

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

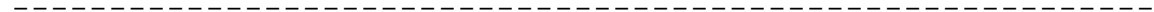
JUDICIAL MERIT SELECTION COMMISSION
PUBLIC HEARINGS

Thursday, November 15, 2012

9:00 a.m.

1105 Pendleton Street
Blatt Building, Room 101
Columbia, South Carolina

REPORTED BY: KATY MCCORMICK
Stenographic Court Reporter



COMPUSCRIPTS, INC.
A Full-Service Court Reporting Agency
Post Office Box 7172
Columbia, South Carolina 29202
803-988-0086
1-888-988-0086
www.compuscripts.com

1 MEMBERS IN ATTENDANCE:

2

3 REPRESENTATIVE F.G. DELLENEY, JR., CHAIRMAN

4 SENATOR LARRY MARTIN, VICE-CHAIRMAN

5 REPRESENTATIVE DAVID J. MACK, III

6 PROFESSOR JOHN P. FREEMAN

7 SENATOR FLOYD NICHOLSON

8 JOHN DAVIS HARRELL, ESQUIRE

9 AMY JOHNSON MCLESTER

10 ERIN B. CRAWFORD, ESQUIRE

11 SENATOR CHIP CAMPSEN

12

13 COUNSEL:

14 JANE SHULER, CHIEF COUNSEL

15

16

17

18

19

20

21

22 (INDEX REAR OF TRANSCRIPT)

23

24

25

1

2

REPRESENTATIVE DELLENEY: Good morning.

3

We will call the Public Hearing on Judicial

4

Qualifications to order. Counsel advises me that

5

we need to have a short executive session. Do I

6

hear a motion?

7

SENATOR MARTIN: So moved.

8

SENATOR NICHOLSON: Second.

9

REPRESENTATIVE DELLENEY: All in favor?

10

MULTIPLE SPEAKERS: Aye.

11

(The Judicial Merit Selection

12

Commission went into executive session from 9:19

13

to 9:26 a.m.)

14

REPRESENTATIVE DELLENEY: All right,

15

we're back in session. All in favor of the rule

16

changes? We have been given a copy of the

17

proposed rules changes to rule 5, 6, 7, 9, 27 and

18

28. Do we have a motion?

19

SENATOR MARTIN: Motion.

20

SENATOR NICHOLSON: Second.

21

REPRESENTATIVE DELLENEY: We have a

22

motion. All in favor raise their hand.

23

MS. SHULER: We have 10 for each rule.

24

MS. TRAYWICK: Can you just remind

25

everyone to use their mics. There are a lot of

1 extra people in the building and in the halls
2 today so it's going to be hard for the court
3 reporter to hear. There's a thousand students in
4 the building today.

5 MS. SHULER: If you have a question for
6 the candidate please press on your mic for the
7 court reporter and the candidate.

8 REPRESENTATIVE DELLENEY: Good morning.
9 First up before us we have Ms. Martha McCright
10 Rivers Davisson. Do you have anyone you'd like
11 to introduce to us?

12 MS. DAVISSON: Yes, sir, I'd like to
13 introduce my husband Doug Davisson.

14 REPRESENTATIVE DELLENEY: Ms. Davisson
15 seeks a position in the Family Court At-Large
16 seat number 5. If you would, please ma'am, raise
17 your right hand to be sworn.

18 (Martha Davisson, was duly sworn, after
19 which testimony began at 9:29 a.m.)

20 REPRESENTATIVE DELLENEY: Thank you,
21 ma'am. Have you had an opportunity to review
22 your Personal Data Questionnaire?

23 MS. DAVISSON: I have.

24 REPRESENTATIVE DELLENEY: Is it
25 correct?

1 MS. DAVISSON: Yes, I believe it is.

2 REPRESENTATIVE DELLENEY: So we don't
3 need to make any changes?

4 MS. DAVISSON: No, sir. I believe the
5 Personal Data Questionnaire had a question on
6 whether I had ever been sued personally or
7 professionally. Two days ago Ms. Benson brought
8 to light that on the case record search there is
9 an indication of my name as a defendant and a
10 defendant's attorney in a case where I served as
11 a guardian ad litem for an incarcerated defendant
12 in a civil matter. That was not a suit involving
13 me personally or professionally.

14 REPRESENTATIVE DELLENEY: Do you object
15 to our making this part of the record of your
16 sworn testimony?

17 MS. DAVISSON: No, sir.

18 REPRESENTATIVE DELLENEY: It will made
19 part of the record at this point in the
20 transcript.

21 (EXH. 1, Martha Davisson's Personal
22 Data Questionnaire, marked for identification.)

23 REPRESENTATIVE DELLENEY: The Judicial
24 Merit Selection Commission has thoroughly
25 investigated your qualifications for service on

1 the bench. Our inquiry is primarily focused on
2 nine evaluative criteria which has included a
3 survey of the bench and the bar, a thorough study
4 of your application materials, verification of
5 your compliance with the State ethics laws, a
6 search of any newspaper articles in which your
7 name may have appeared, a study of previous
8 screenings and a check of any economic conflicts
9 of interest.

10 There are no affidavits filed in
11 opposition to your election nor are there any
12 witnesses here to testify. Do you have a brief
13 opening statement you'd like to make?

14 MS. DAVISSON: Representative Delleney,
15 I would like to say that it's an honor to be
16 here. I know that this takes a great deal of
17 your time in coming today and I appreciate your
18 service and the committee's. This is a position
19 that I very much would like and I appreciate your
20 due consideration.

21 REPRESENTATIVE DELLENEY: Thank you,
22 ma'am. If you would at this time please answer
23 any questions that counsel might have for you.

24 MS. BENSON: Thank you.

25 Ms. Davisson, you also have before you

1 the Sworn Statement that you provided detailed
2 answers to over 30 questions regarding judicial
3 conduct, statutory qualifications, office
4 administration and temperament.

5 Are there any changes that you would
6 like to make to this statement at this time?

7 MS. DAVISSON: No, ma'am.

8 MS. BENSON: Thank you.

9 At this time, Mr. Chairman, I would
10 like to ask that Ms. Davisson's Sworn Statement
11 will be entered in as an exhibit to this hearing.

12 REPRESENTATIVE DELLENEY: It will also
13 be made part of the record at this point in the
14 transcript without objection.

15 (EXH. 2, Sworn Statement of Martha
16 Davisson was marked for identification.)

17 MS. BENSON: Mr. Chairman, I would also
18 state for the record that Ms. Davisson meets the
19 statutory requirements for this position
20 regarding age, residence and years of practice.

21 Ms. Davisson, would you please state the
22 city and the circuit in which you reside.

23 MS. DAVISSON: I reside in Elko, South
24 Carolina which is in the 2nd Judicial Circuit.

25 MS. BENSON: Talk to me now and tell

1 me why you want to serve as a Family Court judge.

2 MS. DAVISSON: I have practiced in
3 Family Court since the beginning of my practice
4 in 1996. I've practiced as a sole practitioner
5 sine 2001 with a large percentage of my practice
6 being in Family Court.

7 We were speaking the other day with
8 another attorney and talking about how Family
9 Court is often a messy area of the law
10 emotionally, but it is an area of the law that
11 gives you a good deal of satisfaction in being
12 able to help folks out during that difficult
13 period in their life. I feel that I am qualified
14 for this position. I feel that I have the
15 judicial temperament for the Family Court which
16 is often very highly emotional. I don't even
17 know if it would be second to the criminal court
18 in that regard sometimes, and I believe that I
19 would serve the State of South Carolina hopefully
20 admirably, and I would hope that I could continue
21 to help out more families and the children in the
22 state through this position.

23 MS. BENSON: Are there any areas that
24 you feel that you might need to have additional
25 experience or education that would help you in

1 serving in this capacity?

2 MS. DAVISSON: Well, I think we can
3 always learn more about any area of law. I will
4 say that in my area of the state we are not a
5 high economic area, so I do not -- have not
6 handled a lot of cases involving substantial
7 property settlements, and I think that's an area
8 that I can draw on colleagues or others who have
9 handled those to discuss how they go about
10 addressing those cases.

11 I have handled juvenile justice as a
12 defense attorney but I don't do that on a regular
13 basis. That would be another area that I could
14 study and also speak to colleagues about.

15 MS. BENSON: Ms. Davisson, you've
16 addressed this already but could you describe for
17 me and the committee the type of temperament in
18 the Family Court that you think a judge should
19 have?

20 MS. DAVISSON: As I said in my
21 application, I think it's extremely important
22 that the judge always be courteous in the
23 courtroom to all people involved, not just the
24 litigants but the attorneys, the court reporter,
25 the bailiffs, everyone who is there. It takes a

1 large army of people to keep a court going and
2 the judge is often the central focus of
3 everything. The temperament of the judge can
4 make a tremendous difference in what happens in
5 the courtroom. I think it's important that
6 although you keep control of the court that you
7 do so in a manner that is respectful of all.

8 MS. BENSON: Is there any judge that
9 you consider a model that particularly
10 exemplifies the characteristics that you think
11 are important for a Family Court judge?

12 MS. DAVISSON: I have enjoyed serving
13 under our resident judges, Judge Vicki Snelgrove
14 and Judge Dale Gable. Although their mannerisms
15 are not completely the same I have found that
16 they both attempt to explain sometimes very
17 complicated procedural issues to the litigant,
18 even if they are not pro se but through their
19 language with the attorneys, and I also believe
20 that they have a deference for the other members
21 in the courtroom, other members of the judiciary
22 to try to assist them.

23 MS. BENSON: And is there a particular
24 legacy that you would like to have considered as
25 your legacy as a Family Court judge?

1 MS. DAVISSON: I would like to be fair.

2 MS. BENSON: Ms. Davisson, as a
3 practicing attorney do you currently carry
4 malpractice insurance and if so how long have you
5 carried it?

6 MS. DAVISSON: I have carried
7 malpractice insurance since opening my office in
8 2001.

9 MS. BENSON: The commission received 36
10 ballot box surveys concerning you with six
11 additional comments, and two of the comments
12 indicated concerns. The first one concerns Ms.
13 Rivers. Who is Ms. Rivers?

14 MS. DAVISSON: I use Ms. Rivers
15 professionally.

16 MR. BENSON: Thank you.

17 -- is too inexperienced, too lacking in
18 diversity based on the cases that I have had with
19 her and observed. I would be very concerned with
20 her judging some of my complex and unusual cases.
21 Do you have any response to that?

22 MS. DAVISSON: Well, if I agreed I
23 wouldn't be here, number one, but so I do take
24 issue with the comment. I don't think I am too
25 inexperienced in the area of Family Court. Since

1 the day I became a lawyer I've been handling
2 Family Court cases. I've handled a lot of cases
3 with grandparent's rights, biological parents
4 cases, custody visitation issues, divorces,
5 defending juveniles in juvenile justice. I've
6 volunteered as a guardian ad litem for DSS cases.
7 I've also served as a private guardian ad litem
8 which is appointed to assist children and/or to
9 speak for the children in the process of Family
10 Court, and I do that routinely for all of our
11 regular attorneys in the 2nd Judicial Circuit.
12 So I believe I have a wide breadth of Family
13 Court experience.

14 MS. BENSON: The second comment was
15 concerning the fact that you have young children
16 and your capability to be able to manage your
17 practice as well as managing young children.
18 Would you respond to that.

