five of your most significant orders or opinions and give the citations if they were reported. N/A
24. Have you ever held public office other than judicial office?
 Yes. 2006-10, SC House of Representatives, Representative District 35, elected. All reports were timely filed, no penalty.
25. List all employment you had while serving as a judge (whether full-time or part-time, contractual or at will, consulting or otherwise) other than elected judicial office. N/A
26. Have you ever been an unsuccessful candidate for elective, judicial, or other public office?
 (a) 1991 SC Senate special election to fill unexpired term of Senator Horace Smith. I lost in the primary to a challenger.

- (b) 2010 SC House of Representatives, District 35. I lost in the primary to a challenger
 - (c) 1995 Family Court Judgeship. I withdrew from consideration.
 - (d) 1998 Family Court Judgeship. I withdrew from consideration.
 - (e) 2010 US Magistrate Judge. I was not selected.
27. Have you ever been engaged in any occupation, business, or profession other than the practice of law, teaching of law, or holding judicial or other public office?
Yes. 1976-77 Mr. Zip Food Stores as HVAC technician. 1977-81 Mr. Zip Food Stores and Land Lease Corporation as HVAC and maintenance technician while attending college. 1981-84, Soldier, US Army. 1984-94, Soldier, US Army Reserve.
28. Are you now an officer or director or involved in the management of any business enterprise?
Partner in Lister, Flynn & Kelly, PA, law firm practicing in SC, 2001 to present. I am trial counsel for the majority of our litigation practice.
29. A complete, current financial net worth statement was provided to the Commission.
30. Describe any financial arrangements or business relationships you have, or have had in the past, that could constitute or result in a possible conflict of interest in the position you seek. Explain how you would resolve any potential conflict of interest.
I am a partner in our law firm's office building. I would decline to hear any matter in which my former law firm is involved.
31. Have you ever been arrested, charged, or held by federal, state, or other law enforcement authorities for violation or for suspicion of violation of any federal law or regulation, state law or regulation, or county or municipal law, regulation, or ordinance, or any other law, including another country's law?
No.
32. Have you, to your knowledge, ever been under federal, state, or local investigation for possible violation of a criminal statute? No.
33. Has a tax lien or other collection procedure ever been instituted against you by federal, state, or local authorities? Have you ever defaulted on a student loan? Have you ever filed for bankruptcy?
No tax lien or other collection procedure. All student loans paid in full, never in arrears. Never filed bankruptcy.
34. Have you ever been sued, either personally or professionally, that is, have you ever been named as defendant or respondent in any court of law?
(a) Garrett v. Lister, Flynn & Kelly, PA, et.al. 2005CP420597, Common Pleas, Spartanburg, SC. John Garrett was represented by associate attorney Brendan Delaney who achieved a beneficial result for the Plaintiff. Case was dismissed by the Court, not Rule 40J. Plaintiff petitioned the appellate court and lost. Taxation of costs awarded against Plaintiff.

- (b) Roger Bragg v. Keith Kelly, 2002CV422417, Magistrate Court, Spartanburg, SC. Mr. Bragg hired me on a Magistrate Court criminal case. Central Magistrate Court had multiple courtrooms operating simultaneously. I reported to the courtroom for Mr. Bragg and advised the clerk I would return but I was to be in another courtroom at the same time. Also, I advised the clerk that my client was present and informed me the alleged victim would not appear and the case would be dismissed. Upon my returning, the clerk advised me that when Mr. Bragg's case was called, the judge was advised it was to be dismissed. The case was dismissed and Mr. Bragg left. Mr. Bragg filed suit for the return of his attorney fees stating that I did not earn the fee even though I resolved the case in his favor. I returned 100% of his retainer fee and the case was ended. As an aside, I've made it a practice not to argue with a client about a fee.
- (c) A lawyer by the name of Ben N. Miller, III, represented Fleet Real Estate Funding in either collection or foreclosure work in the early 1990s. He named me as a co-defendant in several actions in Spartanburg County, SC. I think I was named because I had an attorney fee lien awarded by the Family Court. Nonetheless, I took no action and no judgment was entered against me.
36. Have you ever been investigated by the Department of Social Services? If so, give the details and the resolution. Has your name ever been enrolled on the Central Registry of Child Abuse and Neglect?
Never investigated. Not on any registry.
37. If you are in private practice, are you covered by malpractice insurance and, if so, how long have you carried malpractice insurance? If applicable, have you ever been covered by a tail policy?
I have always been covered by malpractice insurance but I have never been covered by a tail policy.
38. Are you now or have you ever been employed as a "lobbyist," as defined by S.C. Code § 2-17-10(13), or have you acted in the capacity of a "lobbyist's principal," as defined by S.C. Code § 2-17-10(14)?
Never a lobbyist or lobbyist's principal.
39. Since filing with the Commission your letter of intent to run for judicial office, have you accepted lodging, transportation, entertainment, food, meals, beverages, money, or any other thing of value as defined by S.C. Code § 2-17-10(1) from a lobbyist or lobbyist's principal? No.
40. S.C. Code § 8-13-700 provides, in part, that "[n]o public official, public member, or public employee may knowingly use his official office, membership, or employment to obtain an economic interest for himself, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated."
I have no knowledge of charges or allegations.

