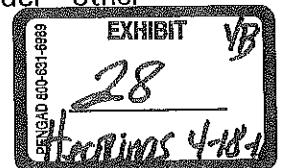


JUDICIAL MERIT SELECTION COMMISSION  
Sworn Statement to be included in Transcript of Public Hearings

Family Court  
(New Candidate)

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1. Why do you want to serve as a Family Court Judge? Serving as a Judge has been my career goal since clerking for Judge Carol Connor. Early in my career, I found Family Court to be the most personally rewarding. A Family Court Judge has the opportunity to make a difference in the lives of our most vulnerable citizens: our children, our elderly and disabled adults needing protection, and families in crisis. I believe that I am compassionate, and hard-working. I believe my temperament, life experiences, work history and caring nature would make me an excellent 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? 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? I would follow the Judicial Canons as they relate to *ex parte* communications. Code of Judicial Conduct Canon 3(A)(4) provides that judges should give every person legally interested in a proceeding or his attorney full right to be heard according to law, and except as authorized by law neither initiate nor consider *ex parte* communications regarding a pending or impending matter. The Canons do allow for a judge to consult with a disinterested expert on the legal matter if he gives notice to the parties or the legal expert consulted and discloses the substance of the advice given and then gives the parties the opportunity to respond. As a general rule *ex parte* communications should not occur. Staff should be trained to screen for *ex parte* communications which may be in the form of correspondence, phone calls, or direct contact. There are situations particular to the Family Court arena, where *ex parte* communications are permissible if the conditions warrant it. These situations may arise in abuse and neglect proceedings, when minors and vulnerable adults are at substantial risk of great bodily harm. An *ex parte* communication may also be permissible under other



emergency situations when possibly an emergency restraining order is needed. Again, however, the other party must be given the opportunity to be heard as soon as practicable or the *ex parte* relief, if granted, should expire. Additionally, a presiding judge should take extreme caution to ensure that a party does not attempt to use an emergency, *ex parte* situation, primarily to gain a tactical advantage in the proceeding. It would be my policy to have written guidelines for attorneys and court personnel to ensure that proper procedure is followed. Except for the rare, emergency situation, *ex parte* communications should not occur.

6. What is your philosophy on recusal, especially in situations in which lawyer-legislators, former associates, or law partners are to appear before you? Code of Judicial Conduct Canons 1 and 2 address this issue, and provide that a judge should avoid impropriety and the appearance of impropriety. Canon 3(C)(1) provides that a judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned. I would recuse myself if the possibility existed that my impartiality could be questioned. It would be my practice to maintain a list of attorneys who would be disqualified from appearing before me and routinely review the list to make sure it stays current.
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? Judicial Canon 3(C)(1)(a) provides that a judge should disqualify himself if his impartiality might reasonably be questioned. Even the appearance of impropriety must be avoided to maintain the faith in the integrity and impartiality of the judicial branch. I would give great deference to the request. Even though I personally may not believe there is a problem, if a party reasonably believes that I cannot be impartial, I would recuse myself based upon the canons of judicial ethics.
8. How would you handle the appearance of impropriety because of the financial or social involvement of your spouse or a close relative? Again Canon 3(C)(1) provides that a judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned. This would apply in circumstances involving appearance of impropriety because of spouses and close relatives. I would disclose the connection and recuse myself if a social or business relationship of my of my spouse or close relative led to the appearance of impropriety with a particular litigant.
9. What standards would you set for yourself regarding the acceptance of gifts or social hospitality? Canon 4(D)(5) controls this. My standard would be to engage only in ordinary social hospitality and

- accept gifts only from a relative or friend for a special occasion such as a wedding, anniversary or birthday, and only if the gift is commensurate with the occasion and the relationship.
10. How would you handle a situation in which you became aware of misconduct of a lawyer or of a fellow judge? Judicial Canon 3(D) imposes upon a judge disciplinary responsibilities. I would take the appropriate action given the particular circumstances. This may include direct communication with the lawyer or the judge. My actions may include sanctions if the infraction involved a matter over which I was presiding. My action may also include reporting the infraction to the appropriate reporting authorities governing judicial or lawyer discipline.
  11. Are you affiliated with any political parties, boards or commissions that, if you were elected, would need to be evaluated? I serve on the Board of Directors Palmetto Electric Cooperative.
  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? If I ruled from the bench, I would ask one of the attorneys to prepare the order consistent with my ruling and have the proposed order provided to opposing counsel before sending it to me for signing. To ensure the proposed order is consistent with my ruling, it would be my policy to take notes sufficient to ensure the order is accurate. If a matter is taken under advisement, it would be my policy to send written correspondence to the attorneys setting forth my findings of fact, conclusions of law and ruling and ask one of the attorneys to prepare a proposed order consistent with my written instructions. Again, it would be very important that the judge keep excellent records related to outstanding orders and which attorneys were asked to draft the proposed order. When possible to promote the swift and consistent administration of justice, I would employ the use of approved form orders, but only in those situations where a form order is approved.
  14. If elected, what method would you use to ensure that you and your staff meet deadlines? I believe that I have excellent mastery of computer skills and I have embraced docket and work calendaring for my private law practice. I would likely implement similar procedures if elected to the bench. In my private practice, I daily review my pending items and my to-do list. I believe that staff can only be as good as the supervision they receive. I believe it is the judge's responsibility to ensure staff are timely completing the tasks assigned to them and a judge must actively supervise staff. When I was law clerk to Judge Connor I was very familiar with court administration requirements and understand the importance of managing and maintaining