19 MS. DAVISSON: I do have young
20 children, they are nine, seven and three. Like
21 most children they are pretty active and involved
22 so it does take some management, but as you see
23 with me today I have an extended family that is a
24 part of them and my husband is very supportive,
25 my parents are very support of me in any endeavor

1 I've done and helped me with my law practice
2 currently and I do not believe my children would
3 be an issue in serving in the judicial court.

4 MS. BENSON: Ms. Davisson, the South
5 Carolina Bar and Judicial Qualifications
6 Committee found you to be qualified overall, they
7 found you to be well qualified for character and
8 judicial temperament and qualified for ethical
9 fitness, professional and academic ability,
10 reputation and experience and also qualified in
11 the constitutional qualifications of physical
12 health as well as mental stability. They do add
13 a comment that the committee was unable to reach
14 a goal of 30 interviews indicating knowledge of
15 the candidate was extraordinary. Would you
16 please respond to that?

17 MS. DAVISSON: The 2nd Judicial Circuit
18 is a small bar. There are not a lot of attorneys
19 practicing in our bar. The bar did alert me that
20 they were unable to reach 30 candidates and I can
21 certainly understand that particularly in this
22 screening they don't necessarily keep a list of
23 who they contacted and who they did not contact,
24 so I was not able to provide any additional names
25 to contact. Some of my colleagues said they did

1 not receive phone calls, so I do know that not
2 all the attorneys in my circuit were contacted.
3 But I think what happened is they did make an
4 extraordinary attempt to contact some and when
5 they started hearing they had contacted this
6 person more than once they were not able to make
7 a list and be able to reach 30.

8 MS. BENSON: Ms. Davisson, I just have
9 some housekeeping issues.

10 Have you sought or received any pledge
11 from any legislator prior to this date?

12 MS. DAVISSON: No, ma'am.

13 MS. BENSON: Have you sought or have
14 you been offered a conditional pledge of support
15 of any legislator pending the outcome of your
16 screening?

17 MS. DAVISSON: No, ma'am.

18 MS. BENSON: Have you asked any third
19 parties to contact the members of the General
20 Assembly on your behalf?

21 MS. DAVISSON: No, ma'am.

22 MS. BENSON: Are you aware of anyone
23 attempting to intervene on any part of the
24 process on your behalf?

25 MS. DAVISSON: No, ma'am.

1 MS. BENSON: Have you contacted any
2 members of the commission?

3 MS. DAVISSON: No, ma'am.

4 MS. BENSON: Do you understand that you
5 are prohibited from seeking a pledge until 48
6 hours after the formal release of the
7 commission's report?

8 MS. DAVISSON: Yes, ma'am.

9 MS. BENSON: Have you reviewed the
10 commission's guidelines on pledging?

11 MS. DAVISSON: Yes.

12 MS. BENSON: As a follow up are you
13 aware of the penalties for violating the pledging
14 rules are that it's a misdemeanor and upon
15 conviction the violator must be fined not more
16 than \$1,000 or imprisoned for not more than 90
17 days?

18 MS. DAVISSON: Yes, ma'am.

19 MS. BENSON: I would note that the
20 Midland's Citizen's Committee found Ms. Davisson
21 well qualified in the evaluative criteria of
22 ethical fitness, professional and academic
23 ability, character, reputation and judicial
24 temperament. The committee found Ms. Rivers
25 Davisson qualified in the evaluative criteria of

1 experience, constitutional qualifications,
2 physical health and mental stability.

3 In summary, the committee stated Ms.
4 Rivers Davisson is an outstanding attorney with
5 integrity, wisdom and common sense. We believe
6 that she would make an excellent Family Court
7 judge and our committee finds her very qualified
8 to serve on the Family Court.

9 I would just note for the record any
10 concerns raised have been incorporated in the
11 questions for the candidate today.

12 I have no further questions.

13 REPRESENTATIVE DELLENEY: Do any
14 members of the commission have any questions for
15 Ms. Rivers Davisson?

16 (No response.)

17 REPRESENTATIVE DELLENEY: There being
18 no further questions we would like to thank you
19 very much for being here today and subjecting
20 yourself to this process. This ends this portion
21 of the screening process for you.

22 As you know we will issue a draft
23 report and then the draft report will eventually
24 become the final report of the commission. Up
25 until that time if there was a matter that we

1 needed to reconvene for and we would need to
2 bring you back for more questions we could do so,
3 but that's not very likely in your case but it
4 has happened in the past. But nevertheless be
5 mindful of the 48 hour rule.

6 And with that, again, I thank you for
7 offering and hope you and your family have a safe
8 trip back home.

9 MS. DAVISSON: Thank you very much.

10 REPRESENTATIVE DELLENEY: We have
11 before us this morning Stevens Bultman Elliot.

12 MR. ELLIOT: Yes, sir.

13 REPRESENTATIVE DELLENEY: Who seeks the
14 position of the Family Court At-Large, seat
15 number 5.

16 Mr. Stevens Elliot, if you would please
17 raise your right hand to be sworn.

18 (Stevens Elliot, was duly sworn, after
19 which testimony began at 9:36 a.m.)

20 REPRESENTATIVE DELLENEY: Have you had
21 an opportunity to review your Personal Data
22 Questionnaire?

23 MR. ELLIOT: Yes, sir, I have.

24 REPRESENTATIVE DELLENEY: Is it
25 correct?

1 MR. ELLIOT: Yes.

2 REPRESENTATIVE DELLENEY: Do you have
3 any objections to our making it a part of the
4 formal record of your sworn testimony?

5 MR. ELLIOT: No, I do not.

6 REPRESENTATIVE DELLENEY: It will be
7 done at this point in the transcript.

8 (EXH. 3, Stevens Bultman Elliot
9 Personal Data Questionnaire was marked for
10 identification.)

11 REPRESENTATIVE DELLENEY: The Judicial
12 Merit Selection Commission has thoroughly
13 investigated your qualifications for service on
14 the bench. Our inquiry is primarily focused on
15 nine evaluative criteria which has included a
16 survey of the bench and the bar, a thorough study
17 of your application materials, verification of
18 your compliance with the State ethics laws, a
19 search of any newspaper articles in which your
20 name may have appeared, a study of previous
21 screenings and a check of any economic conflicts
22 of interest.

23 There are no affidavits filed in
24 opposition to your election nor are there any
25 witnesses here to testify.

1 Do you have a brief opening statement
2 you'd like to make.

3 MR. ELLIOT: Thank you for allowing me
4 to appear here today. I will be brief. I would
5 just like to tell the committee members that I
6 have been practicing law for 31 years, I have
7 vast life's experiences to include, I'm a
8 veteran, I've practiced law, raised a family,
9 have three grown children. I feel like that
10 since I have been practicing law in the Family
11 Court for 31 years I have requisite experience,
12 trial experience, appeal experience. I've been
13 in every level of the court you can be in the
14 Family Court arena. I have done all types of
15 cases in the Family Court and I feel like I am at
16 a point in my career now that I could bring
17 something to the table as far as exercising good
18 judgement with the experience I have had in
19 applying the law and good judgement in Family
20 Court cases. That's about all I have to say as
21 an opening statement.

22 REPRESENTATIVE DELLENEY: Thank you,
23 sir. Will you answer any questions Mr. Odom may
24 have for you?

25 MR. ELLIOT: Yes, sir.

1 MR. ODOM: Good morning.

2 MR. ELLIOT: Good morning.

3 MR. ODOM: Mr. Elliot, you should have
4 before you the Sworn Statement that you provided
5 with detailed answers to over 30 questions
6 regarding judicial conduct, statutory
7 qualifications, office administration and
8 temperament.

9 Are there any additional amendments
10 that you would like make to that statement at
11 this time?

12 MR. ELLIOT: No.

13 MR. ODOM: Mr. Chairman, I'd ask that
14 Mr. Elliot's sworn statement and amendments be
15 entered as an exhibit.

16 REPRESENTATIVE DELLENEY: It will be
17 done at this point in the transcript.

18 (EXH. 4, Stevens Elliots' Sworn
19 Statement, was marked for identification.)

20 MR. ODOM: Mr. Chairman, I note for the
21 record that based on the testimony of Mr.
22 Elliot's PDQ, which has been included in the
23 record with his consent, Mr. Elliot meets the
24 statutory requirements regarding age, residence
25 and years of practice.

1 Mr. Elliot, could you please state the
2 city and circuit in which you reside.

3 MR. ELLIOT: I reside in Columbia,
4 South Carolina, Richland County. I am on the 5th
5 Circuit.

6 MR. ODOM: Mr. Elliot, after practicing
7 law after 30 years, why would you now want to
8 serve as a Family Court judge?

9 MR. ELLIOT: Well, as I stated I have
10 been practicing for 31 years in the Family Court
11 and I have two sons now that practice with me,
12 Christopher and Reynolds Elliot. They are in my
13 law practice and they are following their father.
14 I didn't encourage them but they did do that.

15 And I believe I have got enough life
16 experience, experience with trial, dealing with
17 other lawyers, dealing with the judges that I
18 believe I would be able to go in to the office
19 and not need a tremendous amount of on-the-job
20 training. I feel like I have vast experience in
21 trial work. I think I understand the courtroom,
22 I understand what lawyers go through when they
23 are representing their clients, and I certainly
24 understand what the litigants go through when
25 they're in the middle of a Family Court case.

1 And I believe that the number of years
2 and the number of clients I've represented and
3 the numerous cases that I have been involved in
4 enable me to bring something to that office.

5 And I feel like at 60 years old I think
6 I am at the point in my life where I do believe
7 that I do need a change and I think it would be a
8 positive change because I have so much experience
9 to bring to the office. And I would like to
10 serve and I think I would do it very, very
11 honorably, I'd do it with integrity and I'd use
12 the experience I have to make the best judge I
13 could.

14 MR. ODOM: Mr. Elliot, are there any
15 areas including subjective areas of the law that
16 you would need additional familiarity to
17 effectively serve as a Family Court judge, and if
18 so how would you handle that additional
19 preparation?

20 MR. ELLIOT: I am always open for
21 people that have the experience in an area to
22 tell me what I need to know in an area. I don't
23 think I know everything by a long shot, I know I
24 don't know everything, but having been involved
25 in every kind of Family Court case that I know of

1 exists to include juvenile justice, adoptions,
2 divorces, alimony cases, equitable distribution,
3 everything, of course I'd have to keep current
4 with the law. And I would certainly seek the
5 advice of people in similar posts to give me
6 advice about administratively how to handle
7 certain things, but as far as being able to go
8 into the job I feel like I would be ready if
9 elected.

10 MR. ODOM: Mr. Elliot, although you
11 addressed this in your sworn statement could you
12 please explain for the members of the commission
13 what you think the appropriate demeanor for a
14 judge should be?

15 MR. ELLIOT: I have very strong
16 feelings about demeanor for judges. I feel that
17 when the litigants and lawyers go into a
18 courtroom, particularly a Family Court, I feel
19 like that they have to be comfortable in
20 presenting their case. I feel like that if
21 they're not relaxed and they don't feel welcomed
22 into the family courtroom then it chills the
23 ability for them to present their case.

24 I was telling somebody the other day,
25 and as much as I hate to say it, sometimes you

1 may be going into a courtroom and you get that
2 pit in your stomach and you get a bad feeling
3 about, oh, goodness, I'm going into this
4 courtroom because the environment may not be as
5 welcoming as friendly, litigant-friendly,
6 lawyer-friendly -- and I understand you have to
7 keep decorum in the courtroom, and I understand
8 you have to keep control over the courtroom, but
9 I also feel like you don't have to have a
10 demeanor that makes people uncomfortable and
11 makes people feel inhibited about really giving
12 the facts of the case. And I do see that
13 sometimes.