41. S.C. Code § 8-13-765 provides, in part, that “[n]o person may use government personnel, equipment, materials, or an office building in an election campaign.”
I have no knowledge of charges or allegations.
42. Itemize (by amount, type, and date) all expenditures, other than those for travel and room and board, made by you, or on your behalf in furtherance of your candidacy for the position you seek.
No expenditures to date.
43. List the amount and recipient of all contributions made by you or on your behalf to members of the General Assembly since the announcement of your intent to seek election to a judgeship.
No contributions.
44. Have you directly or indirectly requested the pledge of any member of the General Assembly as to your election for the position for which you are being screened? Have you received the assurance of any public official or public employee that they will seek the pledge of any member of the General Assembly as to your election for the position for which you are being screened?
I have not directly or indirectly requested a pledge nor have I received any assurances from any person regarding a pledge.
45. Have you requested a friend or colleague to contact members of the General Assembly on your behalf? Are you aware of any friends or colleagues contacting members of the General Assembly on your behalf?
No. I am unaware of any friend or colleague contacting members of the General Assembly.
46. Have you or has anyone acting on your behalf solicited or collected funds to aid in the promotion of your candidacy? No.
47. Have you or has anyone acting on your behalf contacted members of the Judicial Merit Selection Commission about your candidacy or intention to become a candidate? No.
48. List all bar associations and professional organizations of which you are a member and give the titles and dates of any offices you have held in such groups.
(a) SC Bar Association;
(b) SC Association of Criminal Defense Lawyers;
(c) Spartanburg County Bar Association.
49. List all civic, charitable, educational, social, and fraternal organizations of which you are or have been a member during the past five years and include any offices held in such a group, any professional honors, awards, or other forms of recognition received and not listed elsewhere.
(a) Emma Gray Memorial United Methodist Church;
(b) Woodruff Rotary Club, past president 2011-12, president 2012-13;
(c) Spartanburg Pilot’s Association, board member;
(d) SC House Republican Caucus.

50. Provide any other information that may reflect positively or negatively on your candidacy, or which you believe should be disclosed in connection with consideration of you for nomination for the position you seek.

I respectfully submit that my work ethic is one of my strong suits. I worked to pay my way through college and law school. I repaid all student loans timely, and I applied myself to the practice of law and representing my clients with the same work ethic. I will apply myself and this same work ethic while serving our state as a circuit court judge.

51. References:

- (a) John B. White, Jr.
PO Box 3547
Spartanburg, SC 29304
864-585-5100
- (b) Scott F. Talley
2500 Winchester Place, Ste. 100
Spartanburg, SC 29301
864-595-2969.
- (c) Kelly G. Banks
PO Box 5135
Spartanburg, SC 29304
864-948-8720.
- (d) Albert V. Smith
PO Box 5866
Spartanburg, SC 29304
864-585-8174.
- (e) Michael D. Morin
PO Box 161903
Boiling Springs, SC 29316
864-596-8946.

YOUR SIGNATURE WILL BE HELD TO CONSTITUTE A WAIVER OF THE CONFIDENTIALITY OF ANY PROCEEDING BEFORE A GRIEVANCE COMMITTEE OR ANY INFORMATION CONCERNING YOUR CREDIT.

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

Signature: Keith Kelly

Date: August 1, 2012

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

Circuit Court
(New Candidate)

Full Name: Ralph Keith Kelly
Business Address: 421 Marion Avenue
Spartanburg, SC 29306
Business Telephone: 864-582-3770

1. Why do you want to serve as a Circuit Court judge?

Serve is the operative word. All judges serve the citizenry of the state and represent the judiciary in the community. To some extent, I have represented the judiciary for over twenty-four years as a practicing lawyer. I want to bring those twenty-four years of courtroom experience to the bench.

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.
4. Have you met the Constitutional 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?

In accordance with Judicial Canons, a judge is allowed to engage in *ex parte* communications for emergencies where exigent circumstances warrant such communications as long as the opposing party has the opportunity to be heard and neither party will gain a tactical advantage by such action. I understand *ex parte* communication is permissible to seek emergency restraining orders, to apply for search warrants or wiretaps, to obtain default judgments when a party has notice but fails to appear, consultation with a disinterested expert on the law, consultation with other judges, consultation with court personnel and scheduling purposes. *Ex parte* communication is prohibited by the canons with the exception of these circumstances.

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

I would exercise recusal in a manner consistent with the ethical canons in order to avoid improprieties and the appearance of improprieties. A judge's decision concerning recusal should be cautiously entered into to avoid frivolous attacks which are meritless. I would follow the Code of Judicial Conduct and recuse myself if my

impartiality might reasonably be questioned. I would not recuse myself merely because a lawyer-legislator is counsel of record. I am a former legislator myself. As to former law partners and associates, I would decline to hear any matter in which my former law firm was involved.

