

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

Family Court
(New Candidate)

Full Name: Daniel D. Kienker
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1. Why do you want to serve as a Family Court Judge?

As with criminal law, the practice of family law is one in which an attorney works with people in crisis where it is often possible to make a real difference especially regarding children. As a family law practitioner I can't take away the pain of a broken marriage from a spouse, but I can help bring closure to a very painful chapter in his or her life. I can't take away the emotional trauma a small child has suffered from being exposed to an abusive parental relationship, but I can advocate that custody of that child should be awarded to the more nurturing and loving parent. I can help facilitate the process of bringing together loving parents and an adopted child, or I can facilitate the process of terminating the parental rights of a person who has abrogated his parental role in a child's life. It is from being a part of the family court process that gives me a feeling of fulfillment and gratification, knowing that in some small way I can perhaps make a difference in someone's life. For these reasons and with humility, I seek the opportunity to play a more pivotal role in family law by serving as a Family Court Judge. Presiding as Judge and applying the law to the facts in any given case, I envision having an even greater opportunity to serve the people.

My grandfather was a surgeon and the person I most admired while growing up. He often said that as a surgeon he felt he was "serving God by serving his people." I have taken those words as my personal creed and would apply them as a Family Court Judge.

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?

If elected to serve as a Family Court Judge I honestly do not know if I would one day return to private practice. I would need to assess my personal and professional situation at or near the end of my elected term before making that decision.

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?

The only *ex parte* "communication" I would envision as a Family Court Judge would be in the form of a Motion for an Emergency Hearing involving allegations of domestic violence, physical harm to a child, or a threat of absconding with a child out of State. I believe *ex parte* communication should be the rare exception because anytime the Court finds itself involved in *ex parte* communication or issuing *ex parte* Orders, due process and equal protection are impacted.

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 believe it is always best to err on the side of caution if there is ever any question involving the issue of impartiality or even the appearance of such. I would recuse myself if ever a former associate, law partner, or lawyer-legislator appeared before me.

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?

I would inform the parties of what I thought might give the appearance of bias, express my opinion that I did not think it would affect my impartiality, but if either side had an objection to my hearing the matter or case, out of an abundance of caution I would more than likely grant counsel's motion for recusal.

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

I would recuse myself

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

The highest standards. I would not so much as allow someone to pay for my lunch.

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

My ethical obligation is to report such misconduct to the South Carolina Commission on lawyer/judicial misconduct. I would do so.

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? No

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

My experience as a Family Law Practitioner has been that the presiding Judge will direct the attorney who has prevailed at a Hearing to draft his/her Order, and coordinate it with opposing counsel prior to submitting it to the Judge for approval. I would continue that practice though I am not above drafting my own Orders, documents, and correspondence. I have done a great deal of my own "typing" in the various positions I have held as an attorney and I frequently do much of my own administrative work.

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

Falling back on my previous career as a military officer, punctuality and meeting deadlines levied by superiors and higher headquarters are two attributes vital to the successful career of any officer. I practice law the same way. I am never late submitting an Order to a Judge or documents to opposing counsel. I keep handy on my desk a current listing of all my cases which I often review several times a day to ensure each case is current. I make notations in the margins of each case as to case status, i.e. has a Temporary Hearing been scheduled? Have I heard back from opposing counsel about the proposed Settlement Agreement? I would use the same or similar "tickler" system as a Family Court Judge.

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?

Upon completion of a Guardian Ad Litem's duties I would expect his or her report to the Court to address each and every responsibility outlined in Section 63-3-830 of the South Carolina Code of Laws. If any area or responsibility was not addressed or lacking, I would question the Guardian Ad litem as to why?

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

Recognizing that Judges bring to the Bench their own unique life experiences as well as personal opinions, they must nevertheless apply the law as written and codified by the legislative branch and established as precedent by Higher Court. That is not to say that a Judge may not be presented with a case of "first impression" involving a new or novel question which heretofore has not been addressed by the Legislature or Higher Court. However, a Judge should not, on his or her own initiative, seek out opportunities to thwart or short-circuit established law and principle based upon a personal, political, or socio-economic agenda.

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 participant either "en banc" with other Judges or individually during Family Law Continuing Legal Education Seminars through answering questions and adding my perspective to this area of practice.

I would also be glad to speak to any civic group about Family Law consistent with my obligation not to comment on specific cases or give the impression I have a position on any legal issue.

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?

No, I do not. My children are all older now and on their own. I am also fortunate to be married to a wife who has endured the better part of my military career which has included frequent moves to numerous assignments including those overseas. During my military career my wife was often left alone with our young children making all the important decisions while I was deployed for extended periods of time. There is no doubt in my mind my wife would be extremely supportive of my duties as a Judge. At the same time, I know how to prioritize my time so that I keep both my personal and professional life in balance.

19. Would you give any special considerations to a *pro se* litigant in family court? No

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? No

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: 70%

b. Child custody: 70%

c. Adoption: 70%

d. Abuse and neglect: 70%

e. Juvenile cases: 30% (while serving as an Assistant Solicitor prosecuting juveniles)

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

It is never appropriate to belittle, berate, or humiliate anyone. Regardless of circumstances, everyone should be treated with respect and that includes litigants, attorneys, and Court Personnel. To do otherwise detracts from the solemnity of the Court, the proceedings at hand, and only serves to tarnish the credibility of the judicial process. That is not to say that a firm hand and clear voice from the bench may not be needed at times to assert the authority of the court. As a practicing attorney I treat everyone I deal with in court to include opposing counsel, litigants, and court personnel with courtesy and respect. I will treat the same if elected as Judge. If there is ever a time to deal harshly with an attorney it should be done in Chambers and not in front of his client(s) and colleagues. Unfortunately I have seen a few and only a few Judges whose demeanor on the bench is unprofessional and it is inexcusable and unnecessary.

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?

These rules would apply seven days a week, twenty-four hours a day. Judges and attorneys represent a learned profession which I believe is still held in high esteem by most of the public. The law is an honored profession and as a Lawyer or Judge I would never allow myself to be in a position where I might bring discredit upon the profession by exhibiting boorish behavior, public intoxication, or the use of profanity. That is not to say a Judge should not be sociable, have fun, or never participate in recreational activities, but should do so with a sense of decorum.

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 a natural emotion we all share, and as long as we do not lose control of that anger it can be an effective aid in communicating our feelings. Therefore, being angry with an attorney, litigant, or defendant who has lied to the court, is being disruptive of the judicial process, or is mocking the judicial process, is not necessarily inappropriate as long as the response is to hold the offender accountable through the Court's Contempt Power. To lose control of that anger by yelling from the bench and "brow-beating" is not 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? None

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

Daniel D Kienker

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

Notary Public for South Carolina

My commission expires: 05/16/18 _____