14 So I believe that demeanor is very
15 important, and you have to be able to get along
16 with the attorneys involved and you to have to be
17 able to put the litigants in the position where
18 they are going to tell the truth and feel like
19 they are getting whatever it is in their hearts
20 out and can get it out without being inhibited.
21 And the demeanor of the judge is so important
22 when they try a case or even resolve a case even
23 in a hearing or a pretrial hearing, you just have
24 to have a good demeanor or a good presentation
25 and friendly environment for people to be

1 comfortable. And that's how I feel about that.

2 MR. ODOM: Thank you, Mr. Elliot. Do
3 you currently carry malpractice insurance in your
4 law practice and if so how long have you carried
5 that insurance?

6 MR. ELLIOT: Yes, I do and I have
7 carried it, my goodness, as far back as I can
8 remember. I've been practicing 31 years, I
9 originally practiced with my two brothers, my
10 late brother Robert and my other brother Tom.
11 But I know we carried it and ever since my law
12 office has been by myself and with my two sons I
13 have carried it as far back as I can remember.

14 MR. ODOM: Mr. Elliot, the SLED report
15 was dealing with one lawsuit from 2005 that was
16 not covered in the required screening. It was
17 Freeman v Elliot when you were listed as one of
18 the defendants. And it appears that you were a
19 named party in this suit in your official
20 capacity as a special administrator. What can
21 you briefly tell the commission about this
22 matter?

23 MR. ELLIOT: When it was brought to my
24 attention this was in '05, '06 and I didn't even
25 remember it, but what it involved after I went to

1 the lawyer -- who was the plaintiff and it was a
2 lawsuit -- it was a personal injury lawsuit where
3 I was named as a special administrator for a
4 deceased person. And as the law requires,
5 somebody had to stand in his stead, and the case
6 was settled eventually, it never went to trial,
7 but they have to name someone in the stead of the
8 deceased person, and I was named as the special
9 administrator, but I was simply there to stand in
10 in that general capacity.

11 MR. ODOM: Mr. Elliot, the commission
12 received 77 ballot box surveys regarding you with
13 six additional comments, three of which were
14 negative. One comment expressed a general
15 concern about your conduct inside and outside of
16 the courtroom and how it might subject you to
17 sanctions. What explanation would you offer the
18 commission with respect to this concern?

19 MR. ELLIOT: Well, in 31 years of
20 practice I'm sure you probably had made somebody
21 mad or angry. I don't know. It's hard to defend
22 something when you don't know from where it came,
23 but let me just say this about the character
24 situation or whatever they attacked. I have
25 conducted myself in my practice with just this

1 basic guideline: I have two wonderful parents
2 that are still living, they're in their 80s, and
3 I have two children, and I'm soon to have a
4 grandchild. But the way I conduct my life is I
5 make sure every day that I don't do anything that
6 would disappoint my parents, and I still live by
7 that. And particularly my immediate family; I
8 strive not to do anything that would be
9 disappointing or embarrass my family, and
10 certainly for my grandchild when it gets here.

11 But that's basically what I live by. I
12 followed the rules. I don't know where the
13 negative comments came from, of course, but I am
14 disappointed that somebody would say something
15 negative, but I know that's going to happen and
16 like I say, I keep living my life with those
17 standards for myself in my life.

18 MR. ODOM: Thank you, Mr. Elliot. The
19 other concern was raised with respect to your
20 intellect and whether it was sufficient enough to
21 allow you to serve as a Family Court judge. What
22 explanation can you offer the commission with
23 respect to that concern?

24 MR. ELLIOT: An intellect situation is
25 -- that too is kind of hard to defend and the

1 only thing I can point to is I did have a good
2 academic career in college and I graduated with
3 high honors from the University of South Carolina
4 and graduated with a good GPA from the University
5 of South Carolina Law School and that's a tough
6 one, one I am sure my father would enjoy if he
7 were sitting in the audience today. Not too long
8 ago I backed a big moving truck into his garage
9 into the metal rood that he had just put on his
10 garage, and I hate to tell you what he said about
11 my intellect then. But, you know, yes, I do feel
12 like I have the intellect to perform the job. I
13 don't say that adamantly, I don't say that with
14 an overabundance of being too sure of myself, but
15 I do believe I have the intellect to be in that
16 job and performing that job with integrity. And
17 I am sorry, again, I am disappointed that anybody
18 would say that but I am sure after 31 years --
19 you know what, I am glad a client said that and I
20 am more happy about that than having an attorney
21 saying that.

22 MR. ODOM: Mr. Elliot, just a few minor
23 issues and questions. Have you sought or
24 received the pledge of any legislators as of this
25 date?

1 MR. ELLIOT: No, sir.

2 MR. ODOM: Have you sought or have you
3 been offered any conditional pledges of support
4 pending the outcome of the screening?

5 MR. ELLIOT: No, sir.

6 MR. ODOM: Here you asked any third
7 party to contact members of the General Assembly
8 on your behalf?

9 MR. ELLIOT: No, sir.

10 MR. ODOM: Are you aware of anyone
11 attempting to intervene in this part of the
12 process on your behalf?

13 MR. ELLIOT: No, sir.

14 MR. ODOM: Have you contacted any
15 members of the commission?

16 MR. ELLIOT: No, sir.

17 MR. ODOM: Do you understand that
18 you're prohibited from seeking a pledge of the
19 members of the committee until after 48 hours
20 after formally releasing the commission's report?

21 MR. ELLIOT: Absolutely.

22 MR. ODOM: Have you reviewed the
23 commissions' guidelines on pledges?

24 MR. ELLIOT: Yes, sir.

25 MR. ODOM: And as a follow up, are you

1 aware of the penalties for violating the pledging
2 rules, that is it is a misdemeanor and upon
3 conviction the violator must be fined not more
4 than \$1,000 or imprisoned for not more than 90
5 days?

6 MR. ELLIOT: Yes, sir.

7 MR. ODOM: Mr. Chairman, I would note
8 that the Midlands Citizen's Committee reported
9 that Mr. Elliot is qualified in the evaluative
10 criteria of constitutional qualifications of
11 physical health and mental stability. The
12 committee found Mr. Elliot well qualified in the
13 remaining evaluative criteria of ethical fitness,
14 professional and academic ability, character,
15 reputation, experience and judicial temperament.
16 The committee stated in summary: We were
17 impressed with all of Mr. Elliot's extensive
18 experience but also his honesty, integrity,
19 common sense and humility. We interviewed no
20 other candidate who has practiced law for 31
21 years. We believe he is most eminently qualified
22 to serve on the Family Court and are certain he
23 will serve in an exemplary manner.

24 I note for the record that any concerns
25 raised through the investigation regarding Mr.

1 Elliot were incorporated into the questioning
2 today.

3 I have no further questions.

4 REPRESENTATIVE DELLENEY: Does any
5 member of the commission have any questions for
6 Mr. Elliot?

7 There being none, I'll just say you
8 made a pretty good score on the test, Mr. Elliot.

9 MR. ELLIOT: Thank you.

10 REPRESENTATIVE DELLENEY: In any event
11 Mr. Elliot, thank you so, much for appearing
12 before us today and this concludes this part of
13 the screening process. As you know we will issue
14 a draft report and that draft report will
15 eventually be included in the final report.
16 Before that happens if we so chose we could bring
17 you back down here and have another public
18 hearing and ask you more questions or whatever.
19 That is not really likely to happen in your case,
20 but it is a possibility.

21 You have enunciated that you understand
22 the 48 hour rule and those time frames will be on
23 the final report. With that I'd like to thank
24 you for offering and I hope you have a safe trip
25 back home.

1 MR. ELLIOT: Thank you very much.

2 REPRESENTATIVE DELLENEY: We're waiting
3 for counsel, is that correct?

4 MS. SHULER: Yes, sir.

5 REPRESENTATIVE DELLENEY: We have
6 before us this morning Melissa Johnson Emery who
7 seeks the position of the Family Court At-large
8 seat number 5.

9 If would please raise your right hand
10 and be sworn.

11 (Melissa Johnson Emery, was duly sworn,
12 after which testimony began at 10:03 a.m.)

13 REPRESENTATIVE DELLENEY: Do you have
14 anybody here you need to introduce us to?

15 MS. EMERY: I have my friend Martha
16 Hamill (ph), she's on the Family Law Counsel and
17 she came up with me. We actually have a meeting
18 this afternoon so she came up with me.

19 REPRESENTATIVE DELLENEY: We're glad to
20 meet you.

21 Have you had an opportunity to review
22 your Personal Data Questionnaire?

23 MS. EMERY: I have.

24 REPRESENTATIVE DELLENEY: Is it
25 correct?

1 MS. EMERY: Yes, sir.

2 REPRESENTATIVE DELLENEY: Do you object
3 to our making that summary a part of the record
4 of your sworn testimony?

5 MS. EMERY: I do not.

6 REPRESENTATIVE DELLENEY: It will be
7 now made part of the transcript without
8 objection.

9 (EXH. 5, Melissa Johnson Emery's
10 Personal Data Questionnaire marked for
11 identification.)

12 REPRESENTATIVE DELLENEY: The Judicial
13 Merit Selection Commission has thoroughly
14 investigated your qualifications for service on
15 the bench. Our inquiry is primarily focused on
16 nine evaluative criteria which has included a
17 survey of the bench and the bar, a thorough study
18 of your application materials, verification of
19 your compliance with the State ethics laws, a
20 search of any newspaper articles in which your
21 name may have appeared, a study of previous
22 screenings and a check of any economic conflicts
23 of interest.

24 There are no affidavits filed in
25 opposition to your election nor are there any

1 witnesses here to testify. Do you have a brief
2 opening statement you'd like to make?

3 MS. EMERY: Well, I appreciate you
4 having me here today. I would first like to
5 thank the legislators for the creation of this
6 Family Court seat. As a Family Court
7 practitioner I believe that having been raised in
8 the Family Court I think it's wonderful that you
9 all are taking this step to create the offer and
10 I believe this will be a huge benefit for South
11 Carolina whether I'm elected or not. However, I
12 have dedicated my professional life to Family
13 Court, that is one of my passions in life, and I
14 have enjoyed it throughout my career and believe
15 that I would be an asset to the bench, I would
16 bring my experience and my passion for the Family
17 Court to the bench if elected, and I appreciate
18 the opportunity.

19 REPRESENTATIVE DELLENEY: Thank you,
20 ma'am. If you would answer any questions counsel
21 may have for you.

22 MR. FIFFICK: Ms. Emery, you have
23 before you your Sworn Statement that you provided
24 with detailed answers to over 30 questions
25 regarding judicial conduct, statutory

1 qualifications, office administration and
2 temperament.

3 Are there any additional amendments
4 that you would like to make at this time to your
5 Sworn Statement?

6 MS. EMERY: No, sir.

7 MR. FIFFICK: Mr. Chairman, at this
8 time I would ask that Ms. Emery's Sworn Statement
9 be entered as an exhibit to the record.

10 REPRESENTATIVE DELLENEY: The sworn
11 statement will be entered at this point in the
12 transcript.

13 (EXH. 6, Melissa Emery's Sworn
14 Statement, was marked for identification.)

15 MR. FIFFICK: Mr. Chairman, I note for
16 the record that based on the testimony of the
17 candidate's PDQ, which has been included in the
18 record with the candidate's consent, Ms. Emery
19 meets the statutory requirements regarding age,
20 residence and years of practice.

