

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

Family Court
(New Candidate)

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

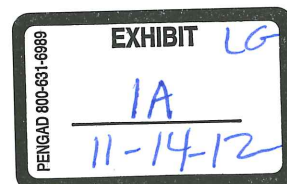
My entire legal career has been focused on issues in Family Court. Although I have not always been in court, I have been engaged in training professionals and providing guidance for those who do appear in court. I believe my diverse experience as a family law attorney will bring a new perspective to the Family Court.

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 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?

Pursuant to Canon 3(B)(7), a judge "shall not initiate, permit or consider an *ex parte* communication" except when allowed. In my professional career I have been mindful to avoid *ex parte* communications and have cautioned non-attorney co-workers against the types of activities that would constitute *ex parte* communications. However, a judge may engage in *ex parte* communications in certain situations, as when it is necessary to issue a warrant; an *ex parte* order for the emergency removal of a child from the home; a temporary restraining order; an *ex parte* order for temporary child support or temporary custody of a child.

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 the duty of a judge to maintain the integrity of the legal system and the confidence of the public that the legal system is just, fair and impartial. Thus, in any situation where a judge's ability to remain fair and neutral is questioned or may reasonably be questioned, as when a former associate or law partner appears before the judge,



the judge must disclose the relationship and disqualify himself/herself from hearing the matter.

The commentary to Canon 3E(1)(B) concerns government agency attorneys and provides that agency attorneys do not normally have associations with each other within the meaning of the Canon. However, as a current and former agency attorney, I would disqualify myself from a matter if I was concerned about my ability to be impartial or in any instance where my ability to be impartial could reasonably be questioned.

It should be noted that after disclosure of the reason for disqualification, the parties may consult and choose to waive the disqualification of the judge, and with the consent of the judge, may proceed with the matter.

Save an unusual relationship, which would impair the judge's ability to be impartial, it would not be necessary for a judge to disqualify himself/herself from a case in which the lawyer-legislator is 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?

If, after a disclosure, a party questions my ability to be fair and impartial, it would be sufficient reason to grant the motion and disqualify myself from the matter.

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

If I am aware that my husband or a close relative has or had a financial interest in the matter before me, I would adhere to Canon 3, disclose the interest and, if was more than a de minimis interest, I would disqualify myself from the matter. Likewise, if I were aware that my husband or close relative has or had a social involvement/relationship, that would give the appearance of impropriety, I would disclose the relationship and disqualify myself from the matter.

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

I would try to conduct myself in a manner that would not cause anyone to question my ability to be fair and impartial. Thus, when it comes to the acceptance of gifts or things of value, I would make every effort to abide by the rules set out in Canon 4(D)(5) of the Code of Judicial Conduct. Except in permissible circumstances, such as ordinary social hospitality, or reasonable gifts for special occasions (birthdays, weddings, etc.), I would not accept anything of value from an attorney, group of attorneys or any other person who has appeared before me or

is likely to appear before me. I would also discourage my husband (my children are too young now to understand) from accepting anything of value that would be offered to him incident to my service on the bench.

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

If I suspected or became aware that a lawyer or judge committed misconduct, I would act in accordance with Canon 3D, and take the appropriate action. The appropriate action may mean talking with the attorney and judge about my suspicions, and reporting to the appropriate authority. If a lawyer committed misconduct while appearing before me, I would likely exercise the contempt powers of the court, and report to the appropriate authority. Otherwise, if I had direct knowledge of a lawyer or judge committing misconduct, I would abide by the rules and report to the appropriate authority: the Office of Disciplinary Counsel, Commission on Judicial Conduct, or the Commission on Lawyer Conduct.

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

I am a member of the Preened Funeral Contract Advisory Board, Department of Consumer Affairs. I do not believe my service would create a conflict, as this board would not appear before Family Court. However, I would resign if I perceived a potential conflict of interest.

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

Canon 4D(3) provides that "a judge may serve as an officer, director, manager, general partner, advisor or employee of a business entity if that service does not conflict with the judges judicial duties, create the appearance of impropriety or otherwise violate any provision of this code." My father owns a small, family business, Manigault-Hurley Funeral Home, where my mother, two siblings and I assist when needed or requested. I do not envision my continued involvement with this business as conflicting with my duties as a Family Court judge. I assist infrequently, and when I do, it is usually after-hours or on weekends, and the business would never have any matter before Family Court. In addition, I do not have a financial interest in the business and have not received any compensation or income from this business in at least six years or more.

