

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

**Family Court
(Incumbent)**

Full Name: The Honorable Katherine Hall Tiffany

Business Address: Greenville County Family Court
301 University Ridge
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1. Why do you want to serve another term as a Family Court judge?

In 2016 I sought election to the family court bench to invest myself in my native state and to challenge myself professionally. I believed that I had knowledge and skills that would aid me in serving the people of this state. Today, I appreciate more than ever how every success, as well as every failure, during my twenty years as a family court attorney prepared me to serve as a family court judge. I firmly believe that without those twenty years behind me, I could not meet the intellectual (and sometimes personal) challenges I face. Every day I am presented with new parties and new legal issues. Every day I am tasked with answering different questions and crafting different solutions, to which I devote all the attention, patience and deliberation I can summon. And every day I reflect on how I can "do better" the next day. Our state's population is steadily expanding, and legal issues are becoming more complicated. The demands on our family court system will continue to increase, and in turn require more from its judges. I have the drive, energy, skills but most of all the determination to meet those demands.

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?

I hope to serve as many terms on the Family Court bench as I am capable of serving and that I am found qualified, nominated and elected to serve. If or when my time on the bench comes to an end, my preference would be to pursue interests such as teaching or writing in the legal profession. However, my employment after serving on the bench would ultimately depend on my personal, family and financial circumstances at that time.

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?

According to Judicial Canon 2.A., a judge is required to act at all times in a manner that promotes confidence in the integrity and impartiality of the judiciary. My actions regarding *ex parte* communications are specifically governed by Judicial Canon 3.B.(7), which prevents me (or my staff) from initiating, permitting or considering *ex parte* communications, or other communications (from parties, parties' lawyers or third parties), which are made outside the presence of parties about a pending or impending proceedings except for :

- 1) Communications made for purposes such as scheduling, administrative purposes or emergencies that do not raise substantive issues or issues on the merits of pending/impending matters.

I believe this exception allows for communications such as requests for continuances or requests for emergency orders. However, even under this exception, my practice is that before I consider the communication, my office ensures that the communications have been or are sent (or reasonable efforts to do so are made) to all opposing counsel/self

represented parties, either simultaneously to or immediately after my office receives them; allow opposing counsel or self-represented parties an opportunity to respond; and consider whether a response with result in an unfair or tactical advantage to any party.

- 2) Communications to seek advice from a disinterested expert (such as by inviting the expert to file an amicus curae brief) on the law applicable to a matter before me, provided that I disclose the identity of the expert and the substance of the communication to all counsel/parties and allow them an opportunity to respond.
- 3) Communications with other court personnel who aid me in carrying out my responsibilities as a judge.
- 4) With the consent of the parties and counsel, separate conferences with parties and their attorneys to mediate or settle matters before me.
- 5) Ex parte communications I am expressly authorized by law (including court rules, statutes, constitutional provisions and common law) to make such as temporary restraining orders or writs of supersedeas under limited or exigent circumstances (per SCRCP 65(b) and SCACR 225 (d)(6)), and temporary orders relating to child support and custody under certain conditions (pursuant to 63-17-390)

I believe that the applicable Judicial canons generally discourage, if not prohibit, ex parte communications regarding pending or impending matters, including those from parties, their lawyers and third parties. Even those that fall within "exceptions" should only be allowed if the circumstances warranting exception are clearly met.

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?

In this situation I would look to Judicial Canon 2.A. for guidance to protect the integrity of and the public's confidence in the impartiality of the judiciary. It is not a question of whether I believe that my impartiality is in question, but whether the parties or attorneys believe that my impartiality is compromised.

If a party or attorney expressed a sincere belief that my impartiality could be questioned, along with a specific basis for that belief, then I would likely defer to the request for recusal. However, I would make every effort to prevent prejudice to any party caused by my recusal, such as delay in the proceedings. For example, I would see if another judge was immediately able to hear the matter; if no other judge was immediately available to hear the matter, I would request that the matter be given priority in rescheduling at the first available time.