21 Ms. Emery, could you please state the
22 city and circuit in which you reside.

23 MS. EMERY: I live in Myrtle Beach,
24 South Carolina and I practice in Conway which is
25 the 15th Judicial Circuit.

1 MR. FIFFICK: Ms. Emery, why do you
2 want to serve as a Family Court judge?

3 MS. EMERY: Well, as I stated in my
4 opening statement I am a Family Court
5 practitioner and that is a hundred percent of my
6 practice is in the Family Court, and that has
7 been the case for I would say the last 15, 16
8 years. And I've served in guardian cases, I have
9 served as a mediator so I have a full practice
10 that deals with each and every aspect of family
11 law, and I just think that we need Family Court
12 judges who have experience in family law on the
13 bench for the benefit of the judiciary, and I
14 feel I would serve well.

15 MR. FIFFICK: Thank you, ma'am. Is
16 there anything else you would like to tell the
17 commission that explains how you feel your legal
18 or professional experience thus far will assist
19 you in being an effective Family Court judge?

20 MS. EMERY: None other than this has
21 just been my professional life. I was a judicial
22 clerk my first year out and thereafter I went
23 into private practice, and Family Court has been
24 my focus since that time.

25 MR. FIFFICK: Thank you. Are there any

1 areas including subjective areas of the law that
2 you would need to additionally prepare for in
3 order to serve as judge, and how would you handle
4 that additional preparation?

5 MS. EMERY: I don't believe there's any
6 area that I would actually have to prepare for, I
7 have practiced in each area. The one that I
8 probably would have to brush up on would be the
9 juveniles, simply because for 11 years I was
10 practicing with a firm and I got all the court
11 appointments when they came down the pike from
12 all the attorneys, so did a lot of juvenile work.
13 I did a lot of DSS appointments at that time,
14 however, since I became a mediator in Horry
15 County it has become one of the pilot counties
16 for DSS investigations, and we volunteer our time
17 in rotation to them and mediate every Friday
18 morning those DSS cases. Since I've been a
19 volunteer for those cases and I'm one of the few
20 certified mediators in Horry County, that kind of
21 takes my appointments up so I don't get as many
22 juvenile appointments as I once did.

23 So if I had to brush up on that I
24 believe I would. That would be the area that I
25 think I would need the most catch up.

1 MR. FIFFICK: Although you addressed
2 this in your Sworn Affidavit could you please
3 explain to the members of the commission what you
4 think the appropriate demeanor is for a judge.

5 MS. EMERY: Well, I think the
6 appropriate demeanor for a judge is to treat
7 everyone fairly and remember that the only thing
8 that separates you from the others is a robe, but
9 that doesn't give you the right to act like
10 you're any better, you just have a different job.
11 I have always felt about that as an attorney the
12 only difference between me and someone else is
13 just a degree.

14 I think everybody has a right to come
15 in Family Court and feel like the person that is
16 deciding their fate and the fate of their
17 children and the fate of their family is looking
18 at them and treating them truly and fairly and
19 giving them due consideration, and making them
20 feel as if they are truly given consideration.
21 Now, do I think a judge should be a pushover?
22 Absolutely not, I think the judge has a tough job
23 in that they're making tough decisions, and you
24 can't please everyone. But I think if it's done
25 fairly I think the job can be done.

1 MR. FIFFICK: Thank you, ma'am. Is
2 there any Family Court judge that is currently on
3 the bench that you feel particularly exemplifies
4 the characteristics that you believe a judge
5 should have?

6 MS. EMERY: Well, I'm partial to my
7 resident judges. When I came to private practice
8 in Horry County Judge Lisa Kinon was taking the
9 bench, that was her first year on the bench. I
10 think she got sworn in at the beginning of July
11 and I went into private practice in August. And
12 I have watched her grow as a member of the
13 judiciary and think she just does a stellar job.

14 There's other parts of the state in
15 which Family Court might not be as pleasant to
16 work in as it is in Horry County because our
17 judges are very tuned in and plugged in with
18 what's going on with our county and with our bar
19 and meet with our bar members regularly to see
20 what problems are going on. They are tuned in
21 and they keep control of it. If you walk into
22 one of our resident judge's courtrooms you know
23 who is in control; it's not you, it's the person
24 who is supposed to be really in control. So I
25 think all our judges in Horry County and in the

1 15th Circuit do a fabulous job, and I would like
2 to mirror with them if I could.

3 MR. FIFFICK: What suggestions would
4 you offer for improving the backlog of cases on
5 the docket, if any?

6 MS. EMERY: Well, I think that the
7 legislators are taking a huge step toward that by
8 creating this seat because there is a tremendous
9 backlog in the Family Court and I think that with
10 the addition of the new judge seat they will fill
11 it up and make sure that the docket is run well.

12 One of the things we do in Horry County
13 is called short notice time; if we have a three
14 or four day trial that gets continued the
15 scheduling clerk will send out a notice saying
16 we've got short notice of time; not enough time
17 for a statutory required notice time but if you
18 have got something you can put on the record and
19 everybody is in agreement and you can get it
20 done, that clears up a lot of space on the
21 docket. So I think you have to be creative to
22 make sure that you're using this important time
23 instead of just letting the day go by.

24 And I think our resident judges do an
25 excellent job with that and I would look forward

1 to working with them as a Family Court Judge
2 At-Large and as a member of the judiciary sharing
3 that kind of information would be helpful.

4 MR. FIFFICK: Thank you, Ms. Emery. Do
5 you currently carry malpractice insurance in your
6 law practice, and if so how long have you carried
7 malpractice insurance?

8 MS. EMERY: I do carry -- I'm a sole
9 practitioner and I do carry malpractice insurance
10 and I have had malpractice insurance the entire
11 time that I have practiced law.

12 MR. FIFFICK: Thank you. Ms. Emery,
13 the commission received 94 ballot box surveys
14 regarding you with eight additional comments.
15 Three of those in the survey indicate a concern.
16 One was that you notarized a signature
17 improperly.

18 While you have responded to this
19 accusation in writing and you do acknowledge it
20 occurred, please briefly explain the situation
21 and how you believe it's come to light in the
22 context of your candidacy.

23 MS. EMERY: I was a new attorney and we
24 had a case, it was in front of Judge Kinon. And
25 we had a situation where a fellow had provided us

1 an affidavit stating -- the judge had signed an
2 ex-parte order based on an affidavit that made
3 some pretty heavy allegations against their mom.
4 She came and retained me and during that period
5 of time he recanted. I interviewed him and he
6 recanted and said, we just broke up and I didn't
7 know it could go this far. And so I prepared an
8 affidavit based on his statement.

9 I sent my assistant out to where he
10 worked to give him the statement and at that
11 point in time he couldn't stop what he was doing
12 and said to leave it with him and I'll make a
13 copy. So the next day -- I heard from him and he
14 had signed it. So the next day the client brings
15 it in and it was not notarized. And I verified
16 with him that he had signed it and then I
17 notarized it. Huge mistake.

18 Went in and the judge called him into
19 -- actually called him into court. He had
20 acknowledged that he had signed both statements.
21 At that time she was quite angry because she had
22 found an ex-parte order based on that initial
23 affidavit that took custody away from the mother,
24 and so she referred the matter to the solicitor's
25 office because he had signed both statements, and

1 he acknowledged he signed both statements.

2 At that time I just felt a burden about
3 what had happened and I went to the solicitor's
4 office and I said, look, I know he signed both
5 statements and I know why the judge referred him
6 here, but I feel like it's very important for me
7 to explain to you what happened as far as the
8 affidavit that I prepared and how it was
9 notarized. So I reported that to the solicitor's
10 office. I don't know where they went with it
11 after that, I don't know if they went forward
12 with it after that. I think they dealt with it,
13 but I just felt like it was very important.

14 It was probably the most scared I've
15 ever been in my practice because I realized it
16 was one of those things you look back and say
17 what was I thinking. But I can tell you it was a
18 mistake that I truly learned from because it has
19 never happened again. And my assistant that's
20 been with me now for about 10 years can tell you
21 it's one of the things I am most anal retentive
22 about because it was a huge learning experience,
23 and I know it was a mistake I made early on in my
24 practice but it was something I learned from.
25 And I think that's just very telling because

1 everybody makes a mistake at some point in time
2 and you look back and say I wish I hadn't done
3 that or not post judgement call, but it's where
4 you go from there. And I think it's very telling
5 of my character that the fact that that incident
6 allowed me to understand the very importance of
7 the documents that you present to the court. And
8 the fact that your integrity is of the utmost
9 importance and that if you make a mistake the
10 embarrassment of having come forward and saying I
11 made this mistake is enough to stay away from.

12 So I think I learned form that and I
13 think it's made me a better attorney.

14 MR. FIFFICK: Two ballot box surveys
15 alleged that you are rude and untrustworthy.
16 Would you care to respond?

17 MS. EMERY: I don't agree with that. I
18 think that being a divorce attorney puts you in
19 an adversarial position. I think we probably get
20 seen as the ones you either like us or you hate
21 us.

22 I can tell you that I am a good
23 attorney and I am a tough attorney. I take
24 professional courtesy very seriously. I actually
25 have a clause for professional courtesy in my

1 representation agreement that my client, when
2 they hire me they understand; you understand that
3 I will deal with professional courtesy with
4 opposing counsel or any other attorney in this
5 case as I see fit. If you don't agree with that,
6 if you have a different opinion, then you need to
7 let me know before you sign this agreement.
8 That's how seriously I take professional courtesy
9 and how you treat people.

10 Now, it is to a point, though. I'll
11 try the case, I am a mediator, I'm one of the
12 certified mediators in Horry County, but if we
13 get to a point and we can't settle it and we go
14 to trial, they better bring it because I am going
15 to zealously represent my client. And I'm going
16 to know the rules, I'm going to be organized and
17 I'm going to be prepared.

18 Does that translate to opposing things
19 I'm not doing? I don't know. I recently had a
20 trial to where one of the fellows said, you were
21 mean to me. I said, well, we were standing in
22 court. You tried to introduce a piece of
23 evidence you didn't turn over to me in discovery
24 and it was very damaging to my client. He said,
25 you embarrassed me. Well, I understand that, but

1 who is my loyalty to? My client who I'm here to
2 represent. But if I know you've got a piece of
3 evidence that you're trying to put in when you
4 didn't send it to me like you were supposed to,
5 I've got to represent my client so I'm going to
6 object to that. The judge didn't allow it in.
7 But he got angry because he said I was mean to
8 him, I embarrassed him.

9 So if that's the characterization that
10 somebody wants to say I am mean or I'm rude
11 because I am going to zealously represent my
12 client, then I'll own that because that's my job.

13 Now, I can tell you that I don't
14 purposely try to be rude or mean to anyone, and I
15 have a lot of friends in the bar and I do a lot
16 to help. In Horry County we have a mentor
17 program. I have three mentees, Family Court
18 attorneys that have been assigned to me and that
19 I work with on a weekly basis in answering
20 questions they might have. I do a ton of
21 mediations by agreement of the parties. I think
22 if I was a rude or ugly person I wouldn't have as
23 good a mediation practice that I have. I think
24 if they came to me and I was consistently ugly or
25 nasty to them I wouldn't have that practice,

1 they'd go somewhere else.

2 I am consistently agreed upon as a
3 guardian in private custody cases. I think if I
4 was consistently rude or ugly people would not
5 choose me to act or serve in that capacity that
6 they have to deal with me on a regular basis.