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? Yes. If a judge's impartiality might reasonably be questioned, recusal is mandatory.
8. How would you handle the appearance of impropriety because of the financial or social involvement of your spouse or a close relative?

Judicial Canons require a judge to be vigilant as to their own financial or social involvement as well as their spouse and close relatives. Any appearance of impropriety must result in a recusal so as to ensure faith and trust in the impartiality of the judiciary.
9. What standards would you set for yourself regarding the acceptance of gifts or social hospitality?

I would accept gifts or social hospitalities only from family members or friends that are not being extended to me for a reason associated with the position of judge.
10. How would you handle a situation in which you became aware of misconduct of a lawyer or of a fellow judge?

I would report any violation of the Judicial Canons.
11. Are you affiliated with any political parties, boards or commissions that, if you were elected, would need to be re-evaluated?

I sit as the SC House lay member on the Sentencing Oversight Committee. I would resign my position if elected.
12. Do you have any business activities that you would envision remaining involved with if elected to the bench? No.
13. If elected, how would you handle the drafting of orders?

I would calendar the drafting of all orders to ensure orders were timely issued.
14. If elected, what methods would you use to ensure that you and your staff meet deadlines?

I would calendar all deadlines. I'm very accustomed to using a calendar to ensure deadlines are met.
15. What is your philosophy on "judicial activism," and what effect should judges have in setting or promoting public policy?

The power of the General Assembly is plenary in nature unless limited by a specific Constitutional provision. The General Assembly establishes the law and the Court follows the intent of the law. The Judiciary does not legislate.

16. Canon 4 allows a judge to engage in activities to improve the law, legal system, and administration of justice. If elected, what activities do you plan to undertake to further this improvement of the legal system?

I will continue to participate in CLEs and JCLEs as well as other educational opportunities afforded me. Additionally, I will continue to speak to students at career days about our court system.

17. 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 address this?

No. I have been in private practice for over twenty-four years while simultaneously balancing my professional life and private life.

18. The following list contains five categories of offenders that would perhaps regularly appear in your court. Discuss your philosophy on sentencing for these classes of offenders.

a. Repeat offenders: A fundamental fact of criminology is that a small proportion of individuals commit a large proportion of crime. Another fundamental fact is that the older the offender, the less likely he is to recidivate. Therefore, it stands to reason that a longer active sentence for a repeat offender lessens crime in our communities and ensures the safety of our citizens.

b. Juveniles (that have been waived to the circuit court): Evidence based practice research concludes that intense supervision outside of detention is more effective than detention in the majority of cases. It appears that this is due to the impressionability of the young offender and the ability to rehabilitate him. However, this must be weighed on a case by case basis taking into account the seriousness of the offense committed and the overall safety of the community.

c. White collar criminals: Evidence based practice research shows that deterrence works best when punishment is swift and certain and that certainty is of far greater value than severity in creating deterrent sentences. Additionally, research shows that this type of offender is less likely to recidivate thereby taxing the state's penal resources. Therefore, the sentence should be structured to punish the offender and deter others from this type criminal activity and include loss of any economic gain realized by the criminal activity.

d. Defendants with a socially and/or economically disadvantaged background: All sentences must be proportionate to the gravity of the offense committed and the degree of responsibility of the offender. Further, similar sentences must be imposed on similar offenders for similar offenses. Poverty, unemployment, poor education, limited opportunities and substance abuse are factors a judge should consider along with the likelihood of the offender to recidivate and the overall safety of the community.

e. Elderly defendants or those with some infirmity: Research shows that home confinement, electronic monitoring and other forms of punishment

can be equally efficient and effective and less costly than incarceration for an offender who has a severe medical condition, especially if combined with advanced age. However, this must be weighed on a case by case basis taking into account the seriousness of the offense committed and the overall safety of the community.

19. Are you involved in any active investments from which you derive additional income that might impair your appearance of impartiality? No.

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

If a judge's impartiality might reasonably be questioned, recusal is mandatory.

21. Do you belong to any organizations that discriminate based on race, religion, or gender? No.

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

Yes, I have exceeded this requirement regularly.

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

A Judge should be courteous to all persons who appear before the court. A Judge should remember that he is a representative of the State of South Carolina and conduct his behavior accordingly, both personally and professionally.

24. 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?

The rules apply every day, all day.

25. Do you feel that it is ever appropriate to be angry with a member of the public, especially with a criminal defendant? Is anger ever appropriate in dealing with attorneys or pro se litigants?

Anger is a human emotion but there is no place for anger in a courtroom either by a judge, lawyer or litigant.

26. How much money have you spent on your campaign? If it is over \$100, has that amount been reported to the House and Senate Ethics Committees? None

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

28. Have you sought or received the pledge of any legislator prior to this date? No.

29. Have you sought or been offered a conditional pledge of support by any legislator pending the outcome of your screening? No.

30. 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. I am unaware of any friend or colleague contacting members of the General Assembly.

31. Have you contacted any members of the Judicial Merit Selection Commission? No.
32. 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.

Ralph Keith Kelly

Sworn to before me this 8 day of August, 2012.

Notary Public for S.C.

My Commission Expires: 10/14/14 _____