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

For issues I take under advisement and I would either draft the order myself or issue an instructional letter to the prevailing party to draft the order. For most other orders, I would have the prevailing party draft the order.

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

I currently utilize Outlook Calendar for scheduling and keeping up with deadlines. I believe I would continue to use Outlook or a similar application, as well as maintain a spreadsheet of all hearings, and deadlines for orders. If the 30-day deadline for issuing an order is approaching, but the attorney has not submitted the order, I would have my assistant contact the attorney to inquire about the missing order.

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 ensure that the duties and responsibilities of the GAL are specified in the appointment order. During hearings I would carefully review the GAL's report, listen to testimony and, if necessary, ask questions to ensure that the GAL has adequately performed an independent investigation and has had sufficient contacts with the child to support the recommendations or findings in the report.

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

I believe it is the job of the legislators to create law, and the job of a judge to apply it. Judges should be faithful to the law and not allow their personal and political beliefs to influence their decisions. Other than setting precedent on novel issues, judges should not legislate from the bench or intentionally shape public policy.

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?

When requested, I will speak at CLEs; and continue to participate in the mentoring program at the University of South Carolina School of Law. I will also attend National meetings and conventions, so that I may meet and interact with other judges, and learn what other jurisdictions are employing to improve their court systems, that I may be implemented in South Carolina.

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?

As attorneys, my husband and I have always had full schedules and are very fortunate to have a strong foundation of family and friends that support us, and our endeavors. When we are not able to do so, my husband and I can call on family members, who stand ready and willing, to assist us with picking up our children from school or

camp. I believe, that if elected, there will be a period of adjustment, but I will have my husband's understanding and support.

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

Not normally, but under extraordinary circumstances I may. For instance, with exceptions, a probable cause hearing must be held within 72 hours of a child being placed into emergency protective custody. If a child is placed into protective custody on Friday, the probable cause hearing will likely be held on Monday. This may not have allowed time for the parent to obtain an attorney. Pursuant to S.C. Code Ann. §63-7-1620, parents, guardians or other persons subject to legal proceedings are entitled to legal representation. Under the Emergency Protective Custody statute, a defendant is not allowed to testify at a probable cause hearing, but can only cross examine the agency's witnesses and/or submit an affidavit to the court. As this is the first time in court for many people, the defendant may not be aware that he/she will not be able to address the court. In this situation I may delay the hearing for a few minutes to allow the defendant to prepare an affidavit, or I may allow the defendant to make a statement in court. I may also continue the hearing to allow for the appointment of an attorney for the defendant.

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

No.

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

Pursuant to Canon 3E(1)(C), if I knew of the *de minimis* financial interest, I would disclose the interest on the records. If I felt that this interest would not affect impartiality, I would ask the parties to consult to determine if they were comfortable going forward with me presiding. If I, or any party felt that the *de minimis* interest would affect my ability to be fair, I would disqualify myself from the matter, and try to schedule the hearing as soon as possible before another judge. If after consultation, the parties agree to go forward, we will put their consent on the record and go forward.

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

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: 0%. Although I do not have any experience representing clients in divorce and equitable distribution, I have stayed abreast of divorce issues through reading weekly Advance Sheets. If elected, I would actively attend CLE seminars pertaining to divorce issues. If a particularly complex case came before me, I would seek the guidance of another judge, if I felt it was necessary.
 - b. Child custody: I have not handled a private child custody case, but in concert with abuse and neglect cases, I have handled many cases dealing with the custody or guardianship of children
 - c. Adoption: I have not represented anyone in an adoption action; however, I have a working knowledge of the adoption laws contained in South Carolina Code Annotated Section 63, Chapter 9. I have trained DSS staff on adoption laws; consents and relinquishments for adoption; confidentiality issues; notice and service requirements; the Responsible Father Registry; the Multi-Ethnic Placement Act; and on issues concerning adoption applications.
 - d. Abuse and neglect: 98%
 - e. Juvenile cases: 2%
25. What do you feel is the appropriate demeanor for a judge?
A judge should be tolerant and respectful of everyone. A Judge should never appear bias or impartial or show anger. One should be fair and patient yet firm and decisive.
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?
Seven days a week, twenty-four hours a day.
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?
Anger is never appropriate.
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? \$63.15
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?
I have not asked anyone to contact members of the General Assembly on my behalf. People are aware that I am a candidate for Family Court, but I am not aware of anyone contacting a member on my behalf.
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.

Michelle Manigault Hurley

Sworn to before me this 6 day of August, 2012.

Notary Public for South Carolina

My commission expires: 10/10/17 _____