



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

Family Court
(Incumbent)

Full Name: Karen Fowler Ballenger

Business Address: PO Box 487
Walhalla, South Carolina 29691

Business Telephone: (864) 638-4290

1. Why do you want to serve another term as a Family Court judge?

Becoming a family court judge has allowed me to continue to grow and serve my community in a field about which I am very passionate. Prior to my election as a judge, I had over 20 years of experience handling family court issues. In looking back at my legal career, I firmly believe that there have been many opportunities and experiences that have unknowingly brought me to where I am today.

The past nine years of my life have, without a doubt, been the most rewarding years of my career/life. I have grown personally and professionally in my position. As a family court judge, I firmly believe that we are most often the face of the judiciary. Most citizens at one point in their life find themselves in front of a family court judge. Therefore, as a family court judge, I have always tried to represent the judiciary competently, proudly and humbly.

I believe that my experience on the bench, and my previous experience as a family court practitioner, provide a good perspective from which to carry out my duties as a family court judge.

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

Generally, *ex parte* communications should be avoided, as they undermine the confidence and the principal of fairness in the administration of justice.

Canon 3 , Rule 501, SCACR, specifically states that “A judge shall accord to every person who has a legal interest in a proceeding, or that person’s lawyer, the right to be heard according to law. A judge shall not initiate, permit, or consider *ex parte* communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding.”

After stating the rule, Canon 3 goes on and states that a judge may initiate or consider any *ex parte* communication when expressly authorized to do so. Examples when an *ex parte* communication may be expressly authorized by law includes the issuance of a temporary restraining order and the issuance of temporary orders related to child custody and support where conditions warrant (Section 63-17-390 of the South Carolina Code of Laws). Another example of when a family court judge can consider *ex parte* communication is in cases involving abuse and neglected children. Section 63-7-740 of the South Carolina Code of Laws allows the family court to issue an *ex parte* order that a child be taken into emergency protective custody provided the family court judge determines that there is probable cause to believe that the child is in imminent and substantial danger due to abuse and/or neglect.

As a family court judge, I only consider *ex parte* communications under extreme circumstances and in accordance with these rules.

6. 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 there was the appearance of bias and a party requested my recusal, I would grant the recusal. As stated in the preamble of the Code of Judicial Conduct, our legal system is based on the principle that a fair and impartial judge will apply the law to the cases before him or her.

However, in small counties, I have had situations before me where “necessity may override the rule of disqualification” (a term used in the commentary). There have been a few times where there was an emergency situation before me and I have had to deal with the emergency situation and give a temporary ruling until the matter could be heard by another judge (as soon as possible). However, I would handle the matter only if there was an extreme emergency and also in cases where I felt that I could hear the case impartially. I would not hear the matter even on an emergency basis if the matter fell within the specific circumstances set forth in the canon which clearly would disqualify me from hearing the matter.

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

Canon 3 is very clear. The appearance of impropriety undermines the public confidence in the judicial system. Therefore, I would recuse myself if my impartiality might be questioned due to any basis.

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

Gifts to a judge are controlled by Cannon 4(d)(5) of the Code of Judicial Conduct, which generally prohibits a judge from accepting such. I do not accept gifts from attorneys or parties who are or may be before the Court.

As to social hospitality, I will accept it if all judges similarly situated are included in the hospitality, and it does not appear to be an effort to exert influence on some issues before the Court (and I report it as required). However, if social hospitality appears to be offered to me alone, or is offered by attorneys with a matter presently pending before me, it is respectfully declined.

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

Canon 3(d)(1) specifically states that “a judge who receives information indicating a substantial likelihood that another judge has committed a violation of this Code [Code of Judicial Conduct] should take appropriate action. A judge having knowledge that another judge has committed a violation of this Code that raises a substantial question as to the other judge’s fitness for office shall inform the appropriate authority”.

Canon 3(D)(2) specifically states “A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct contained in Rule 407, SCACR, should take appropriate action. A judge having knowledge that a lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to the lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects shall inform the appropriate authority”.

The Commentary for this Rule specifically states that appropriate action may include direct communication with the judge or lawyer who has committed the violation, other direct action if available, and reporting the violation to the appropriate authority or other agency or body.

As a judge, I would follow the Code of Judicial Conduct and the Rules of Professional Conduct.

10. Have you engaged in any fund-raising activities with any social, community, or religious organizations? Please describe.

No

11. Do you have any business activities that you have remained involved with since your election to the bench?

No

12. Since Family Court judges do not have law clerks, how do you handle the drafting of orders?

Generally, I request one of the attorneys to draft the order for the Court. The drafting attorney must send it to the other attorney/party prior to sending it to the Court. Therefore, I am aware of any issues involving the order when it is sent to me. My Administrative Assistant reviews all drafts of orders prior to my review of the order. She then gives the proposed order to me for my review along with my notes from the hearing. Finally, I review the order, make any revisions, and sign the final version. Sometimes, if there is an issue that I feel needs to be discussed with the attorneys prior to signing the order, I will have a conference call with them.

In some cases (recently, this number has increased), I will draft the order. To the best of my recollection, I have always drafted the order in cases where both parties are self-represented. I have also drafted the order when one party was represented by an attorney, and the other party was self-represented in order to avoid the appearance of bias. I have also drafted the order in cases where it was very important to me that the order includes specific findings of facts that supports my decision and my findings as the credibility of witnesses.

