

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

Family Court
(New Candidate)

Full Name: KATHERINE HALL TIFFANY
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1. Why do you want to serve as a Family Court Judge?

I am proud to have been born and raised in South Carolina; I am even more proud to raise my own family here. I am passionate about this state and its people. I want to invest myself in this state and serve in any way I am qualified. I believe I can do this as a Family Court Judge.

I was raised in a family that taught and expected me to give my best to whatever I undertook; and then to give or try just a little bit more. Seventeen years ago I was lucky enough to find a place with a law firm with the same expectation. No matter who the client is, we always strive to give them our best. And no matter what the result, we ask ourselves how we can "do more" or "do better" next time. I have tried to adhere to this in my work as an advocate, devoting myself to protecting and serving my clients, regardless of their backgrounds or stations in life.

My years with my law firm have been both stressful and exciting, but always rewarding. I have been blessed with partners and coworkers who have taught me and supported me both professionally and personally. I have no regrets or complaints about these years.

As much as I have enjoyed serving as an advocate, I have always felt drawn to the seeking of resolution. Perhaps that is why I have found my experiences as a Guardian Ad Litem particularly rewarding when I have had to evaluate circumstances from "all sides", consider them objectively, not in light of my preference or the parties' preferences, but what best serves the children involved.

I feel that I have given my best to the legal profession as a lawyer; and I am now ready to "do more" and hopefully "better" in this profession by serving as a family court judge.

2. Do you plan to serve your full term if elected? Yes



3. Do you have any plans to return to private practice one day?
If elected to the Family Court Bench, I hope to serve as many terms as I am capable of serving and that I am nominated and elected to serve.

After serving on the bench my preference would be to seek opportunities other than returning to private practice, such as teaching or writing. But my employment after serving on the bench will 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.

I believe that my actions with respect to 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) made outside the presence of parties about a pending or impending proceeding, with the exception of :

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 that this exception allows communications such as requests for continuances or requests for emergency orders. But even under this exception I believe that these communications should be provided (or reasonable efforts should be made to provide them) to opposing counsel or party(ies) at the same time they are sent to me. And before I can consider the communication, I have to reasonably believe that the communication will not result in a party obtaining an unfair or tactical advantage AND I will have to immediately take steps to notify the other counsel/parties of the communication (if they have not already been notified) and allow them an opportunity to respond before making any decision or taking any action.

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 I disclose the identity of the expert and the substance of the communication to all parties/counsel, allow the counsel/parties an opportunity to respond.

Communications with other court personnel who aid me in carrying out my responsibilities as a judge. With the consent of the parties, separate conferences with parties and their attorneys to mediate or settle matters pending before me.

Any 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 writs of supersedeas under limited or exigent circumstances (per SCRPC 65(b) and SCACR 225(d)(6)) and temporary orders relating to child support and custody under certain conditions (pursuant to 63-17-390)

Under the applicable Canons, I believe that in general, any ex parte communications regarding pending or soon to be pending matters should be discouraged, including those from lawyers, their clients and third parties. Even those that fall within the "exceptions" should ONLY be allowed if the circumstances for the exceptions are CLEARLY met AND all parties have been or are informed of the communication and allowed to respond before any action is taken.

6. What is your philosophy on recusal, especially in situations in which lawyer-legislators, former associates, or law partners are to appear before you?

Canon 3.E requires that I disqualify myself from ANY proceeding in which my impartiality might reasonably be questioned. I am specifically required to recuse myself where I have a personal bias for or prejudice against a party or a party's lawyer, or some personal knowledge of the facts in the matter before me. I am also required to recuse myself in matters where I previously served as a lawyer; in matters involving parties I previously represented; in matters where my former partners or associate served as a lawyer while I was in practice with them; and in matters where I have been or could be a material witness. Taking this Canon into account:

I believe that at least for some period of time, I should be disqualified from hearing matters in which my current partners and/or our associate appear as attorneys. In my early days (or years) on the bench, they would likely appear in matters that began while I was in practice with them and I could have independent (or privileged) knowledge regarding the clients or matters -- rendering it unethical that I preside. As for recusal in later years, or in matters that arise after I leave the firm, I would at the beginning of a hearing, disclose to the parties/counsel my previous professional relationship and ask that the parties/counsel have concerns regarding my ability to be impartial and to confer with each other and advise as to whether the parties are willing to proceed with me hearing the matter.