As noted in Judicial Canon 3.E.(1), there may be situations where the "rule of necessity" that a matter be heard would have to override the "rule of disqualification"—such as matters requiring immediate action (such as probable cause removal or other emergency hearings) when no other judge is available to preside. In such a situation I would disclose on the record the basis for potential conflict, decide only those issues which demand immediate attention, and reserve all issues for later hearing (or re hearing) by another judge. I would also notify docket to refrain from assigning me to preside in any future hearings in 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?

Judicial Canon 3.E. requires me to recuse myself if I have actual knowledge that my spouse or a close relative has an economic interest (more than de minimis) in the subject matter or party to a proceeding that could be affected by my decision; that my spouse/close relative is a party to the proceeding or has some close professional association with a party; or that my spouse/close relative could be a material witness in the proceeding before me.

If I am aware that my spouse/close relative has a financial or social involvement with a party, and none of the parties raise the issue, then I believe I am required to disclose my knowledge of such relationship(s) at the outset of the proceeding before me. If I am not aware that my spouse/close relative has a financial or social involvement with a party, but the issue is raised by a party or attorney, I first try to verify whether such involvement or association exists. If verified, then I would invite all parties and counsel to state any concerns they had about my ability to preside impartially in the proceeding, and their position(s) on whether I am disqualified to preside. Under Judicial Canon 3.F. I can ask that the parties and counsel confer outside my presence to determine whether the parties are willing to waive my disqualification and allow me to preside.

If either party is not willing to waive disqualification, then I believe I am required to recuse myself, stating on the record the basis for disqualification. But the Judicial Canons also require me to take steps to ensure that the matter is heard promptly by another judge (such as exchanging dockets with another judge, or asking docket to give the matter priority in rescheduling) to avoid unreasonable delay or prejudice to any party because of my recusal.

If both parties and their attorneys agree to waive disqualification, then I must still consider whether my recusal is necessary by weighing the basis for disqualification, the issues to be decided, the need to protect the integrity of the of the proceedings – as well as the integrity of any ultimate decision- and the potential prejudice my recusal would cause. I believe, above all else, that the parties and attorneys who appear before me are entitled to feel as though they have been fully and fairly heard, and that any decisions I make are impartial and without the taint of bias.

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

I look to Judicial Canon 4.D.(5) for guidance, which generally prevents me or members of my family from accepting gifts, bequests, favors or loans except in certain situations such as :

- 1) receiving professional materials, such as books and materials provided to all Family Court judges by the SC Bar Association;
- 2) my spouse and I attending functions related to the "legal profession," such as local (Greenville County) bar association events, or the annual SC Bar or SCAJ Conventions;
- 3) the extending/receiving of ordinary social hospitality;
- 4) my spouse receiving gifts, awards, etc related to his profession;
- 5) my family receiving gifts for special occasions if the gifts are consistent with the occasion and the relationship of the donor;
- 6) receiving gifts, loans, bequests, etc from someone whose relationship would require me to recuse myself from any matters involving that person;
- 7) receiving regular bank loans available to people other than judges;
- 8) receiving scholarships based on criteria applicable to other applicants; and
- 9) receiving gifts, loans etc. from someone who has not been a party before me or who is not likely to be a party before me and I report the same if the value exceeds \$150.00

I am fortunate to have made many good friends and professional colleagues over the years, before and after election to the Family Court Bench in 2016. These relationships do not typically involve exchanging gifts on social or other occasions. I expect to pay for my own meals, and do not expect others to pay for me. I enjoy associating with members of the bar outside of the courtroom; however this association generally occurs at bar related events.

I do not believe that I am prohibited from extending social courtesy and kindness to all members of the bar and any parties who appear before me. This is how I was raised and how I believe everyone should conduct themselves. Moreover, I believe that the Judicial Canons require me to extend such social courtesy and kindness.

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?

Judicial Canon 3.D. requires that I take action when I am aware of misconduct by a lawyer or judge. The action I take would depend on whether I have personal knowledge of such misconduct or if my knowledge is based on information from another source. It also depends on whether the conduct raises a substantial question as to a judge's fitness to handle his/her duties or, where a lawyer is concerned, whether it raises substantial questions as to the lawyer's trustworthiness or fitness as a lawyer in other respects.