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? With the adoption of the new Children's Code in title 63, the Guardian's responsibilities have been codified. I would review the Guardian's written report to ensure the Guardian has met all of the Guardian's responsibilities, and if the situation warrants it, inquire of the attorneys and/or litigants. If any of the litigants had concerns about the Guardian not completing the statutorily mandated responsibilities, I presume I would entertain the necessary motions related to the Guardian's action/inaction.
16. What is your philosophy on "judicial activism," and what effect should judges have in setting or promoting public policy? I believe it is a judge's responsibility to follow the laws that are enacted by the General Assembly. It is the responsibility of the legislature to enact laws and a judge's responsibility to strictly construe, follow and enforce the laws that as they are written. In situations where there is no specific applicable statute, then existing precedent should be followed. It is not a judge's role to make law, it is a judge's role to see that the law is followed as written and previously interpreted.
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? I would like to be active in continuing legal education programs. I would also like to have the opportunity to serve on special committees that the judicial department may form or have formed addressing the issues of access to justice. Presently, in my practice of law, I consider it my privilege and my duty to participate in programs that advance the legal profession and improve the law. When asked, I have spoken to high school groups and at academic awards banquets about the legal system and the legal profession. When asked, I have spoken to family support groups regarding advance directives and end-of-life planning. For the past three years, I have served as a judge for the national mock trial competition sponsored by Furman University. I also serve on the 14<sup>th</sup> Judicial Circuit Fee Resolution Board, a Jasper County *ad hoc* committee to look at issues of jail overcrowding, and I previously served on the 14<sup>th</sup> Judicial Circuit, circuit defender selection committee when it was necessary to select a circuit-wide public defender. I have also served as the secretary and treasurer of the Jasper County Bar Association continuously since 1998. Subject to the limitations placed upon judges in Canon 4, I would consider it my duty to speak, write, lecture, teach and participate in activities that advance the legal system and the administration of justice.
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? Any demanding occupation or profession can strain personal relationships. I am blessed to have a wonderful husband and three wonderful children who understand the time constraints and demands of my busy law practice, my charitable activities, and my community involvement. I expect no less of them if I am elected. I and my immediate family seem to thrive under the demands of busy schedules. I have been described by family and friends as the ultimate multi-tasker. My oldest child is a senior at Furman University and my middle child is a sophomore at Wofford College. My youngest child is of legal driving age and his braces are off, so the days of rides to school, ball practice and orthodontic appointments are mercifully behind me. My mother died in 1999 from cancer and my father passed away in 2003 after several years of declining health. I can candidly say that I could not have served as a judge from 1997 through 2003. However, after balancing caring for my parents in my home during their last years, while simultaneously raising small children and practicing law on a full-time basis, I believe I can balance just about anything. My closest friends are my close family members, and my social activities are generally family-centered, such as hiking, backpacking, horseback riding and boating. I do not believe that being elected a judge would interfere with these relationships.

19. Would you give any special considerations to a *pro se* litigant in family court? I believe in access to justice for all. Much of the 14<sup>th</sup> circuit is comprised of people suffering in hard financial times, and more *pro se* litigants are an inevitability. I believe in access to justice for all, so yes, I believe that special consideration should be given to *pro se* litigants.
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? Serving on the family court bench, I do not believe this situation would often arise. A judge is not automatically disqualified from hearing a matter if he has only a *de minimis* interest in the proceeding. However, even if the interest is a *de minimis* interest, but it is in one of the parties, I would have to disclose the interest to those involved and recuse myself if the appearance of impropriety could not be avoided.
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?
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| a. Divorce and equitable distribution: | 60% |
| b. Child custody:                      | 50% |
| c. Adoption:                           | 10% |
| d. Abuse and neglect:                  | 50% |
| e. Juvenile cases:                     | 15% |
25. What do you feel is the appropriate demeanor for a judge? A judge must always be respectful and courteous to the parties and other court personnel and show have a sincere interest in the issues before him. A judge must always remain calm, even-tempered, and in emotional control. A judge must show that he has command of the law and the issues before him, and should never appear disrespectful or bored with the party or the proceedings. A judge should show conviction in his ruling and never appear silly or flippant. However, a judge should always show kindness and sincerity and respect.
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.
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? There is never a place for anger by a judge in a judicial proceeding.
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? I have spent \$60.00.
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.

S/W. Deborah Ann Malphrus

Sworn to before me this 3<sup>rd</sup> day of March, 2011.

Notary Public for South Carolina

My commission expires: 3/30/2016