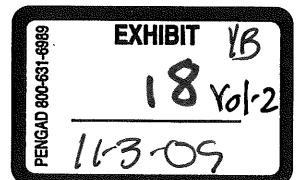


JUDICIAL MERIT SELECTION COMMISSION
Sworn Statement to be included in Transcript of Public Hearings

Family Court
(New Candidate)

Full Name: Lillie Currington Hart
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1. Why do you want to serve as a Family Court Judge?
I believe that my acquired knowledge and experience as a family court lawyer and a former social worker highly qualify me to handle the cases that come before the Family Court. I want to serve because I believe I would treat all matters that come before me as serious, without regard for the race or socio-economic status of the parties. I am especially concerned about the handling of child protection (abuse and neglect) cases. I have a strong appreciation of the law and I believe that my respect for the law and my propensity for diligent responsibility taking will allow me to contribute to the improvement of the administration of justice in the Family Court. I am a person with a strong sense of personal and professional integrity with the belief that I am capable of fair application of the law and the rules of court to all who come before the Family Court.
The Family Court is judge and jury. Therefore, I believe that the litigants who come before the Family Court have a right, as citizens of the community, to feel they have some prospect of facing a trier of a fact who is, on some level, a peer. This would be analogous to the litigant in the other courts who have the right to a jury of their peers. Since the Fifth Circuit has a population that is approximately 45% African-American I believe that it is imperative that the composition of the Family Court in this Circuit more fairly represent the racial composition of the community. As an African-American who was born and educated in this community and who has concentrated my practice of law in the family court for almost twelve years, I believe that I am uniquely qualified to serve as a Family Court Judge of Fifth Judicial Circuit.
2. Do you plan to serve your full term if elected?
Yes, I do. Additionally, I would serve only one term because I want to be consistently alert, always respectful of those who come before me for decision, and consistently diligent and efficient in my deliberations. I would never want to serve to the point that I might appear inattentive or nonchalant about the process to the parties or attorneys.
3. Do you have any plans to return to private practice one day?



Yes, that is my plan. My private practice has provided me great professional satisfaction and allowed me to be of important service to my clients. Since I would be in my late sixties at the end of my term, I would definitely envision myself returning to a small private practice.

4. Have you met the statutory requirements for this position regarding age, residence, and years of practice? Yes. I am sixty years of age, have resided in Richland County for the last twenty-three years and have practiced law as a member of the South Carolina Bar since November 1997.

5. What is your philosophy regarding *ex parte* communications? Are there circumstances under which you could envision *ex parte* communications being tolerated?

I strongly oppose *ex parte* communications except in the most exigent situations. A judge should always act to protect judicial integrity and impartiality. Yet there are limited instances when an *ex parte* communication would likely be tolerated and I could envision circumstances when the immediate health and safety of a child or other vulnerable party might justify *ex parte* communication.

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 that a judge should take the initiative to offer to recuse him or herself whenever there is the reasonable expectation that a party might perceive the presence of personal bias based on the relationship that the judge has or had with another party. I would always offer to recuse myself if a former law partner, close professional associate or personal associate was coming before me as counsel, party or witness. Because I will not serve a second term on the bench, I would have less concern about a lawyer-legislator appearing before me unless that person was a primary supporter during this election process. I would rather recuse myself than risk the appearance of unfair bias or self-serving decision-making. If a party asked that I be recused because of reasonable concern that I might have a personal bias or interest toward some other party in the case, I would seek the advice of my judicial colleagues and give serious consideration to the request.

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 give serious consideration to deferring to the requesting party. I would rather recuse myself than risk the appearance of unfair bias. Despite what I might believe about my capacity for impartiality in the matter, I believe that presentation of a reasonable concern about my

ability to consider the matter at hand in an impartial and balanced way would justify granting the motion for recusal. Therefore, unless recusal would result in greater undue prejudice to the other party due to resulting delay of the judicial process, I would likely grant the motion.