If my information on misconduct is received from another source, then the Judicial Canons requires that I take "appropriate action," such as direct communication (which I interpret to mean a frank personal and private conversation) with the lawyer or judge whose conduct or health is in question. If it appears that some misconduct has occurred, then I would advise the judge/lawyer that a report must be made , but allow him/her an opportunity to self report (assuming I have a way to verify that the self report is made). If I personally observe misconduct, or have other actual personal knowledge misconduct by a lawyer (that raises a substantial question as to the lawyer's trustworthiness or fitness as a lawyer in other respects) or misconduct by another judge (that raises a substantial question as to the judge's fitness for office) then I believe that I am required to report the misconduct to the appropriate authority.

Judicial Canon 3.G. requires that if I have a reasonable belief that another lawyer or judge is impaired in his/her performance by drugs, alcohol or by a mental, emotional or physical condition, then I should take "appropriate action" to help the judge or lawyer address the impairment and prevent harm to the justice system. Depending on the situation, my actions would include speaking with the lawyer or judge, contacting a family member of the lawyer or judge and/or making a referral to an assistance program in accordance with SCACR 428. Depending on the information I receive, I may also be required to take other action such as making a report to the appropriate authority pursuant to Canon 3.D.

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?

As a family court judge who primarily presides in the Greenville County Family Court, it is not feasible, or even possible, for me to prepare every order in every hearing for every ruling. I am called upon to preside over numerous hearings, sometimes every 15 to 30 minutes, beginning in the morning, often running into lunch hours, and concluding in late afternoon.

Where all parties are self represented, I typically prepare any Orders that are required. If I have time during the hearing, or before the next hearing begins, I try to complete the Order using formats I have accumulated and saved from similar cases, with specific facts and findings from the case before me. If there is not enough time during or after the hearing, I complete the Order during lunch break or after hours.

Where one or more parties is represented by an attorney, my usual practice is to issue my ruling with applicable findings, with instructions to one of the attorney(s) to prepare a draft order and submit it to my office within a specified deadline (usually 10 days), and with verification that opposing party/counsel has had any opportunity to review the draft order. I review the draft order with my notes taken during the hearing to ensure that the Order accurately reflects the ruling I issued. If only minimal corrections or revisions are needed, I will note them on the draft with my initials and then sign the Order. If more extensive corrections or revisions are needed, then I will request that an electronic (Word) version be provided to my office and either I or my assistant will make the revisions needed before a final draft is printed and signed.

When I have presided over a hearing that required multiple days of testimony, numerous exhibits and/or more complicated issues, I typically take the matter under advisement to allow sufficient time for me to review the notes I have taken during the hearing, the exhibits entered into evidence, and the applicable statutes or case law, to ensure that my ruling reflects a thorough consideration of the facts and the law. Most often, my ruling will be provided in writing simultaneously to all counsel of record, with detailed findings of fact and conclusions of law and instructions to one of the attorneys to prepare a draft Order following the above procedure. Occasionally, I will prepare the Order myself (especially if the matter is time sensitive).

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

My administrative assistant and I communicate frequently throughout the day, in person and by email, to ensure that our electronic calendars reflect dates such as legal education seminars, my out of town travel, my assignments during chambers weeks, and my other duty assignments. We also record due dates for filing of monthly reports, annual CLE and Ethics reports, payment of professional fees and dues etc.

I maintain a running spreadsheet of all cases assigned to me. I note by date each case (by name & number) I heard, the attorneys who appeared, who was assigned to prepare the order, and the deadline assigned (usually 10 days). At the end of each day, I update the spreadsheet to make sure all cases heard that day are recorded. As orders are received and signed, I update the spreadsheet to note the date the order was signed. My administrative assistants uses the spreadsheet to track deadlines for orders, and if the order is not received by the assigned deadline, she contacts the assigned attorneys to request submission of the order(s).

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?