7 So not knowing who made the report, I
8 can't tell you, but can I tell you that I have
9 probably offended somebody, I would not doubt
10 that, but I can tell you that I do try to be fair
11 and I don't offend on purpose.

12 MR. FIFFICK: Thank you. One anonymous
13 ballot indicated that you unduly are influenced
14 on the bench by the identity of the litigants
15 before you. Would you care to respond?

16 MS. EMERY: I don't believe so. We are
17 a very close knit group down in Horry County. We
18 have a good Family Court bar. We have a family
19 law seminar that we put on every year and I've
20 been in charge of that for the last 10 or 11
21 years and we work very closely together. I don't
22 think I would.

23 And as a precursor to showing that I
24 don't think there would have been any bias in
25 mediation because mediation -- the mediators are

1 required by the statute to be unbiased. Somebody
2 comes in, they sit down, the mediator is the
3 instrument alone to help them get settled in that
4 process. I think if I had a tendency to favor
5 one group or another group or one attorney or
6 another attorney, I would not have a successful
7 mediation practice because people would just say,
8 hey, you can't get a fair shake out of her, we're
9 not going to use her.

10 But I probably have as much if not more
11 mediations coming to me than any other mediators
12 in Horry County, so I don't know who said it, so
13 can't respond to that directly but I think it's
14 inaccurate. I can honestly say there are three
15 or four of us Family Court attorneys that just do
16 Family Court. We practice together on a regular
17 basis but we have reached a point in our practice
18 and our friendship that we don't take cases
19 together because it would damage our friendship.
20 I have. And I've already put those ladies on
21 notice. If I get a judgeship down in Horry
22 County you can't practice in front of me.

23 So I don't think that I would have an
24 inability to recognize that and recuse myself if
25 necessary, and I certainly don't think that I

1 would hold someone who is either in their favor
2 or against them.

3 MR. FIFFICK: Thank you. One final
4 report from the ballot box survey indicated that
5 you have acted as if you are already on the
6 bench. Again, would you care to respond?

7 MS. EMERY: Not knowing who said that I
8 have no idea. I do work very closely with our
9 judges because they help us with that CLL, we do
10 it every December, it's in process right now.
11 And in doing so I have to work closely with the
12 judges. Our judges also have what is called the
13 Save the Family Court committee that is a core
14 group of Family Court attorneys that they meet
15 with. We talk about some procedural stuff with
16 what is going on in the Family Court of Horry
17 County, and when new legislation comes down the
18 pike they meet to kind of disseminate that
19 information and then we help branch that out to
20 the bar. So I don't know who said that. I think
21 since it's one person that's anonymous that I
22 can't respond to who said it. But do I think I'm
23 a judge? No, and I can tell you that each one of
24 my resident judges don't think that either
25 because I get a spanked bottom on a regular

1 basis. So I lose as many as I win depending upon
2 the law and the facts. And I don't think my due
3 diligence is different because of who I am. And
4 I just don't see the merit in that.

5 MR. FIFFICK: I have a few housekeeping
6 issues to take care of. Have you sought or
7 received the pledge of a legislator prior to this
8 date?

9 MS. EMERY: No.

10 MR. FIFFICK: Have you sought or have
11 you been offered a conditional pledge of support
12 of any legislator pending the outcome of your
13 screening?

14 MS. EMERY: No.

15 MR. FIFFICK: Have you asked any third
16 parties to contact the members of the General
17 Assembly on your behalf?

18 MS. EMERY: No.

19 MR. FIFFICK: Are you aware of anyone
20 attempting to intervene on any part of the
21 process on your behalf?

22 MS. EMERY: No.

23 MR. FIFFICK: Have you contacted any
24 members of the commission?

25 MS. EMERY: No.

1 MR. FIFFICK: Do you understand that
2 you are prohibited from seeking a pledge until 48
3 hours after the formal release of the
4 commission's report?

5 MS. EMERY: I do understand that, yes.

6 MR. FIFFICK: Have you reviewed the
7 commission's guidelines on pledging?

8 MS. EMERY: Yes.

9 MR. FIFFICK: As a follow up are you
10 aware of the penalties for violating the pledging
11 rules and that it's a misdemeanor and upon
12 conviction the violator must be fined not more
13 than \$1,000 or imprisoned for not more than 90
14 days?

15 MS. EMERY: Yes.

16 MR. FIFFICK: I would note that the Pee
17 Dee Citizen's Committee found Ms. Emery well
18 qualified in six of the nine evaluative criteria
19 of ethical fitness, professional and academic
20 ability, character, reputation, experience and
21 judicial temperament. The committee found Ms.
22 Emery qualified in the area of constitutional
23 qualifications, physical health and mental
24 stability.

25 In summary, the committee stated that

1 Ms. Emery has the experience as well as the
2 temperament to be an outstanding Family Court
3 judge. We give her superlative marks and hope to
4 hear that she will soon be on the bench.

5 I would note for the record that any
6 concerns raised during the investigation today
7 regarding Ms. Emery were incorporated in the
8 questions for the candidate today. I have no
9 further questions.

10 REPRESENTATIVE DELLENEY: Do any
11 members of the commission have any questions for
12 Ms. Emery?

13 (No response.)

14 REPRESENTATIVE DELLENEY: There being
15 none, Ms. Emery, we thank you so much for
16 appearing before us today and this concludes this
17 portion of the screening process for you.

18 As you know we will issue a draft
19 report that will eventually become the final
20 report. Once that occurs the process is over and
21 it can't be re-opened, but before that we could
22 reconvene and we could ask you questions if we
23 needed to and bring you back. It's unlikely that
24 that will be the case but it has happened in the
25 past.

1 And you have stated that you understand
2 the 48 hour rules. And with that we thank you
3 for you offer to serve and we hope you have a
4 pleasant day.

5 MS. EMERY: Thank you, sir.

6 SENATOR MARTIN: Good morning.

7 MR. MACK: Good morning.

8 SENATOR MARTIN: We have before us this
9 morning Bernard F. Mack who seeks the position of
10 the Family Court At-large seat number 5.

11 If would, Mr. Mack, please raise your
12 right hand and be sworn.

13 (Bernard F. Mack, was duly sworn, after
14 which testimony began at 10:25 a.m.)

15 Have you had an opportunity to review
16 your Personal Data Questionnaire?

17 MR. MACK: Yes, sir.

18 SENATOR MARTIN: Is it correct?

19 MR. MACK: It is.

20 SENATOR MARTIN: I take it there is
21 nothing that needs to be changed?

22 MR. MACK: That is correct.

23 SENATOR MARTIN: Do you object to our
24 making that summary a part of the record of your
25 sworn testimony?

1 MR. MACK: No objection.

2 SENATOR MARTIN: It will be now made
3 part of the transcript without objection.

4 (EXH. 7, Bernard Mack's Personal Data
5 Questionnaire marked for identification.)

6 SENATOR MARTIN: The Judicial Merit
7 Selection Commission has thoroughly investigated
8 your qualifications for service on the bench.
9 Our inquiry is primarily focused on nine
10 evaluative criteria which has included a survey
11 of the bench and the bar, a thorough study of
12 your application materials, a verification of
13 your compliance with the State ethics laws, a
14 search of any newspaper articles in which your
15 name may have appeared, a study of previous
16 screenings and a check for any economic conflicts
17 of interest.

18 There are no affidavits filed in
19 opposition to your election nor are there any
20 witnesses here to testify.

21 Do you have a brief opening statement
22 you'd like to make, sir?

23 MR. MACK: Yes, sir. This is probably
24 the third or fourth time I have been up here as a
25 candidate of the Family Court. All the priors

1 have been with regard to Charleston seats. I
2 have been practicing in Family Court in
3 Charleston, Dorchester and Berkeley for over 30
4 years now. I started out in the early 1980s as a
5 young prosecutor and eventually as a public
6 defender in the Family Court division in
7 Charleston. I was also involved back in the days
8 when the solicitor represented the Department of
9 Social Services so I acted as an attorney for the
10 Department of Social Services, the DSS
11 proceedings in the early 80s.

12 I had went into private practice in
13 about 1985, have been in private practice
14 continually since that time. I've practiced with
15 the same two gentlemen David Day and Walter Imeco
16 (ph), which is kind of unique in itself to have a
17 30-year relationship with your two law partners.

18 I practice primarily both criminal,
19 domestic and State law in the Tri-county area in
20 the lower part of the state. Have had extensive
21 experience in representing individuals in both
22 Family Court, both juveniles and probably
23 thousands of divorce cases, have acted as a
24 mediator since mediation came into our process
25 and have been involved in the mediation process.

1 Each time that I have run, this time
2 and the last time, have been very gratifying to
3 get the support of my peers, found them highly
4 qualified both last time and this time. Really,
5 I think the greatest gratification of this
6 process is having to serve in the bar and the
7 support of people that I have been practicing
8 with for the last 30 years and the endorsement
9 they have given me as I have come up here to
10 apply for this position. Thank you.

11 SENATOR MARTIN: Thank you, Mr. Mack.
12 At this time answer any questions that counsel
13 may have for you.

14 MR. DAVIDSON: Mr. Vice Chairman,
15 members of the commission, I have a few
16 procedural matters to take care of with this
17 candidate.

18 Mr. Mack, you have before you your
19 Personal Data Questionnaire you submitted as part
20 of your application. Are there any amendments
21 you'd like to make at this time to your PDQ?

22 MR. MACK: No, sir.

23 MR. DAVIDSON: Mr. Chairman, I'd like
24 to ask that Mr. Mack's PDQ be entered as an
25 exhibit.

1 SENATOR MARTIN: It has already been
2 entered.

3 MR. DAVIDSON: Mr. Mack, you also have
4 before you the Sworn Statement that you provided
5 detailed answers to over 30 questions regarding
6 judicial conduct, statutory qualifications,
7 office administration and temperament.

8 Are there any changes or amendments
9 that you would like make to this copy of your
10 Sworn Statement?

11 MR. MACK: No, sir.

12 MR. DAVIDSON: At this time, Mr.
13 Chairman, I'd like to ask that Mr. Mack's Sworn
14 Statement be entered into the record as well.

15 SENATOR MARTIN: Without objection it
16 will be entered at this time.

17 (EXH. 8, Bernard F. Mack's Sworn
18 Statement, was marked for identification.)

19 MR. DAVIDSON: Mr. Chairman I would
20 also state for the record that Mr. Mack meets the
21 statutory requirements for this position
22 regarding age, residence and years of practice.

23 Mr. Mack, please state the city and the
24 circuit in which you reside.

25 MR. MACK: I reside in the 9th Judicial

1 Circuit in Charleston.

2 MR. DAVIDSON: If you would, please
3 explain to the commission why you would like to
4 serve as a Family Court judge.

5 MR. MACK: I have been involved in the
6 Family Court as I stated for 30 years now, that's
7 been the primary area of my practice and I have
8 now just turned 60 years old, so I kind of see it
9 as a culmination of both an opportunity to be of
10 service as a judge in the At-Large seat as well
11 as a culmination of my personal and professional
12 career in terms of being able to sit on the bench
13 and have that perspective in the terms of the
14 practice of law that I've had over the past 30
15 years and the experience I've had with that.

16 Are there any areas including
17 subjective areas of the law that you would need
18 to additionally prepare for in order to serve as
19 a judge and if so how would you handle that
20 additional preparation?

21 MR. MACK: I don't think there's
22 anything additional.

23 MR. DAVIDSON: Okay. Although you
24 answered this in the Sworn Affidavit, could you
25 please explain to the members what you think the

1 appropriate demeanor is for a judge.