I would also consider recusing myself if there is some other basis for my disqualification or if a party raises concerns as to my

ability to render an impartial decision. At that point I would allow the party to be heard and/or under Canon 3Fask the parties/counsel to confer outside my presence to discuss whether the disqualification can be waived. If the party raising the issue is not willing to waive disqualification, and it appears that the issue has been raised out of genuine concern that I cannot be impartial and has not been raised solely to delay the proceedings I would likely defer to recusal but take steps to ensure that there is no unreasonable delay in having the matter heard by another judge to avoid or minimize prejudice to the party represented by my former partner(s) or associate.

I do not believe that I should be disqualified from hearing matters in which lawyers/legislators appear, just because the lawyers are also legislators. But if I have or have had a close personal relationship or a business/professional relationship with a lawyer/legislator (other than being colleagues and members of the bar) or there is some other basis for disqualification then recusal might be required.

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?

Again I believe that I should look to Canon 2A as my guide in protecting the integrity of and public confidence in the impartiality of the judiciary. It is not a question of whether I believe my impartiality is compromised but whether the parties or attorneys believe that my impartiality is compromised.

I would likely defer to the party's request for my recusal but attempt to have measures in place to prevent prejudicing the other party with a delay in the proceedings-- such as requesting that Docket give priority to rescheduling the matter at the first available time.

But As noted in Canon 3E(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 in matters requiring immediate (probable cause removal or other emergency hearings) action when no other judge is available to hear the matter. In such a situation, I would disclose on the record the basis for potential qualification, decide only those issues requiring immediate attention, reserving other issues for later hearing by another judge and request that docket refrain from scheduling me to preside over any further hearings in the matter.

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

I believe that I would have to look to Canon 3E(1) for guidance. This would require 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 the proceeding that could be affected by my decision; that my spouse/close relative is a party or has some close professional association with a party; or that my spouse/close relative could be a material witness in the matter before me.

If I am aware of my spouse or a close relative having a financial or social involvement with a party, and neither party or attorney raises the issue, then I believe I should disclose the relationship to the parties.

If I am not aware of the association of my spouse/close relative, and it is raised by a party, then I would first try to verify the association. If I confirmed the association, then I would allow both parties to be heard as to whether they have concerns about my ability to be impartial and whether they believe I should be disqualified from hearing the matter.

UNDER Canon 3F I could ask the parties/counsel to confer outside my presence to determine whether the parties are willing to waive the disqualification.

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

If the parties agree to waive disqualification, then I believe I would still have to consider recusing myself and weigh the nature of the association, the issues I have to decide, the need to protect the integrity of the proceedings and any potential prejudice to the parties my recusal could cause. As stated above, if recusal is required, then I would also try to ensure that the matter is heard promptly.

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

I would look to Canon 4D(5) to guide me. 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. That is how I was raised, and how I believe everyone should conduct themselves. I also believe that social courtesy and kindness are expected of me by the Judicial Canons.

Canon 4D(5) generally prevents me or members of my family from accepting gifts, bequests favors or loans from anyone subject to certain exceptions, such as : receiving professional materials; my spouse and I attending "legal profession" related functions;

extending/receiving ordinary social hospitality; my spouse receiving gifts, awards, etc related to his profession; my family receiving gifts for special occasions if the gifts are consistent with the occasion and relationship with the donor; receiving gifts, loans bequests etc from someone whose relationship would require me to recuse myself from any matters involving that person; receiving regular bank loans available to people other than judges; receiving scholarships based on criteria applied to other applicants; and 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 same if the value exceeds \$150.

