

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

Family Court
(New Candidate)

Full Name: Melissa Johnson Emery
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1. Why do you want to serve as a Family Court Judge?

With the exception of my first year in practice, I have dedicated my entire professional life to practicing in Family Court. I am very passionate about this area of the law as I believe it to be the most important. We deal with people's children, livelihood, and assets that they have worked their entire lives to acquire. They are truly at their most vulnerable and have put their complete trust in the presiding judge to make a fair decision. I believe that I have had the professional, as well as life experience, that will enable me to be a judge who not only knows and understands the law but is compassionate and will strive to be as fair as possible.

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 believe that ex parte communications are improper, and should be avoided. However, there is statutory authority on how a judge must handle ex parte communication in the situation of an emergency, and when such issues are properly before the Court. I believe that the only time such communication should be allowed or tolerated is under strict compliance with the statute.

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

The appearance of impropriety should be avoided at all times. I can certainly understand that an opposing counsel to a former partner or associate of a judge would have concern to bring a case in front of that judge. Even though the judge may feel that he/she can be



impartial, it is not fair to put the attorney in the position of challenging that impartiality with the Court.

In regards to a lawyer-legislator, if there is no relationship with the judge, then there should be no recusal necessary. It would be my hope that there would be no expectation of partiality by the legislator and certainly none should be given.

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?

Each party should be allowed to make known all of their concerns in this regard. A judge must strive at all times to avoid the appearance of impropriety. While this philosophy should certainly not "hamstring" the court so that all motions for recusal are granted, each situation should be given due deference and weight. I would not want to encourage "judge shopping" by granting every motion for recusal; however, a litigant deserves to know that the trier of fact in his/her case is impartial. I have had to deal with the issue of impartiality as a mediator and it is very important that each party feel they are starting out on even ground with the person who is "in charge" of the case at that time.

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

This should be dealt with on a case by case basis. I could deal with every litigant fairly and would strive to do so; however, I strongly believe that all litigants deserve the peace of mind that they are being treated fairly and that there have been no preconceived notions about their case before it is started. If they can show that their concern is genuine and that there is truly an appearance of possible bias, I would recuse myself.

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

A judge has a high standard to fill in this area so that there is no appearance of impropriety. If the gift is given by someone who would give me a gift whether I was a judge or not, then I would most likely still accept the gift. However, if the gift is given because I am a judge or because I would not otherwise be in the position to even be associated with the giver, then I believe it is unacceptable.

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

The South Carolina Rules of Professional Conduct are very clear and must be followed at all times, particularly for members of the Judiciary. If I am aware of any misconduct that violates the Rule, then I am mandated to report the conduct.

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?

In my experience, most proposed orders are drafted by the attorneys of the case, or in some cases, the Guardian ad Litem. I am aware of instances where self representing litigants need orders drafted for them, and I would have no problem in dictating orders and supervising my staff in their preparation.

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

Fortunately, in my private practice I have experienced no problems in this regard. We have a tickler system for keeping up with dates that is quite effective and keeps us on track, and it survives any type of computer crash as it is a manually kept system. I would continue to use this system to make sure that all deadlines are timely met.

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 have served as a GAL for approximately fifteen years and this is a role that I take very seriously. It is vital for a GAL to act properly and in the best interest of their minor charge. Strict adherence to the GAL statute is a must. I think that it is imperative that a judge know the qualifications of an appointed GAL and monitor those who serve as GAL. Prior to an appointment, a judge should ensure that a GAL is qualified to serve and has met all statutory requirements. There should no hesitation by a judge to question a GAL to insure that they are following the mandates of the GAL statute.

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

I believe that a judge's job is to interpret the law that is set out by the General Assembly of this state. I do not think that a Family Court judge has the authority to "re-write" any statute. If a case is appealed, then the appellate courts have the power to make common law to govern certain interpretation of the statute. However, I do not believe that a Family Court judge has the authority to ignore any statute due to their own ideology.

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 continue participating in courses and seminars that teach attorneys how to effectively practice in the area of family law. I would also like to be involved in any committees that include members of the judiciary when addressing current problems in the court system or promoting new ideas of change.

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?

A judgeship would not put a strain on my relationship with family or friends. In fact, my running for the Judiciary seat was discussed at length with my family and friends, who I value as advisors, prior to my candidacy. They are completely supportive of me.

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

Court rules require a judge to hold a litigant who appears pro se to the same standard they hold attorneys. It would be unfair and unethical to give a pro se litigant legal advice or special consideration because they came to court without an attorney.

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?

No

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: 40%
- b. Child custody: 40%
- c. Adoption: 10%
- d. Abuse and neglect: 5%
- e. Juvenile cases: 5%

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

A judge should conduct herself/himself with cordiality and impartiality towards all who appear before her/him, attorney and litigant alike. Many times the Family Court is a person's only contact with the judicial system, and in most cases, they are going through a difficult time. Each decision made should be made with sincerity and compassion for the situation. Becoming a judge does not give one justification to treat anyone without dignity 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?

The behavior and demeanor that should belong to a judge should be a way of life and not just a persona that is put on with the robe. Proper conduct should be practiced 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 think that a judge is human and there may be times when they are moved to anger by the behavior of others; however, if such anger or emotion is strong enough to create a bias then the judge should recuse himself/herself from the case. There have been times that I have seen a judge angry at an attorney who has done a poor job in representing a client or has made such a procedural mess of things that the judge's hands are tied. Usually, such an emotion is expressed in chambers and is directed at the attorney and not the litigant. I believe that this would be the proper place to express such feelings, if the matter dealt with the attorney's behavior and not the litigant. I have also seen a judge become angry at the behavior or actions of a litigant. However, in these instances, the decision of the court was not prejudiced as it was clear that the anger was directed at the actions of someone and was not personally directed.

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?

\$127.00 for stationary and postage

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/Melissa J. Emery

Sworn to before me this 15th day of August, 2013.

Laura D. Hicks

Notary Public for South Carolina

My commission expires: July 18, 2022