8. How would you handle the appearance of impropriety because of the financial or social involvement of your spouse or a close relative?
I have no spouse or parent living to cause conflict of interest. I would definitely recuse myself if one of my sons, a sibling or a close relative was involved socially or financially in a matter that was set to come before me. I would make disclosure of the involvement, recuse myself without motion if clearly required or grant any motion for recusal. I would also have the record reflect the decision on recusal.
9. What standards would you set for yourself regarding the acceptance of gifts or social hospitality?
I would accept no gifts from attorneys who might appear before me or from their family or associates. I would also prohibit my sons and grandchildren from accepting gifts from such persons. Generally, I would decline any gifts other than those that I would normally receive from my family and very close friends on special occasions. I would definitely not accept gifts from or socialize with any party who I know to have a case pending before the court. I would not accept any private or intimate social hospitality from those who practice in the Family Court. However, I would not reject an invitation to a large group gathering that included numerous members of the family court bar. I would try to maintain the relationships that I have with colleagues who practice in the Family Court and probably continue to have dinner out with attorney friends as long as I pay my own check and those attorneys are not likely to be appearing before me.
10. How would you handle a situation in which you became aware of misconduct of a lawyer or of a fellow judge?
When made aware of misconduct by a lawyer or judge, I believe it would be prudent to first immediately check the applicable rules of professional or judicial conduct and the canons on professional ethics. Upon review of the rules and canons, I would decide whether the misconduct appeared to be a violation of the rules and/or canons. Depending upon the seriousness of the misconduct, I might speak directly to the offending lawyer or judge to determine whether corrective action by the lawyer or judge is possible and forthcoming. Upon determination that the lawyer or judge appears to have engaged in serious misconduct regarding honesty or fitness to serve, I would report the lawyer or judge to the appropriate authority, the Commission on Lawyer Conduct or the Commission on Judicial Conduct.

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

I have no current affiliation with any political party, boards or commissions that would need to be re-evaluated upon my election.

12. Do you have any business activities that you would envision remaining involved with if elected to the bench? No, I have no business involvement other than my small private practice and I would close my practice upon election and end all representation of clients before assuming the position as a Family Court Judge.

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

I would have no hesitation in having one of the attorneys involved draft the order on most motion hearings and in uncontested matters. I would only sign orders after all involved attorneys have been given opportunity to review the order and comment. It would be my preference to take highly contested and complex matters under advisement and write the orders myself if at all possible. However, I realize that workload may not allow me time to write all the orders in such matters. Therefore, on hearing a contested merits trial, I would probably prepare written instructions indicating findings on contested issues with reference to prevailing law that applies to the issue and my order. I would send my instructions to all involved attorneys and, following the custom of most current judges, have the attorney who prevails draft the order. The drafting attorney would be instructed to circulate the proposed order to other counsel and/or unrepresented parties for review and comment before submitting the proposed order to me for consideration. If the matter involves an especially complex legal question, I might take the matter under advisement and require the attorneys on both sides to submit a memorandum on the law supporting their position before I prepare my instructions or write the order. In all cases, I would strive to give clear indication of my findings on the contested issues and clearly enumerate the provisions of my order when assigning the responsibility for drafting to an attorney.

I think the use of form orders for pre-trials, the standard motion hearings and some of the institutional matters would be useful to assure some level of efficiency. Still, in using form orders, I would want to be very careful to avoid neglecting thorough consideration of the unique facts that might be a part of any given case. Therefore, I would want form orders to allow for necessary inclusion of specific findings and order provisions that are required for just and appropriate decisions in all cases.

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

Assuming that this question refers primarily to deadlines for orders to be entered, I would probably have a tiered process to assure that I and my office stay within the deadlines. For every matter scheduled for hearing before me that did not result in an order being produced immediately following the hearing on the matter, I would develop a tracking form. The form would be designed to identify all involved counsel and required tasks. The form would be prepared by the secretary and used by me at the time of hearing to note the applicable interim time frames for necessary tasks to finalize the order. For example, on a contested merits hearing, the tracking form would include notation of the date of the hearing, date for receipt of memoranda from attorneys, date for transmitting instructions, date for receipt of proposed order, date of signing and date of filing.

My secretary would be responsible for noting when each task was completed. Additionally I would keep two calendars on orders that must be written and entered. I would keep one of the calendars and have my secretary keep the other. The calendars would be used to note due dates for any orders not signed on the date of the hearing. The tracking forms and the calendars would be reviewed and reconciled on a weekly basis.

Attorneys would be given relevant dates from the bench and/or in written instructions. I would also fax or e-mail reminders to responsible attorneys within 24 hours after the date of a required memorandum or proposed order remains due. I might consider imposing sanctions on attorneys who repeatedly failed to meet deadlines for the submission of proposed orders.

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 require that court orders appointing guardians *ad litem* (GAL) comply with the statute as to compensation of the guardian and I would assure that the appointed guardian *ad litem* met the qualifications for appointment. I would issue orders that include the perimeters of the guardian *ad litem's* investigation so that all parties are clear about the scope of the investigation and reduce the likelihood that the guardian will spend unnecessary time and effort investigating the totality of the situations of parties when the issue is limited. For example, if the question is only the safety of a visiting parent's home when primary custody is uncontested, the GAL would not need to make home visits to the custodial parent's home. I might regularly suggest witnesses for interview based on the age of the child and the allegations. I would likely provide specific deadlines for such tasks as making contact with the child or some important collateral or witness and securing certain material information or reports such as drug-

testing or mental evaluations. I would probably require guardians to submit written confirmation that required tasks have been completed in the specified time frames whenever I perceived that the welfare of a child might be seriously affected by some existing circumstance in the matter. In some cases, I might require interim reports from the guardian *ad litem* and seek suggestions from the guardian on the means to assure safety of a child ward. In pre-trial orders, I would include deadlines for the submission of the guardian *ad litem* report to assure that all parties have the findings of the guardian in a timely manner before trial.