At a temporary hearing or other hearing where the appointment of a Guardian Ad Litem is requested or required, I include in my instructions for preparation of the Order of Appointment provisions for a reasonable hourly rate for the Guardian's services; an initial fee cap for the Guardian, allowing for the fee to be exceeded by Consent Order or by further Motion and Hearing; interim allocation of fee payments between the parties. I also typically require that the person appointed as Guardian Ad Litem be immediately notified of the appointment and verify his/her willingness and ability to serve as Guardian Ad Litem, by signing his/her consent to the Order. I also instruct that the Order of Appointment or a Supplemental Order include specific provisions detailing the statutory duties of the Guardian Ad Litem pursuant to the Private Guardian Ad Litem Act. If appropriate, I also provide that the Guardian Ad Litem is authorized to seek additional temporary or other relief as needed to fulfill his/her statutory duties, namely to protect the best interests of the child and/or recommend services for the parties or the child which the Guardian deems necessary or beneficial.

There is no prescribed procedure for judges to monitor a Guardian's compliance with the Private Guardian Ad Litem Act. A party or his/her attorney can raise concerns about the Guardian's performance by filing a motion to seek disqualification of the Guardian or other relief, and then requesting a hearing on the Motion. If I am assigned to such a hearing, then I allow all parties and the Guardian to be heard on the issues or concerns raised in the Motion. If it appears that the Guardian Ad Litem has not fulfilled his/her statutory duties, or has not complied with the requirements of the Private Guardian Ad Litem Act, then I consider whether the current Guardian should be relieved from his/her appointment and a replacement Guardian Ad Litem should be appointed.

If I am assigned to a pre trial hearing or status conference hearing in which a Guardian Ad Litem is assigned, I typically inquire as to whether a Final Hearing has been set, the status of the Guardian's Investigation, and any information the Guardian requires for his/her investigation. I also remind the attorneys and Guardian who are present that all parties should cooperate with the Guardian's

investigation; that the Guardian should be mindful of his/her obligations; and that the Final Report must be filed according to the statutory deadlines.

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

Our General Assembly is responsible for the creation of our laws. I trust in our legislators to draft and implement those laws that they feel best protect this state and our citizens. As a member of the judiciary, I am bound to and responsible for enforcement and upholding those laws. That being said, I do believe that family judges have knowledge and experience that could be helpful to the General Assembly in the drafting or revision of statutes which govern or apply to Family Court proceedings. The comments to Judicial Canon 4.B. reflect a similar position, stating that judges are “in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice.” I believe that the Judicial Canons allow, and even encourage judges to participate in activities which can improve the law or legal system, such as by serving on committees or providing commentaries to members of the General Assembly- but without interfering with the legislative process.

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?

From 2005 until my election to the bench in 2016, I enjoyed serving as a speaker at legal education seminars; serving as a member of the SC Bar Family Law Council, assisting with the planning and moderating of legal education programs; and volunteering as a judge at local mock trial events for college students.

Since my 2016 election, I have had additional opportunities to speak at legal education seminars and programs, for the SC Bar Association, the SC Women Lawyers Association, and the Greenville Bar Association. These opportunities have allowed me to further research legal issues and expand the legal knowledge I am called on to apply as a judge. I hope to have the opportunity to serve as a

speaker at future legal education programs.

I have continued to serve as a volunteer judge at mock trial events, including those sponsored by the AMTA for college students, and those by the SC Bar Association for middle school students. I also make myself available to serve as a volunteer judge for "scrimmage" or practice rounds for the Furman University mock trial program. I plan to continue participating in mock trial programs and competitions whenever possible.

Before COVID 19, as part of the Judges in the Classroom Program implemented by the Chief Justice, I participated in Lunch and Learn programs with middle school students to educate them on the South Carolina Court System, the jurisdiction of the Family Court, the election of judges, and education requirements for lawyers and judges. I plan to resume such programs when COVID 19 protocols allow.

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?

As a judge, I no longer have the flexibility in my daily schedule that I had as an attorney. I have an obligation to this state, and to the litigants and the attorneys who appear before me, to hear their cases and make decisions. As a resident judge in Greenville County, my docket is typically full, requiring my undivided attention for most of the day. My phone is turned off, my email goes unanswered and my focus is solely on the parties and issues before me. My husband often compares my work in the courtroom to work on a submarine, as I go silent when the day begins and only resurface when the mission is complete.