2 MR. MACK: I have been in front of a
3 lot of judges and I think I know what the
4 appropriate demeanor is and that is to be a fair
5 minded, open-minded individual who gives an
6 opportunity for all sides to be heard, to act
7 with an even keel so to speak. And that's very
8 important for a judge to give both sides a fair
9 opportunity to be heard on all the issues before
10 the court and to do that in a restrained manner,
11 in a restrained personal manner in terms of being
12 fair minded at all times with regard to all
13 decisions you make.

14 MR. DAVIDSON: Thank you. Is there any
15 Family Court judge currently on the bench that
16 you would like to model yourself after?

17 MR. MACK: Yes, I have a great deal of
18 admiration for Wayne Creech in Berkeley County.
19 I have practiced in front of him for a long
20 period of time. I think he's a model Family
21 Court judge as is Jack Ramses as well. I think
22 we've got two really fine Family Court judges in
23 Berkeley County among others in Charleston as
24 well, but that's the ones I would mention.

25 MR. DAVIDSON: Is there any Family

1 Court judge that you feel particularly
2 exemplifies the characteristics you believe a
3 judge should have, or would those be the same
4 judges?

5 MR. MACK: I think they would be the
6 same judges. Also Judge Landis in Berkeley
7 County as well as Judge Wylie in Dorchester
8 County. He is an excellent judge as well.

9 MR. DAVIDSON: What suggestions would
10 you offer for improving the backlog of cases on
11 the docket in Family Court?

12 MR. MACK: Well, I think one of the
13 situations we've got in Berkeley County is that
14 it has great backlog right now, much more so than
15 in Charleston and I think it more relates to the
16 clerk's office. I think one of the things we've
17 got to do is set aside days for uncontested
18 matters. And also my partners and I have talked
19 about what they do in Charleston is every Friday
20 you can go down and sign up for an uncontested
21 matter. They don't do that in Berkeley County.
22 So you can go assign your own case if the two
23 attorneys have reached an agreement and they're
24 ready to settle the case and put something on the
25 record, you go down at any time in Charleston and

1 sign the roster. They don't do that in Berkeley
2 County and that's one of the things I would
3 advocate.

4 We've also talked about getting the
5 legislature possibly get to the point where you
6 could appoint somebody like a special master to
7 hear uncontested matters, that's one thing we've
8 talked about in the bar; having somebody, a
9 well-experienced retired attorney assigned and be
10 appointed on Fridays to hear uncontested matters.
11 I know there's been a lot of contention about the
12 backlog because we have not gone through the
13 screening process and they're not officially
14 judges, but it's an idea that's been batted
15 around. I think it's been suggested to the
16 legislature through the committee of the
17 Charleston bar.

18 MR. DAVIDSON: Thank you. Do you
19 currently carry malpractice insurance in your law
20 practice and if so how long have you carried
21 malpractice insurance?

22 MR. MACK: I have carried it
23 continuously for 30 years through the cooperative
24 malpractice insurance company.

25 MR. DAVIDSON: Thank you.

1 Mr. Vice Chairman, at this time I'd
2 like to ask to go into executive session to
3 discuss the matter of this candidate.

4 MR. MARTIN: All right, without
5 objection.

6 (The Judicial Merit Selection
7 Commission went into executive session from 10:34
8 to 10:40 a.m.)

9 MR. MARTIN: The veil is lifted. We
10 are back on the record.

11 MR. DAVIDSON: Mr. Mack received a
12 number of ballot box surveys with no negative
13 complaints. I'll note that for the record.

14 Lastly I have a few housekeeping
15 matters.

16 Mr. Mack, have you sought or received a
17 pledge from any legislator prior to this date?

18 MR. MACK: No, sir.

19 MR. DAVIDSON: Have you sought or have
20 you been offered a conditional pledge of support
21 of any legislator pending the outcome of your
22 screening?

23 MR. MACK: No, sir.

24 MR. DAVIDSON: Have you asked any third
25 parties to contact the members of the General

1 Assembly on your behalf?

2 MR. MACK: No, sir.

3 MR. DAVIDSON: Are you aware of anyone
4 attempting to intervene on any part of the
5 process on your behalf?

6 MR. MACK: No, sir.

7 MR. DAVIDSON: Have you contacted any
8 members of the commission?

9 MR. MACK: No, sir.

10 MR. DAVIDSON: Do you understand that
11 you are prohibited from seeking a pledge until 48
12 hours after the formal release of the
13 commission's report?

14 MR. MACK: Yes, sir.

15 MR. DAVIDSON: Have you reviewed the
16 commission's guidelines on pledging?

17 MR. MACK: I have.

18 MR. DAVIDSON: As a follow up are you
19 aware of the penalties for violating the pledging
20 rules are that it's a misdemeanor and upon
21 conviction the violator must be fined not more
22 than \$1,000 or imprisoned for not more than 90
23 days?

24 MR. MACK: I am.

25 MR. DAVIDSON: I would note that the

1 Lowcountry Citizen's Committee found Mr. Mack
2 qualified in the evaluative criteria of
3 constitutional qualifications of physical health
4 and mental stability. The Committee also found
5 him to be well qualified in the evaluative
6 criteria of ethical fitness, professional and
7 academic ability, character, reputation,
8 experience and judicial temperament.

9 Lastly I would note for the record that
10 any questions or any concerns raised during the
11 investigation regarding the candidate have been
12 incorporated in the questions asked today.

13 Mr. Vice Chairman, I have no further
14 questions.

15 SENATOR MARTIN: Does any member of the
16 committee have any questions for Mr. Mack?

17 (No response).

18 There being none, thank you, Mr. Mack,
19 for appearing before us today, for being willing
20 to serve as a Family Court judge and this
21 concludes this portion of your screening.

22 As you know we will issue a draft
23 report, which will eventually be the final
24 report, and once that happens the screening
25 process is over, however up until that time we

1 still have the right to reconvene the public
2 hearing and bring you back and question you to
3 clarify any issues that you may have brought up
4 today. Although it's unlikely, that could
5 happen.

6 Also you've also stated that you
7 understand the 48 hour rule.

8 MR. MACK: Yes.

9 SENATOR MARTIN: That time frame will
10 be stated on the front of the report as to when
11 you can seek commitments. And we hope you have a
12 safe trip back home.

13 MR. MACK: Thank you, sir.

14 REPRESENTATIVE DELLENEY: Good morning.

15 MR. MCGEE: Good morning.

16 REPRESENTATIVE DELLENEY: We have
17 before us this morning Randall Edward McGee who
18 seeks the position as Family Court At-Large seat
19 number 5. If you would raise your right hand to
20 be sworn, please sir.

21 (Randall Edward McGee, was duly sworn,
22 after which testimony began at 10:44 a.m.)

23 REPRESENTATIVE DELLENEY: Have you had
24 an opportunity to review your Personal Data
25 Questionnaire?

1 MR. MCGEE: Yes, sir.

2 REPRESENTATIVE DELLENEY: Is it
3 correct?

4 MR. MCGEE: Yes, sir.

5 REPRESENTATIVE DELLENEY: Is there
6 anything that needs to be changed?

7 MR. MCGEE: No, sir. We did an
8 amendment about my expenditures and that's been
9 submitted.

10 REPRESENTATIVE DELLENEY: Do you object
11 to us making this a part of your sworn testimony?

12 MR. MCGEE: No, sir.

13 REPRESENTATIVE DELLENEY: It will be
14 now made part of the transcript without
15 objection.

16 (EXH. 9, Randall Edward McGee's
17 Personal Data Questionnaire was marked for
18 identification.)

19 REPRESENTATIVE DELLENEY: The Judicial
20 Merit Selection Commission has thoroughly
21 investigated your qualifications for service on
22 the bench. Our inquiry is primarily focused on
23 nine evaluative criteria which has included a
24 survey of the bench and the bar, a thorough study
25 of your application materials, verification of

1 your compliance with the state ethics laws, a
2 search of any newspaper articles in which your
3 name may have appeared, a study of previous
4 screenings and a check of any economic conflicts
5 of interest.

6 There are no affidavits filed in
7 opposition to your election nor are there any
8 witnesses here to testify. Do you have a brief
9 opening statement you'd like to make?

10 MR. MCGEE: Yes, sir. I really
11 appreciate you all having me here today. I just
12 want to tell you I really appreciate all the help
13 from your staff, Ms. Shuler and her staff have
14 been very gracious with any calls I have made and
15 have been wonderful, and I think they do a great
16 job and I just appreciate the opportunity that I
17 have to be before you today.

18 REPRESENTATIVE DELLENEY: Thank you,
19 sir. Answer any questions our able counsel might
20 have for you.

21 MS. ANZELMO: Thank you. Mr. McGee you
22 have before you the Sworn Statement with detailed
23 answers to over 30 questions regarding judicial
24 conduct, statutory qualifications, office
25 administration and temperament.

1 Are there any additional amendments
2 that you would like to make at this time?

3 MR. MCGEE: No, ma'am.

4 MS. ANZELMO: Mr. Chairman, at this
5 time I would ask that Mr. McGee's Sworn Statement
6 be entered into the record as an exhibit.

7 REPRESENTATIVE DELLENEY: It will be
8 done at this point in the transcript.

9 (EXH. 10, Randall McGee's Sworn
10 Statement, was marked for identification.)

11 MS. ANZELMO: Mr. Chairman, I note for
12 the record that based on the testimony of the
13 candidate's PDQ, which has been included in the
14 record with the candidate's consent, Mr. McGee
15 meets the statutory requirements regarding age,
16 residence and years of practice.

17 Mr. McGee, could you please state the
18 city and circuit in which you reside.

19 MR. MCGEE: Yes, I reside in St.
20 Matthews, South Carolina, which is the 1st
21 Judicial Circuit.

22 MS. ANZELMO: Why do you currently want
23 to serve as a Family Court judge?

24 MR. MCGEE: I've had a desire to be a
25 Family Court judge for a while now. I've

1 practiced in Family Court for all 21 years of my
2 practice time but primarily in the last 15 years
3 my practice has evolved where I'm there almost
4 continuously, I would say it's at least 80
5 percent of what I do. I enjoy it, I believe I
6 have gained the experience that is necessary to
7 be a good judge.

8 I've been trained by good judges, I am
9 fortunate that I have been around good judges
10 that early on in my career taught me the right
11 way and wrong way to do things. Being in a small
12 area like Orangeburg and Calhoun I've been
13 fortunate enough to get a lot of mentoring when I
14 was coming along and it just turned into an area
15 that I really liked a lot, and I think I've got
16 the qualities to do a good job.

17 MS. ANZELMO: Are there any areas of
18 the law for which you would need to additionally
19 prepare to serve as a Family Court judge and how
20 would you handle that additional preparation?

21 MR. MCGEE: No, I don't think so. In
22 doing as much Family Court work as I have done I
23 pretty much have run the gamut of everything. I
24 have seen everything that can come through the
25 Family Court. That is not to say that I have got

1 tons of experience in certain things, but I've
2 had experience and I know where to go get the
3 ball if I need the ball I know where to find it
4 and I'm not going to be helpless about that. So
5 obviously everyone is better at certain things
6 than they are at others and it being an area that
7 I know where to get the material to be prepared
8 for the hearings and things that will be
9 happening in court.

10 MS. ANZELMO: I know you addressed this
11 in your Sworn Affidavit, but could you please
12 explain to the members of the commission what you
13 think is the appropriate demeanor for a judge.