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

I think that judicial activism, as the term is generally understood, is best avoided. However, I think that the legislature has left the door open for a level of judicial activism in regard to some issues that come before the Family Court where judges are deciding issues such as juvenile detention, child welfare and child support enforcement. I believe that judges should consistently apply the law that exists and, when appropriate, promote the public policy that underlies the existing law. I believe that Family Court judges in South Carolina, allowed to rely on the application of the undefined best interest standards, often act to promote public social policy that underlies law on many of the domestic law issues that develop within families. I do not view this as improper, however, I believe that it is improper for Family Court judges to use their substantial discretionary authority to set 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?

I have spent half of my professional life as an instructor to developing professionals and as a community educator. I would be most comfortable utilizing those related skills by seeking and accepting opportunities to provide legal education to the broadest constituency possible. I would also welcome the opportunity to provide insight into the judicial system to the community by speaking to community groups, including schools and churches. I believe that people should have knowledge and understanding of the systems that impact their lives. When the citizens have greater, rather than less, awareness and understanding of how their legal system works, there will be greater probability that justice is consistently and fairly administered.

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 a former social worker, I have been trained to be a problem-solver and deal with other people's important issues without becoming personally involved. In addition, I

anticipate minimal effect on my family from my judicial responsibilities because I am widowed, my parents are deceased and my sons are grown with families of their own. I have close and supportive relationships with family and a small network of friends with whom I interact regularly. I do not believe that serving as a judge will have any significant effect on my personal life.

19. Would you give any special considerations to a *pro se* litigant in family court? I probably would give some special consideration to a *pro se* litigant because the issues in family court are extremely personal and can be life-altering. Therefore, while I would not allow myself to act as counsel or advocate for a *pro se* party, I probably would be somewhat lenient as to procedural and evidentiary rules and would not expect a *pro se* litigant to strictly adhere to the rules, especially if the substantive rights of the other party are not adversely effected.
20. Are you involved in any active investments from which you derive additional income that might impair your appearance of impartiality? No, I am not involved in any such investments.
21. Would you hear a case where you or a member of your family held a *de minimis* financial interest in a party involved? I might since the interest would be inconsequential. However, I would make disclosure of the *de minimis* financial interest to the parties and to the administrative judge before hearing the case. If after the disclosure, it was clear that a party continued to have a strong perception of unfairness resulting if I heard the matter, I might recuse myself despite the fact that the interest was inconsequential.
22. Do you belong to any organizations that discriminate based on race, religion, or gender? No, I do not and would never belong to such an organization.
23. Have you met the mandatory minimum hours requirement for continuing legal education courses? Yes, I have consistently done so since my admission to the bar.
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: 21%
 - b. Child custody: 42%
 - c. Adoption: 6%
 - d. Abuse and neglect: 15%
 - e. Juvenile cases: 2%
- The remainder of my legal experience (approximately 14%) has been primarily in the areas of education law, public housing, Social Security disability law and other family court cases such as child support, name changes and paternity.

25. What do you feel is the appropriate demeanor for a judge?
A judge should always appear respectful and respectable to all persons, especially to parties and attorneys that are appearing before the judge. A judge should be calm and courteous, attentive and thoughtful, decisive and self-controlled. This demeanor is especially required in the court. It is important that a judge's demeanor indicate that he or she is interested in the matter brought to the court. A judge's demeanor has to demonstrate that the judge takes his or her position and the matter before the court seriously. A judge should display decisiveness and competence when called upon to make decisions in the performance of the judicial duties that are assigned to him or her. However, as a judge acts to protect and assert the status of the court, he or she should avoid letting an authoritative demeanor become one of arrogance.
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?
When a judge is in public, I believe that a judge should always present himself or herself in a manner that reflects appropriately on the position that he or she has been given by the people or the representatives of the people. A judge cannot separate him or herself from the position in any setting where members of the public are present. However, a judge is also human. I believe that a judge should be able to be comfortable and relaxed in the confines of his or her home, family environment, and small social network.
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?
I could envision situations where a judge might appropriately feel angry with an attorney or party who acted in a way that was disrespectful of the court or the rights of others involved in the matter, especially if the person seemed perverse in their disregard. However, I do not believe that it would be appropriate for the judge to display that emotion in the courtroom, especially with a party appearing before the judge. I think that judicial character includes the ability to remain emotionally non-reactive to those appearing before you. This is critical to maintaining the appearance of impartiality as legal decisions are made. At the same time, I would require that those appearing before me, especially attorneys, respect the court.
If an attorney did something that caused me to feel anger, I might call the attorney into chambers to let him or her know that the behavior was perceived as inappropriate. I would hope that my communication of the concern to the offending attorney would serve to lessen the

