



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

Circuit Court
(Incumbent)

Full Name: The Honorable R. Keith Kelly

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1. Why do you want to serve another term as a Circuit Court judge? I truly enjoyed my job and serving the community.
2. Do you plan to serve your full term if re-elected? I can serve 5.5 years of the term. I will reach the age of 72 in 2030.
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. 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?

(a) If a judge's impartiality might reasonably be questioned, recusal is mandatory.

(b) Yes.

7. How would you handle the appearance of impropriety because of the financial or social involvement of your spouse or a close relative? I would recuse myself.
8. 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 fully comply with the Canon.
9. 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.
10. Have you engaged in any fund-raising activities with any social, community, or religious organizations? Please describe. No.
11. Do you have any business activities that you would envision remaining involved with if reelected to the bench? No.
12. How do you handle the drafting of orders? After consideration I instruct my Law Clerk to issue instructions to the Lawyers to prepare the proposed orders.
13. What methods do you use to ensure that you and your staff meet deadlines? We calendar and keep a detailed list regarding outstanding matters to ensure that all deadlines are timely met.
14. 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.

15. 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 past member of the Access to Justice Committee and as such 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.

16. 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?
 - (a) No.
 - (b) I was in private practice for over twenty-five years while simultaneously balancing my professional and private life, including serving in the General Assembly. Additionally, I have served over eleven years as a Circuit Court Judge.

17. 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:** I was on the Sentencing Reform Committee while in the SC House of Representatives. Recidivism is a complex issue often involving homelessness, substance abuse and lack of employment. But, it also is caused by the offender receiving a very lenient sentence each time he or she offends; there is no incentive to refrain from bad conduct. I look at all factors in fashioning an appropriate sentence.
 - b. **Juveniles (that have been waived to the Circuit Court):** As a Circuit Court judge, I have handled several resentencing hearings under *Aiken v. Byars*. Therefore, I am aware that *Aiken v. Byars* and its progeny, *Miller v. Alabama*, established a specific framework, articulating factors a court must carefully consider when sentencing a juvenile to Life Without Parole (LWOP). It is important to also consider that along with *Miller*, our United States Supreme Court has recognized in other seminal cases that it is no longer constitutionally appropriate to treat children like adults. Therefore, even in non-LWOP cases, I would ensure that the hallmark features of youth and the impact of the defendant's juvenility are strongly considered in any sentence rendered.
 - c. **White collar criminals:** Whites collar offenders generally are first time offenders; no prior criminal history. I consider the culpability, did the offender play a significant role in the scheme. I consider whether or not the offender cooperated with law enforcement and the government in the investigation and assist in ending the scheme. Also, I consider whether or not the offender is remorseful and willing to pay restitution to make the victim whole. The two cases I had were two employees of a company where they had worked for many years, had no prior criminal record that I remember, were very remorseful and embarrassed and willing to use 401k and other retirement assets to repay the business.
 - d. **Defendants with a socially and/or economically disadvantaged background:** I see homelessness and hunger in our community and court. And, I consider it when fashioning a sentence.
 - e. **Elderly defendants or those with some infirmity:** I consider age and any infirmity in sentencing an offender. Empirical data shows older offenders are less likely to reoffend; the adage most people get wiser with age. Therefore, a shorter sentence corrects the behavior. The biggest impairment I see in court is related to mental health issues which directly lead to substance abuse issues. As the Veterans Court Judge, I see disabled

veterans with serious disabling injuries, TBI injuries, anger issues, survivor guilt and PTSD. I consider these factors in fashioning a sentence.

18. Are you involved in any active investments from which you derive additional income that might impair your appearance of impartiality?
No.
19. Would you hear a case where you or a member of your family held a *de minimis* financial interest in a party involved? No.
20. 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.
21. Have you met the mandatory minimum hours requirement for continuing legal education courses for the last reporting period? Yes, I have exceeded the requirement.
22. What do you feel is the appropriate demeanor for a judge and when do these rules apply? A Judge should be courteous and respectful to all persons who appear before the court. A Judge should remember that she or he is a representative of the State of South Carolina and conduct her or his behavior accordingly, both personally and professionally. The rules apply every day, all day.
23. 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? There is a role for sternness to the extent the Judge controls the meeting by requiring civility. There is no place for anger in a meeting or a courtroom.

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

A handwritten signature in cursive script that reads "R. Keith Kelly". The signature is written in black ink and is positioned above a horizontal line that extends to the right.

Sworn to before me this 14th day of August, 2024.

Ashley Searcy
(Signature)

Ashley Searcy
(Print Name)

Notary Public for South Carolina

My commission expires: 2/16/28