14 MR. MCGEE: My parents taught me and I
15 really try to teach my children that you have to
16 treat everyone like you want to be treated. If
17 my children were here under oath they could tell
18 you they hear that almost every day, that is the
19 key rule in our house. I just think you need to
20 be fair, you need to be impartial, you need to
21 show you're impartial. And very importantly you
22 need to let everybody know they have had their
23 day in court; they have had their time to present
24 their case to you, they've had a fair time to
25 present their case to you. You have not showed

1 any favoritism, you have given them their day,
2 you have treated them in a fair and good way.
3 You have treated staff well, you've treated the
4 lawyers well and you can be firm without being
5 rude, without being arrogant. And I think if you
6 handle it that way you will be a good judge.

7 I've been fortunate the judges in my
8 circuit, that's how they do things and that's how
9 we've been taught and that's how I want to be.

10 MS. ANZELMO: Is there any particular
11 Family Court judge currently on the bench that
12 you would like to model yourself after that you
13 believe exemplifies the characteristics that a
14 Family Court judge should have?

15 MR. MCGEE: Well, I think Ann Jones in
16 our circuit. I tell people all the time Ann
17 Jones uses common sense to decide her cases. She
18 treats her litigants well, she treats the lawyers
19 well. I have never seen her treat anyone with
20 disrespect or make a lawyer look bad in court.
21 Unfortunately I have seen judges do that and
22 that's just wrong. It's hard to be a lawyer.
23 It's hard to be a lawyer in Family Court, it's
24 emotionally charged. The clients, it's the most
25 important thing going on in their life, and it

1 might be number 80 of the cases you are handling
2 at that time but it's the most important thing
3 going on in their life. And that judge can go a
4 long way in making that person feel like that
5 important matter that they're having handled is
6 being handled the right way. I think she's a
7 perfect example of that.

8 I think Judge Wylie as well. Judge
9 Creech, I believe Judge Creech is another judge
10 that does that very well. Those are just three
11 that I would point to.

12 MS. ANZELMO: What suggestions would
13 you offer for improving the backlog of cases on
14 the docket in Family Court?

15 MR. MCGEE: That's hard. I think just
16 creating six new seats is going to go a long way
17 to do that, I applaud the legislature for doing
18 that because I have practiced in Family Court,
19 not just in the Orangeburg-Calhoun area but a lot
20 of different areas of the state, and I know that
21 the pace at which these cases move can cause a
22 lot of stress for the clients and for the
23 children that are involved, so having these six
24 new seats and how they are going to get doled out
25 around the state to help with the backlog, that's

1 going to be great.

2 But on a personal basis if I get the
3 job I want to be sure there's a little more
4 monitoring of the cases, if I can do that along
5 with court administration. I love the pretrial
6 system, I love scheduling orders. I think
7 getting a scheduling order out of a pretrial
8 conference is a really good way to go. I know in
9 the federal system everything runs through a
10 scheduling order. We don't have to be quite that
11 far but to incorporate some of that into the
12 system I think will make the cases move faster
13 and make the lawyers stay on top of the cases.

14 MS. ANZELMO: Thank you. Mr. McGee, do
15 you currently carry malpractice insurance in your
16 law practice and if so how long have you carried
17 malpractice insurance?

18 MR. MCGEE: Yes, I do. I have had it
19 ever since I've been practicing. The law firm I
20 am with is an old law firm and they've always had
21 it so I've never had a period where there was a
22 lapse.

23 MS. ANZELMO: Thank you. The
24 commission received 77 ballot box surveys with 13
25 written comments concerning your candidacy, only

1 one of those comments caused concern.

2 The comment stated you have
3 questionable character and you believe you're
4 superior to others. How would you respond to
5 that?

6 MR. MCGEE: Obviously we would like to
7 get a perfect grade on that. I have thought
8 about that since I met with you and you told me
9 about it. And you're not going to please
10 everyone. We are in an adversarial system in
11 Family Court and so there are going to be times
12 when things happen where they may be
13 misinterpreted or folks may think it's this way
14 and it's really not that way, you're just being a
15 strong advocate for your client.

16 And if I have done anything to make
17 somebody feel that way then obviously I probably
18 need to work harder to make sure I try to give a
19 hundred percent where that doesn't happen,.

20 But I think overall the polling showed
21 that I have got a good reputation, that I do try
22 to treat people well and I do have a strong work
23 ethic and a strong general ethic. I will
24 disagree with them but obviously somebody felt
25 that way so I need to re-examine and do the best

1 I can every day. I promise I will do that if I
2 become a judge.

3 MS. ANZELMO: Thank you. Have you
4 sought or received a pledge from any legislator
5 prior to this date?

6 MR. MCGEE: No.

7 MS. ANZELMO: Have you sought or have
8 you been offered a conditional pledge of support
9 of any legislator pending the outcome of your
10 screening?

11 MR. MCGEE: No.

12 MS. ANZELMO: Have you asked any third
13 parties to contact the members of the General
14 Assembly on your behalf?

15 MR. MCGEE: No.

16 MS. ANZELMO: Are you aware of anyone
17 attempting to intervene on any part of the
18 process on your behalf?

19 MR. MCGEE: No.

20 MW. ANZELMO: Have you contacted any
21 members of the commission?

22 MR. MCGEE: No.

23 MS. ANZELMO: Do you understand that
24 you are prohibited from seeking a pledge until 48
25 hours after the formal release of the

1 commission's report?

2 MR. MCGEE: Yes.

3 MS. ANZELMO: Have you reviewed the
4 commission's guidelines on pledging?

5 MR. MCGEE: I have.

6 MS. ANZELMO: As a follow up are you
7 aware of the penalties for violating the pledging
8 rules are that it's a misdemeanor and upon
9 conviction the violator must be fined not more
10 than \$1,000 or imprisoned for not more than 90
11 days?

12 MR. MCGEE: Yes.

13 MS. ANZELMO: I would note that the
14 Lowcountry Citizen's Committee found Mr. McGee
15 qualified in the evaluative criteria of
16 experience, constitutional qualifications,
17 physical health and mental stability. The
18 committee also found Mr. McGee well qualified in
19 the evaluative criteria of ethical fitness,
20 professional and academic ability, character,
21 reputation, experience and judicial temperament.

22 I would also note for the record any
23 concerns raised regarding the candidate were
24 incorporated into the questioning of him today.

25 Mr. Chairman, I have no further

1 questions.

2 REPRESENTATIVE DELLENEY: Thank you.
3 Do any members of the commission have any further
4 questions for Mr. McGee?

5 SENATOR CAMPSEN: Mr. McGee, you
6 practice law with John Felder?

7 MR. MCGEE: I do.

8 SENATOR CAMPSEN: He's your partner?

9 MR. MCGEE: Indeed he is.

10 SENATOR CAMPSEN: And you live in St.
11 Matthews?

12 MR. MCGEE: I live in St. Matthews.

13 SENATOR CAMPSEN: No further questions.

14 REPRESENTATIVE DELLENEY: Any other
15 questions?

16 (No response)

17 There being none, thank you, Mr. McGee,
18 for availing yourself for the process and be
19 willing to serve as a judge. This concludes this
20 portion of the screening process.

21 As you know we will write a report
22 which will initially be a draft report to the
23 final report. Up until that time we could
24 reconvene the public hearing and bring you back
25 to clarify any questions about issues that might

1 need clarification. In any event in your case
2 it's very unlikely but it is a possibility.
3 After the report is issued the screening process
4 is over. You have stated you understand the 48
5 hour rule.

6 MR. MCGEE: Yes.

7 REPRESENTATIVE DELLENEY: With that
8 thank you for appearing, and have a good day.

9 MR. MCGEE: Thank you very much.

10 REPRESENTATIVE DELLENEY: Good morning,
11 Mr. Quinn.

12 MR. QUINN: Good morning.

13 REPRESENTATIVE DELLENEY: We have
14 before us this morning Mr. Thomas Joseph Quinn
15 seeking the position of Family Court At-large
16 seat number 5.

17 Please raise your right hand to be
18 sworn.

19 (Thomas Joseph Quinn, was duly sworn,
20 after which testimony began at 10:59 a.m.)

21 REPRESENTATIVE DELLENEY: Have you had
22 an opportunity to review your Personal Data
23 Questionnaire?

24 MR. QUINN: Yes, sir.

25 REPRESENTATIVE DELLENEY: Is it

1 correct?

2 MR. QUINN: It is except for one
3 amendment that I had submitted in writing to
4 question number 47. I wrote to Ms. Shuler on
5 September 26.

6 REPRESENTATIVE DELLENEY: It seems we
7 have that. Other than that is there anything
8 that needs to be changed?

9 MR. QUINN: No, sir.

10 REPRESENTATIVE DELLENEY: Do you object
11 to our making your summary a part of the record?

12 MR. QUINN: No, sir.

13 REPRESENTATIVE DELLENEY: It will be
14 done in this part of the transcript.

15 (EXH. 11, Thomas Quinn's Personal Data
16 Questionnaire, was marked for identification.)

17 REPRESENTATIVE DELLENEY: The Judicial
18 Merit Selection Commission has thoroughly
19 investigated your qualifications for service on
20 the bench. Our inquiry is primarily focused on
21 nine evaluative criteria which has included a
22 survey of the bench and the bar, a thorough study
23 of your application materials, verification of
24 your compliance with the State ethics laws, a
25 search of any newspaper articles in which your

1 name may have appeared, a study of previous
2 screenings and a check of any economic conflicts
3 of interest.

4 There are no affidavits filed in
5 opposition to your election nor are there any
6 witnesses here to testify. Do you have a brief
7 opening statement you'd like to make?

8 MR. QUINN: Just to thank the members
9 of the commission and to thank Ms. Shuler and Mr.
10 Goldin and their offices for helping me make the
11 amendments that I needed to make at that time.

12 REPRESENTATIVE DELLENEY: Thank you,
13 sir, and if you would answer any questions that
14 counsel may have for you.

15 MR. GOLDIN: Mr. Quinn, you have before
16 you the Sworn Statement that you provided
17 detailed answers to over 30 questions regarding
18 judicial conduct, statutory qualifications,
19 office administration and temperament.

20 Are there any additional changes that
21 you would like to make to this statement at this
22 time?

23 MR. QUINN: No.

24 MR. GOLDIN: At this time I'd ask that
25 Thomas Quinn's Sworn Statement be entered as an

1 exhibit into the hearing record.

2 REPRESENTATIVE DELLENEY: It will be
3 done at this point in the transcript without
4 objection.

5 (EXH. 12, Thomas Quinn's Sworn
6 Statement was marked for identification.)

7 MR. GOLDIN: A procedural matter, I
8 note for the record that based on testimony taken
9 from the candidate's Personal Data Questionnaire,
10 which has been included in the record, Thomas
11 Quinn meets the statutory requirements for this
12 position regarding age, residence and years of
13 practice. Mr. Quinn, please state the city and
14 the circuit in which you reside.

15 MR. QUINN: I live in Greenville, South
16 Carolina. That's in the 13th Judicial Circuit.

17 MR. GOLDIN: Why would you now want to
18 serve as a Family Court judge?

19 MR. QUINN: When I began my career I
20 began in Family Court, I practiced the first four
21 years primarily just doing Family Court defense
22 and then prosecution. Since I began as a lawyer
23 my goal has been to be a Family Court judge.

24 MR. GOLDIN: Thank you. Can you
25 explain to the commission how you feel your legal

1 and professional experience thus far will assist
2 you to be an effective judge.