probability of the behavior reoccurring in the future. I could also envision *pro se* litigants becoming frustrated and emotionally reactive to the point that they might show disrespect toward the court. I would try not to take such behavior personally and I do not think such behavior would justify a judge becoming angry and showing his or her emotions. I would warn a *pro se* litigant when the line was crossed and disrespect seemed evident. I would also not hesitate to find an attorney or a litigant in contempt of court after warning was given by me and then ignored by the attorney or litigant.

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?

To date, I have not spent any money to campaign and I doubt that I will spend more than \$100.00 to campaign for the position.

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

30. Have you sought or received the pledge of any legislator prior to this date? No, I have neither sought nor received the pledge of any legislator prior to this date.

31. Have you sought or been offered a conditional pledge of support by any legislator pending the outcome of your screening?

No, I have neither sought nor been offered a conditional pledge of support by any legislator pending the outcome of the screening.

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, I have not asked anyone to contact members of the legislature on my behalf before the screening report.

33. Have you contacted any members of the Judicial Merit Selection Commission? No, I have not contacted any member of the Judicial Merit Commission.

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 am familiar with the 48-hour rule.

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

s/ Lillie C. Hart

Sworn to before me this 24th day of August, 2009.

Notary Public for South Carolina

My commission expires: 12-05-2015

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October 9, 2009

Ms. Laurie Traywick
Judicial Merit Selection Commission
P. O. Box 142
Columbia, SC 29202

Re: Amendments to Sworn Statement

Dear Ms. Traywick:

After having been interviewed by Mr. Dennis, I thought it necessary to better explain my responses to two of the questions. Therefore, I would like to amend my responses to Question # 1 and Question #2 as follows:

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

I believe that my experience has helped to make me uniquely qualified to serve as a Family Court judge and I believe that I have a responsibility to serve the community in the best way that I can. I have acquired knowledge and experience as a family court lawyer and a former social worker that highly qualify me to handle the cases that come before the Family Court. I am especially concerned about the handling of child protection (abuse and neglect) cases. I have a strong appreciation of the law and I believe that my respect for the law and my propensity for diligent responsibility taking will allow me to contribute to the improvement of the administration of justice in the Family Court. I am a person with a strong sense of personal and professional integrity with the belief that I am capable of fair application of the law and the rules of court to all who come before the Family Court, without regard for the race, gender or socio-economic status of the parties.

The Family Court Judge is judge and jury. Since the Family Court judge is the trier of fact and fair consideration of the facts requires broad perspective, it is important for the Family Court to be more representative of the community. In addition, as a member of the legal profession who focuses on family law, I would like to believe that the entire community views the Family Court as fair to and representative of the community that the court serves. As an African-American woman who was raised in this community, I believe that my election to the Family Court will change the composition of the Family Court in this Circuit to more fairly represent the racial

composition of the community. That change may contribute to an improvement in the community's perception of the Family Court that I would welcome.

5. What is your philosophy regarding *ex parte* communications? Are there circumstances under which you could envision *ex parte* communications being tolerated?

I strongly oppose *ex parte* communications except in the most exigent situations. A judge should always act to protect judicial integrity and impartiality and doing so requires avoidance of *ex parte* communication. However, there are times when it is necessary. There are statutory provisions to provide for some necessary *ex parte* communication when the immediate health and safety of a child or other vulnerable party has come to the attention of a state agency. In cases where the state is not a party, there might be some situations that justify *ex parte* communication as well. Such exigent circumstances might exist if a child's immediate health or safety is at risk due to actions of one of the private parties in a case. If it were impossible to arrange for a hearing with all parties before the threat was likely to become manifested in serious harm to the child, a Guardian *ad litem* or the attorney for a concerned party might justifiably seek an *ex-parte* communication. If, after all reasonable attempts have been made to avoid the *ex parte* communication, it seems apparent that the court's action was required to protect the child from an imminent threat, *ex parte* communication might be appropriate. However, when *ex parte* communication occurs, that communication should be limited to only that which is most material to the immediate safety issue, the other party or parties should be given full and complete notice of the *ex parte* communication at the earliest possible time after its occurrence and the court should act to assure that the other party or parties are not unduly prejudiced by the *ex parte* communication.

If possible, I would like for my Sworn Statement to be amended to reflect the responses above. Thank you for your kind consideration.

Sincerely,

Lillie C. Hart

cc: Patrick Dennis, Chief Counsel, House Jud. Comm.

Via e-mail: patrickdennis@schouse.gov