While I am blessed with many good friends and colleagues, these relationships do not typically involve exchanging gifts. If this is not a part of my personal or professional relationships before being elected to the bench, it would not and should not be a part of my personal or professional relationships after being elected.

I would like to continue spending time with members of the bar outside of the courtroom, by attending bar functions and other social gatherings. However, I have always and would always expect to pay for my own dinners etc, myself rather than expecting or allowing others to pay for me.

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

Canon 3D requires that I take action when I am aware of the misconduct of a lawyer or another judge. What action I take would depend on whether I have personal knowledge of the misconduct or I receive the information from another source. It would also depend on whether the conduct raises a substantial question as to a judge's fitness to handle his/her duties or in the case of a lawyer, whether it raises a substantial question as to the lawyer's trustworthiness or fitness as a lawyer in other respects.

If I receive the information from another source, the Canons require that I take "appropriate action" such as direct communication (which I interpret to mean a frank personal discussion) with the lawyer or judge allegedly engaging in misconduct. I believe that some misconduct has occurred. I would advise him/her that I intend to report the misconduct but allow him/her an opportunity to self report first (assuming I have a way to verify that the self report is made).

If I personally observe misconduct or have other actual personal knowledge of 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), I believe I am required to report the misconduct to the appropriate authority.

11. Are you affiliated with any political parties, boards or commissions that, if you were elected, would need to be evaluated? NO
12. Do you have any business activities that you would envision remaining involved with if elected to the bench? NO
13. Since family court judges do not have law clerks, how would you handle the drafting of orders?

During my practice, I have taken a great deal of pride in drafting orders. I would like to say that I am willing to continue drafting orders for my rulings, but I realize that this is just not practical given what my other duties would be -- namely to hear cases and help streamline demanding dockets so that litigants may be heard in a reasonable amount of time.

I would like to continue my current practice of maintaining "checklists" of factors etc that need to be considered and/or addressed on particular issues, and develop a system for noting the evidence or information submitted during a hearing that is relevant to the issues. Using my checklists and notes, I would issue findings and rulings on the issues before me, and instruct one of the attorneys to prepare the Order, advising them that I reserve the right to revise the Order and my findings prior to signing the Final written Order. When the Order is submitted (I anticipate asking the attorney(s) to submit hard copies and electronic copies on flash drive or by email), I would compare my notes and n checklist to the Order to determine if the Orders provisions are consistent with my ruling and instructions. If additional drafting is needed, I would either revise the Order using the electronic copy provided or simultaneously contact the attorneys (and any pro se litigant involved) with instructions to revise the Order.

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

I would set deadlines for submission of orders or other information) from the attorneys/pro se litigants in a matter. I would maintain (or have my staff maintain) a calendar to note the deadlines; case caption; attorneys contact information; and the order or information to be provided . I would have my staff contact the parties/attorneys shortly before the deadline to remind them of the deadline.

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?

When presiding at a temporary or other hearing where appointment of a Guardian is requested or required, I would direct that the Order appointing the Guardian include specific provisions of the Private Guardian Ad Litem Act, including the statutory duties of the Guardian Ad Litem; assigning a reasonable hourly rate for his/her

services; setting an initial cap on fees with provisions addressing how the cap may be exceeded (by agreement of the parties or Order of the Court; providing for interim allocation of fees between the parties; and if appropriate, giving the Guardian leave to seek additional temporary or interim relief necessary for the Guardian to fulfill his/her duties, namely protecting the best interests of the child and/or obtaining services the Guardian deems necessary

I would like to implement (if it is possible) a requirement that when final hearings are set by Docket and written notices confirmation of final hearing dates are sent to attorneys, the notice/confirmation include a statement to counsel that if a Guardian Ad Litem has been appointed, the Guardian is to comply with the statutory deadline for submission of his/her report unless the parties agree in writing to waive the deadline.