My duties as a judge have limited my ability to attend school events for my children, funerals for friends and colleagues, and to schedule medical or personal appointments. My husband has been fully supportive, taking on any parenting or personal obligations my schedule does not allow. My two children (now almost grown men) understand and respect the demands of my job. As a family, we

value the time that we can spend together, in the evenings, on weekends or during vacations.

My closest friends are not involved in the legal profession. Except for the restrictions on my time, those relationships have not been affected. As a judge, I do not have the ability I once had to interact with lawyers outside the courtroom, or to get better acquainted with them on a personal level. So I must make the most of the time I have while attending local and state bar functions to demonstrate that there is an actual person who wears the robe.

Make no mistake, I have no complaints about the limitations my judicial duties place on my personal life. I fully accepted when I was first elected in 2016 that my professional responsibilities would often take priority over my personal interests. I continue to accept these limitations without hesitation.

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?

The Judicial Canons define “de minimis” interest as an insignificant interest that could not raise a reasonable question as to a judge’s impartiality. Therefore, I do not believe that I would be automatically disqualified and required to recuse myself in this situation. However, out of an abundance of caution, I believe that if I am aware of such an interest, I should nevertheless disclose it and follow the steps discussed in my previous/other responses.

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?

I believe that a judge should be courteous, patient, calm, attentive, deliberate and diligent with parties, attorneys (and their staff), and court staff in presiding over court proceedings and in carrying out all other judicial duties. At the same time, a judge must be efficient and exercise control in his/her courtroom; ensure that all parties are heard; and adhere to the law without concern for public opinion or criticism. These are reasonable expectations for any employee in any profession; and they are requirements for judges pursuant to Judicial Canon 3.B.

A judge should view his/her position not as one of privilege or status but rather one of obligation and responsibility. Accordingly, a judge should be prepared to promptly and thoroughly hear and decide all matters assigned; to take responsibility for how proceedings are conducted; and when in error, to learn from his/her mistakes.

Judicial Canon 2.A. requires that I act at all times in a manner that will promote confidence in the integrity and impartiality of the judiciary, and avoid impropriety or the appearance of impropriety in both my professional and personal conduct. Canon 4.A. requires that I conduct any "extra judicial" activities (which I interpret to include my personal life) so that they do not cast doubt on my ability to be impartial or perform my duties, and do not demean the judicial office.

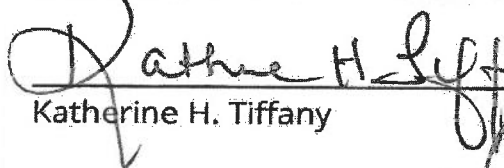
I believe that I am expected to abide by the above Canons when I am on the bench and when I am off the bench. But as a human being, with personal and family obligations as well as the professional responsibilities as a family court judge, I cannot attest that I have behaved "perfectly" at all times. However, I can attest that I am, at

all times, conscious of what is expected of me; that I have endeavored to abide by the requirements of the Judicial Canons; and that I will continue to strive to achieve the standard set by the Canons.

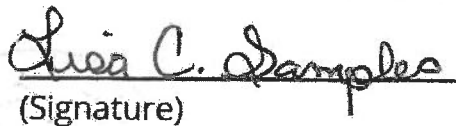
23. Do you feel that it is ever appropriate to be angry with a member of the public, especially with a criminal defendant? Is anger ever appropriate in dealing with attorneys or a pro se litigant?

Judicial Canon 3.B. requires that I be "dignified and courteous" to all litigants and attorneys. Therefore, I do not believe that it is ever appropriate to display anger in the courtroom. It is my responsibility to keep my emotions in check, so that I can carry out my judicial duties. However, it is also my responsibility to exercise control and maintain order during courtroom proceedings, which is often a challenge in family court where parties and issues can be emotional and contentious. I must be efficient and businesslike when presiding, and firm in dealing with parties or litigants whose behavior threatens to disrupt or delay proceedings.

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


Katherine H. Tiffany

Sworn to before me this 12 day of July, 2021.


(Signature)

Lisa C. Samples
(Print Name)

Notary Public for South Carolina

My commission expires: August 13, 2028