



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

**Circuit Court
(Incumbent)**

Full Name: The Honorable R. Keith Kelly

Business Address: 125 E. Floyd Baker Blvd., Gaffney, SC 29340

Business Telephone: 864-487-2581

1. Why do you want to serve another term as a Circuit Court Judge?
Serve is the operative word. All judges serve the citizenry of the state and represent the judiciary in the community. To some extent, I have represented the judiciary for over thirty years as a practicing lawyer and judge. I bring thirty years of courtroom experience to the bench.
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? No
4. Have you met the Constitutional 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? In accordance with Judicial Canons, a judge is allowed to engage in *ex parte* communications for emergencies where exigent circumstances warrant such communications as long as the opposing party has the opportunity to be heard and neither party will gain a tactical advantage by such action. I understand *ex parte* communication is permissible to seek emergency restraining orders, to apply for search warrants or wiretaps, to obtain default judgments when a party has notice but fails to appear, consultation with a disinterested expert on the law, consultation with other judges, consultation with court personnel and scheduling purposes. *Ex parte* communication is prohibited by the canons with the exception of these circumstances.

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 would exercise recusal in a manner consistent with the ethical canons in order to avoid improprieties and the appearance of improprieties. A judge's decision concerning recusal should be cautiously entered into to avoid frivolous attacks which are meritless. I would follow the Code of Judicial Conduct and recuse myself if my impartiality might reasonably be questioned. I would not recuse myself merely because a lawyer-legislator is counsel of record. I am a former legislator myself. As to former law partners and associates, I would decline to hear any matter in which my former law firm was involved.
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? Yes. If a judge's impartiality might reasonably be questioned, recusal is mandatory.
8. How would you handle the appearance of impropriety because of the financial or social involvement of your spouse or a close relative? Judicial Canons require a judge to be vigilant as to their own financial or social involvement as well as their spouse and close relatives. Any appearance of impropriety must result in a recusal so as to ensure faith and trust in the impartiality of the judiciary.
9. What standards have you set for yourself regarding the acceptance of gifts or social hospitality? Acceptance of the above items is governed by Canon 4 D (5) of the Judicial Code of Conduct. I have in the past and will in the future comply fully with the Canon.
10. 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? I would report any violation of the Judicial Canons.
11. Have you engaged in any fund-raising activities with any social, community, or religious organizations? Please describe. No
12. Do you have any business activities that you would envision remaining involved with if reelected to the bench? No

13. How do you handle the drafting of orders? I calendar the drafting of all orders to ensure orders are timely issued.
14. What methods do you use to ensure that you and your staff meet deadlines? I calendar all deadlines. I'm very accustomed to using a calendar to ensure deadlines are met.
15. What is your philosophy on "judicial activism," and what effect should judges have in setting or promoting public policy? The power of the General Assembly is plenary in nature unless limited by a specific Constitutional provision. The General Assembly establishes the law and the Court follows the intent of the law. I have not and will not engage in judicial activism. I am a former member of the General Assembly of this state. It is the province of the General Assembly to create the law of South Carolina, not the Judiciary. The Judiciary does not legislate.
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? I am a member of the Access to Justice Committee and as such I have presented as part of a panel at a CLE. As a lawyer legislator, several times I presented at the Annual Public Defender's Conference. Also, I participate in the young lawyer mentoring program and the judicial observation program.
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? No. I was in private practice for over twenty-five years while simultaneously balancing my professional and private life. Additionally, I have served as a Circuit Court Judge for five years.
18. The following list contains five categories of offenders that would perhaps regularly appear in your court. Discuss your philosophy on sentencing for these classes of offenders.
 - a. Repeat offenders: A fundamental fact of criminology is that a small proportion of individuals commit a large proportion of

crime. Another fundamental fact is that the older the offender, the less likely he is to recidivate. Therefore, it stands to reason that a longer active sentence for a repeat offender lessens crime in our communities and ensures the safety of our citizens.

- b. Juveniles (that have been waived to the Circuit Court): Evidence based practice research concludes that intense supervision outside of detention is more effective than detention in the majority of cases. It appears that this is due to the impressionability of the young offender and the ability to rehabilitate him. However, this must be weighed on a case by case basis taking into account the seriousness of the offense committed and the overall safety of the community.
- c. White collar criminals: Evidence based practice research shows that deterrence works best when punishment is swift and certain and that certainty is of far greater value than severity in creating deterrent sentences. Additionally, research shows that this type of offender is less likely to recidivate thereby taxing the state's penal resources. Therefore, the sentence should be structured to punish the offender and deter others from this type criminal activity and include loss of any economic gain realized by the criminal activity.
- d. Defendants with a socially and/or economically disadvantaged background: All sentences must be proportionate to the gravity of the offense committed and the degree of responsibility of the offender. Further, similar sentences must be imposed on similar offenders for similar offenses. Poverty, unemployment, poor education, limited opportunities and substance abuse are factors a judge should consider along with the likelihood of the offender to recidivate and the overall safety of the community
- e. Elderly defendants or those with some infirmity: : Research shows that home confinement, electronic monitoring and other forms of punishment can be equally efficient and effective and less costly than incarceration for an offender who has a severe medical condition, especially if combined with advanced age. However, this must be weighed on a case by case basis taking into account the seriousness of the offense committed and the overall safety of the community.

19. Are you involved in any active investments from which you derive additional income that might impair your appearance of impartiality?
No
20. Would you hear a case where you or a member of your family held a *de minimis* financial interest in a party involved? If a judge's impartiality might reasonably be questioned, recusal is mandatory.
21. 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
22. Have you met the mandatory minimum hours requirement for continuing legal education courses for the last reporting period? Yes, I have exceeded this requirement regularly.
23. What do you feel is the appropriate demeanor for a judge and when do these rules apply? A Judge should be courteous to all persons who appear before the court. A Judge should remember that he is a representative of the State of South Carolina and conduct his behavior accordingly, both personally and professionally. The rules apply every day, all day.
24. 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? Anger is a human emotion but there is no place for anger in a courtroom either by a judge, lawyer or litigant.

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

Sworn to before me this ____ day of _____, 2018.

(Signature)

(Print Name)
Notary Public for South Carolina
My commission expires: _____