As for ensuring compliance between the appointment of the Guardian and the Final Hearing, there may be little that I or any other judge can do to ensure that the parties/Guardian comply with the provisions of the Private Guardian ad Litem Act. This would be in the hands of the Guardian to fulfill his/her duties and/or the parties' attorneys to bring any concerns about same to the attention of the Court. If a party raises this issue, I believe a hearing should be held, so that the party may be heard as to his/her concerns and the Guardian may also be heard in response to the allegations. If it appears that the Guardian Ad Litem has not fulfilled his/her duties or his/her representation has not complied with the Act, then I would have to consider whether replacing the Guardian ad Litem is required.

16. 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. We should trust in our legislators to draft and implement laws they feel best protect our state and citizens. Our judiciary is responsible for enforcing and upholding these laws.

That being said, I do believe that judges have knowledge and experience that could be helpful to those who are responsible for the drafting of laws and setting of policy(ies). The comments to Canon 4B, reflect this, stating that a judge is "in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice. I believe the Canons allow, and even encourage, judges to participate in activities seeking to improve the law and our legal system, such as by serving on committees, providing comments to the legislature - but without interfering with legislative process.

I also believe that judges can and should share important knowledge and experience with members of the bar by participating as speakers or serving as panel members at legal education seminars.

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?

Since 2005, I have enjoyed being involved as a speaker at several CLEs for both the SC Bar and the National Business Institute. I have also co-authored an article for the May 2011 issue of the SC Lawyer Magazine. These opportunities have required me to research topics that I might not have otherwise researched and learned so thoroughly. I have been able to better educate myself and then share this education with other members of the bar.

I would like to continue serving as speaker at CLEs, and I would also enjoy trying my hand at more writing, either for CLE materials or publications.

I have also enjoyed serving as a member of the SC Bar Family Law Council, which has encouraged me to be more aware of and involved in the drafting of pending family law legislation and procedures. I hope to be involved in a similar way as a Family Court Judge. I also believe that local efforts, such as local liaison committee meetings and information addressed in local bar newsletters allow members of the bench and bar to communicate on areas of concern.

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?

I realize that in serving as a Family Court Judge, I would have to give up the flexibility I now have (or sometimes have). I will be making a commitment to the State and to the people and attorneys who will be before me and depending on me to hear their cases and make decisions.

I also realize that serving as a Family Court Judge may require periods of travel that will take me away from my family. Before deciding to apply for this position, I had lengthy discussions with my family about the responsibilities this position would require. Thankfully, my husband's work does not require much if any travel and, as we have both worked full time throughout our marriage, we have both cared for our children, together and separately. We have also had child care arrangements in place for years including after school and summer programs, as well as assistance from friends, neighbors and family in the area (who we help as well).

19. Would you give any special considerations to a pro se litigant in family court?

Any special considerations given would be to ensure the integrity of the family court proceedings and the Orders that are to result from the proceedings.

I would inform the pro se litigant, in the presence of opposing counsel/party that in electing to represent himself he is held to the same standard and bound by the same laws, rules of procedure and evidence that opposing counsel is required to follow. I would recommend that he/she obtain and be familiar with the South Carolina Rules of Civil Procedure, Rules of Family Court and Rules of Evidence and that he/she obtain a Financial Declaration Form and any other required forms (available in the SC Rules of Court) and complete them.

I would examine the pro se litigant to determine if he appears capable of representing himself/herself and understands the legal relief being sought and potential consequences. If there is any question as to the litigant's competence, I would require that a Guardian Ad Litem be appointed for the litigant. If the litigant indicates that he wants legal counsel and it appears that the litigant has made reasonable efforts but has not had sufficient time to obtain counsel, I would allow him a reasonable opportunity to do so, but put provisions in place to prevent unreasonable delay in the proceedings or other prejudice to the other party.

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?

The Judicial Canon define "de minimis" interest as an insignificant interest that could not raise a reasonable questions as to a judge's impartiality. Therefore I do not believe that I should be automatically disqualified in this situation.