13. What methods do you use to ensure that you and your staff meet deadlines?

My office has a system (two separate systems) that tracks cases in which we are awaiting orders. My Administrative Assistant sends out three reminder messages reminding the attorneys of their responsibility in getting the orders to me. The first letter is a reminder; the second letter is more demanding and the third letter sets a specific deadline as to when the order must be in my office. There have been a few times where I have had to get involved in getting the order but these instances have been few.

The system above is the one used by my Administrative Assistant. I also use an excel spreadsheet where I keep up with the outstanding orders.

I, personally, keep track of matters that I take under advisement. It is my personal policy to get those matters decided as quickly as possible.

14. What specific actions or steps do you take to ensure that the guidelines of the guardian ad litem statutes are followed during the pendency of a case?

The majority of the cases that come before me where a guardian ad litem is involved are cases involving an attorney guardian ad litem. I have an order that I use when appointing a guardian which outlines the duties and responsibilities of the guardian. I feel that including the responsibilities of the guardian in the Order of Appointment helps ensure that the guardian complies with the guardian ad litem statute such as meeting deadlines and sending bills to the parties in a timely basis. I also prefer to have the Order of Appointment of the Guardian separate from the Temporary Order for confidentially purposes.

Most often custody cases are hotly contested. Therefore, the cases come before the Court during the pendency of the case via motion hearings, contempt hearing, and conferences. Therefore, the Court would be alerted very early on if the guardian is not following the statute.

Having served as a guardian ad litem for years, I am familiar with the Guardian ad Litem statute, and I expect the guardians to comply with the statute. In my nine years on the bench, I have found that most guardians comply with the statute.

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

My philosophy on "judicial activism" is that the establishment of public policy is within the province of the General Assembly.

Black’s Law Dictionary defines judicial activism as a “philosophy of judicial decision making whereby judges allow their personal views about public policy, among other factors, to guide their decisions”.

Judicial activism has no place in family court. Family Court is a court of equity. Family court is a court of limited jurisdiction. Family court judges are required to apply the law to the situation before the Court. Canon 3, Rule 501, SCACR, specifically states that a judge shall be faithful to the law. The role of the judge is to apply and enforce the laws enacted by the legislature.

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

The first thing that comes to my mind (which is not a direct answer to the question) is that as a family court judge I always strive to conduct myself in such a manner that I improve the legal system or, at least honor the legal system, by my actions.

Since being elected as a family court judge, I have had the honor of being asked to speak before several agencies who are involved in the court system. I have always tried to use these opportunities to discuss how our judicial system operates.

17. Do you feel that the pressure of serving as a judge strains personal relationships (i.e. spouse, children, friends, or relatives)? How do you address this?

I have always heard that being a judge can be lonely. That has not been the case for me. My life's dreams came true when I was elected family court judge. As I stated earlier, I truly believe that things have happened in my life for a reason. Being elected as a family court judge nine years ago could have not happened at a better time in my life. My daughter was in college (now she is working in DC). Since my election, I have been able to give my full attention to serving this state as its judicial servant.

I feel it is very important to be a well-rounded person so I plan and participate in vacations, family gatherings, social interactions with neighbors and friends. I also try to stay active by exercising, spending time on the water either on the lake or beach, and spending time outdoors.

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

No

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

Canon 3(E)(1) specifically states that a judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonable be questioned, including but not limited to instances where the judge knows that he or she, individually or as a fiduciary, or the judge's spouse, parent or child wherever residing, or any other

member of the judge's family residing in the judge's household has an economic interest in the subject matter in the controversy or in a party to proceeding or has any more than de minimis interest that could be substantially affected by the proceeding.

According to the rules, since the interest is a *de minimis* financial interest then I could hear the case. But, I feel that the better practice is to disclose the relationship on the record and then follow the procedure under Canon 3(f). However, if any of the parties objected and it was a reasonable objection, then the better practice is to disqualify myself and let another judge hear the matter. My belief is that it is always better to be safe. But, I do not think that this would ever be an issue for me.

20. Are you a member of any organization or association that, by policy or practice, prohibits or limits its membership on the basis of race, sex, religion, or national origin? If so, please identify the entity and explain if this organization practices invidious discrimination on any basis.

No

21. Have you met the mandatory minimum hours requirement for continuing legal education courses for the past reporting period?

Yes

22. What do you feel is the appropriate demeanor for a judge and when do these rules apply?

The appropriate demeanor for a judge is that of a "judicial servant". A judge should be patient, dignified and courteous to litigants, lawyers and witnesses. A judge should perform his or her duties impartially and fairly. A judge should love the law and want to perform his or her judicial duties honorably.

23. 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 a pro se litigant?

Public confidence in the judiciary is eroded by improper judicial conduct. Anger is never appropriate for a judge toward a litigant or

attorney. It is imperative for the judicial system that a judge carries out his or her responsibility with integrity, impartiality and competency. Canon 3(b)(4) specifically states that a judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals with in an official capacity.

There are times that a judge needs to be stern. The above canon specifically states that the judge shall require similar conduct of lawyers and staff. In other words, one of the responsibilities of a judge is to ensure that attorneys and litigants act in an appropriate manner – dignified and courteous. The judge should require order and decorum in proceedings before the Court. At times, this may require the judge to be stern and businesslike. But, it never should require him or her to be rude or unprofessional.

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

Sworn to before me this _____ day of July, 2021.

(Signature)

(Print name)

Notary Public for South Carolina

My commission expires: _____