Out of an abundance of caution, however, I believe that if I am aware of the interest, I should disclose it and follow the steps discussed in my response to question 8 above.

22. Do you belong to any organizations that discriminate based on race, religion, or gender? NO

23. Have you met the mandatory minimum hours requirement for continuing legal education courses? YES

24. What percentage of your legal experience (including experience as a special appointed judge or referee) concerns the following areas? If you do not have experience in one of these areas, can you suggest how you would compensate for that particular area of practice?

a. Divorce and equitable distribution: 70%

- b. Child custody: 70% (included in above)
- c. Adoption: 15%

During the course of my practice, I have served as a Guardian Ad Litem and an Attorney (for the party seeking adoption) in blood relative, stepparent and private adoption cases.

- d. Abuse and neglect: 15%

For Rule 608 appointments in my name and substituting for other attorneys on their rule 608 appointments. Also retained by parties to represent them in DSS actions.

- e. Juvenile cases:

No independent cases, but I have reviewed records, attended hearings and meet with DJJ staff in connection with DSS cases where DJJ is also involved. I would further educate myself in this area by reviewing relevant statutes, regulations and procedures; attending CLEs, meeting with DJJ staff, observing DJJ proceedings and seeking the advice of family court judges experienced in this area.

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

I believe that a judge should be courteous, patient, calm, attentive, deliberate and diligent with parties, attorneys (and their staff), and court staff in hearing matters and in carrying out all other judicial duties. But at the same time I believe that a judge must be efficient in carrying out her duties, exercise control in his/her courtroom adhering to the law rather than worrying about public opinion or criticism. This belief is based on how I think ANY employee should perform her obligations and on the provisions of Canons 3.B(2), 3.B(3) and 3.B(4).

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?

Canon 3A requires that my duties as a judge take precedence over all of my other activities and Canon 2A requires that I act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. The comments to Canon 2A state that prohibition against behaving with impropriety or the appearance of impropriety applies to both my professional and personal conduct. And Canon 4 requires that I conduct my "extra judicial" activities (which I interpret to mean my personal life) so that they do not cast doubt on my ability to be impartial; my ability to perform my duties and/or demean the judicial office.

I believe that I am obligated to and should strive to protect the integrity of not just my position but the entire judiciary when I am on the bench and off the bench. But I am also human with human limitations. In a perfect world, I would follow these rules to the letter 24 hours a day and 7 days a week. But as a human being who will

still have the same personal and family obligations in addition to the responsibility of being a judge, I cannot promise that I can behave "perfectly" and follow these rules ALL of the time. But I am aware of the responsibility that comes with this position and that I will try to the best of my ability to fulfill this responsibility at all times .

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 believe that Canon 3B governs my behavior toward attorneys and parties who appear before me. This requires that I be "dignified and courteous" to litigants and attorneys. Therefore, I do not believe it is appropriate to be angry when dealing with attorneys or litigants (whether represented or unrepresented), and I believe that I should keep my emotions in check to fulfill my duties.

That being said, anger is a natural human emotion that we are all going to express at some time or another. I wish I could say that I NEVER got angry or that I WOULD NEVER get angry at anyone in my courtroom. What I can say is that I realize that my anger will do nothing to promote justice; that it serves no purpose in the carrying out of my duties; and that I am expected to keep my emotions in check.

But while anger toward parties or attorneys may not be appropriate, I believe that it is my responsibility to maintain order in the courtroom. For that reason, I would have to be firm in dealing with parties or attorneys whose behavior threatens to disrupt or delay proceedings in my courtroom. And in accordance with the comments to Canon 3B(4), I believe that I can and should be efficient and businesslike in carrying out my duties.

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? NOTHING SO FAR
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/Katherine H. Tiffany

Sworn to before me this 31 day of July, 2013.

Emily P. Freeman

Notary Public for South Carolina

My commission expires: 9/21/19