3 MR. QUINN: One of the advantages you
4 get just from being around a long time is you get
5 to see what judges do and how they handle their
6 courtroom and handle issues and so I have that
7 background from having practiced in Family Court.
8 Of the 33 years I've been a lawyer probably 25
9 years I have been in Family Court so I have that
10 background and that's probably the strongest
11 thing I would bring to the bench is just the
12 experience I have had from handling every kind of
13 case you can have in Family Court.

14 MR. GOLDIN: Mr. Quinn, are there any
15 areas including subjective areas of the law that
16 you would need to additionally prepare for in
17 order to serve as a judge and if so how would you
18 handle that additional preparation?

19 MR. QUINN: The two things that I would
20 need to learn, one that I had to learn almost
21 from the beginning was Native American issues,
22 which have now become prominent in Family Court.
23 I have a case where that has become an issue so
24 I'm trying to learn those issues which I've not
25 been familiar with. The only other area of law

1 that I need to study a bit more is adoptions. I
2 have not been particularly involved in adoptions
3 in the last 12 or 13 years.

4 When I lived in Beaufort, which was 13
5 years ago, I was involved in adoptions. But
6 since then I've only been involved as a guardian
7 in adoptions, and not handled one, so that would
8 be another one is adoptions.

9 MR. GOLDIN: Although you addressed
10 this in your Sworn Affidavit, could you please
11 explain to the members of the commission what you
12 think is the appropriate demeanor for a Family
13 Court judge.

14 MR. QUINN: Patience, interested,
15 knowledgeable. I think those are probably the
16 three most important, I think. Litigants want to
17 know that the judge is attentive to their case,
18 is willing to give them the opportunity to speak
19 and address whatever issues they want addressed,
20 so I think the judge has to be attentive. A
21 judge has to be involved and interested in the
22 case. I think the judge has to be patient.
23 Family Court very often obviously deals with
24 children and it gets to be very heated and a
25 judge has to be able to handle those sort of

1 issues and slow down instead of going faster and
2 calm down instead of letting -- trying to heat
3 the situation or allow the situation to get more
4 heated than it was.

5 MR. GOLDIN: Is there any family judge
6 currently on the bench that you feel particularly
7 exemplifies the characteristics you believe a
8 judge should have?

9 MR. QUINN: There's a bunch of them,
10 unfortunately when you start naming judges you
11 leave somebody out who's going to say what did I
12 do wrong, why didn't you mention me?

13 I'll just tell you just yesterday I was
14 in front of Judge Wylie from Summerville who in a
15 very heated case did a wonderful job, talked to a
16 litigant who was represented but kept saying to
17 the attorney, do you object to me talking to your
18 client, is it all right that I speak with him,
19 and handled a hearing that was falling apart that
20 involved the custody of children beautifully. So
21 based on what I saw yesterday from Judge Wylie in
22 terms of patience and being able to deal with a
23 client he's the one that leaps to mind because I
24 was in front of him yesterday.

25 But you can run through all the judges

1 in Greenville County, we've got a great set of
2 judges right now in our circuit, so any of the
3 judges in Greenville County I would hold up an as
4 example and I would try to live up to. Judge
5 Burnside is excellent, he was a Family Court
6 judge here for years and he was about as good as
7 there ever was.

8 MR. GOLDIN: What suggestions would you
9 offer for improving the backlog of cases on the
10 docket in Family Court?

11 MR. QUINN: In Greenville County we do
12 almost everything we can to attack the backlog.
13 We try to encourage litigants to do consent
14 orders since you don't have to have hearings
15 particularly in temporary matters if at all
16 possible. And we do mediation, mediation is
17 mandatory in the 13th Circuit. But do mediation
18 sooner. We are in a situation where lawyers
19 aren't doing mediation until they're told. If
20 you don't do mediation and you get a court date,
21 your case is going to get struck which means all
22 we're doing is dealing with cases that are right
23 up against the year. We need to back that up and
24 try to do things earlier, try to attack those
25 cases in six months. Same thing with pretrial

1 conferences; the way you get a pretrial
2 conference now is you wait until the case is
3 going to be struck.

4 MR. GOLDIN: Mr. Quinn, do you
5 currently carry malpractice insurance in your law
6 practice and if so how long have you carried such
7 coverage?

8 MR. QUINN: I carry malpractice
9 insurance. I've always had malpractice
10 insurance.

11 MR. GOLDIN: Mr. Quinn, the commission
12 received 118 ballot box surveys regarding you
13 with 17 additional comments. Three of those
14 surveys indicated concerns regarding your
15 temperament and reputation. One remarked that
16 Tom is not very easy to work with, while another
17 commented Mr. Quinn is probably a basically
18 qualified attorney with experience, however I do
19 not believe he enjoys the best reputation in the
20 community or that he has the right personality
21 and temperament to serve as a Family Court judge.

22 What response would you offer to
23 address these issues?

24 MR. QUINN: Let me do them separately.
25 This first one that says I'm hard to get along

1 with, one of the problems with these surveys is
2 you don't know who said it or under what
3 circumstances. This is litigation we do. I can
4 be hard to get along with. If the other attorney
5 I think is proceeding in a manner that is not
6 appropriate or doing something that I don't think
7 is right or doing something that's hurting my
8 client, yes, I'm going to be as difficult to get
9 along with as possible. I don't know if that was
10 a compliment or an insult.

11 My reputation in the community, that's
12 one of those things you'd love to know who said
13 it and why. I have no idea why that comment
14 would be made, I have never had a bar or ethical
15 grievance filed against me. I've had to testify
16 once in a PCR in 33 years even though I do death
17 penalty cases in criminal court. I have no idea
18 why.

19 I know the committee has done an
20 examination of my background. I can't imagine
21 you have found anything in the community that
22 speaks ill of my background. I don't even know
23 what that means, so that one I find difficult to
24 explain.

25 MR. GOLDIN: Thank you, Mr. Quinn. I

1 would note for the record the majority of the
2 responses were positive.

3 At this time, Mr. Chairman, I would
4 like to ask that we go into executive session.

5 REPRESENTATIVE DELLENEY: Can I get a
6 motion that we go into executive session?

7 SENATOR MARTIN: So moved.

8 SENATOR NICHOLSON: Second.

9 REPRESENTATIVE DELLENEY: All in favor?

10 MULTIPLE SPEAKERS: Aye.

11 (The Judicial Merit Selection
12 Commission went into executive session from 11:08
13 a.m. to 11:11 a.m.)

14 REPRESENTATIVE DELLENEY: We are back
15 on the record.

16 MR. GOLDIN: Just some housekeeping
17 matters.

18 Have you sought or received the pledge
19 of any legislator pending the outcome of your
20 screening?

21 MR. QUINN: I have not.

22 MR. GOLDIN: Have you asked any third
23 parties to contact the members of the General
24 Assembly on your behalf?

25 MR. QUINN: No.

1 MR. GOLDIN: Have you contacted any
2 member of the commission in attempting to
3 intervene on any part of the process on your
4 behalf?

5 MR. QUINN: No.

6 MR. GOLDIN: Do you understand that you
7 are prohibited from seeking a pledge of
8 commitment until 48 hours after the formal
9 release of the commission's report?

10 MR. QUINN: I do.

11 MR. GOLDIN: Have you reviewed the
12 commission's guidelines on pledging?

13 MR. QUINN: I have.

14 MR. GOLDIN: As a follow up are you
15 aware of the penalties for violating the pledging
16 rules are that it's a misdemeanor and upon
17 conviction the violator must be fined not more
18 than \$1,000 or imprisoned for not more than 90
19 days?

20 MR. QUINN: I am.

21 MR. GOLDIN: I would note that the
22 Upstate Citizen's Committee found Mr. Quinn
23 qualified in all nine of the evaluative criteria
24 of constitutional qualifications, ethical
25 fitness, professional and academic ability,

1 character, reputation, experience and judicial
2 temperament, physical health and mental
3 stability.

4 I would also note for the record any
5 concerns raised regarding the candidate were
6 incorporated into the questioning of him today.

7 Mr. Chairman, I have no further
8 questions.

9 REPRESENTATIVE DELLENEY: Thank you.
10 Is there any member of the commission who has any
11 questions for Mr. Quinn? There being no
12 questions, thank you, Mr. Quinn, for appearing
13 before us today. This concludes this portion of
14 the screening process.

15 We will be issuing a draft report and
16 that draft report will be included into the final
17 report of the commission. Up until that time we
18 could reconvene the public hearing and bring you
19 back before us to clarify any issues that might
20 need clarification. In any event in your case
21 it's very unlikely but it is a possibility.
22 After the report is issued the screening process
23 is over. You have stated you understand the 48
24 hour rule. With that I'd like to again thank you
25 for offering to serve.

1 MR. QUINN: Thank you, sir.

2 REPRESENTATIVE DELLENEY: Counsel
3 advises me that we need to have a brief executive
4 session. Do I hear a motion?

5 SENATOR MARTIN: So moved.

6 SENATOR NICHOLSON: Second.

7 REPRESENTATIVE DELLENEY: All in favor?

8 MULTIPLE SPEAKERS: Aye.

9 (The Judicial Merit Selection
10 Commission went into executive session from 11:14
11 a.m. to 11:30 a.m.)

12 REPRESENTATIVE DELLENEY: We are back
13 on the record in the public session.

14 We have two proxies. I have the proxy
15 of Representative Clemmons and Mr. Harrel has the
16 proxy of Mr. Sellers.

17 All right. Is there any doubt that all
18 the candidates for Family Court At-Large seat
19 number 5 are qualified the candidates being
20 Rivers Davisson, Elliot, Emery, Mack and Quinn.
21 And all in favor of finding those candidates
22 qualified, please raise your hand.

23 MS SHULER: Ten.

24 REPRESENTATIVE DELLENEY: We will have
25 three votes on this race. Each of us can vote

1 for three people, and I'm voting Mr. Clemmons'
2 proxy and Mr. Harrel is voting as Sellers' proxy.

3 Martha Rivers Davisson, all those that
4 feel she is qualified to nominate raise your
5 hand.

6 MS. SHULER: Ten.

7 REPRESENTATIVE DELLENEY: Stevens
8 Bultman Elliot? All those that believe Mr.
9 Elliot should be qualified and nominated raise
10 your hands.

11 MS. SHULER: Zero.

12 REPRESENTATIVE DELLENEY: Next is
13 Melissa Johnson Emery. All those in favor of
14 finding Ms. Emery qualified and nominated raise
15 your hands.

16 MS. SHULER: Six.

17 REPRESENTATIVE DELLENEY: All those in
18 favor of finding Bernard F. Mack qualified and
19 nominated raise your hands.

20 MS. SHULER: Zero.

21 All those in favor of finding Randall
22 Edward McGee qualified and nominated raise your
23 hands.

24 MS. SHULER: Eight.

25 REPRESENTATIVE DELLENEY: Where does

1 that leave us?

2 MS. SHULER: Thomas Quinn.

3 REPRESENTATIVE DELLENEY: All those in
4 favor of finding Thomas Quinn qualified and
5 nominated raise your hand.

6 MS. SHULER: Four. That leaves Martha
7 Rivers Davisson, Melissa Johnson Emery with six
8 and Randall McGee with eight. There are two
9 votes that do not add up. It doesn't total
10 right. Let's start with Emery again and then go
11 to McGee and then go to Davisson.

12 REPRESENTATIVE DELLENEY: All right,
13 this is a re-vote.

14 All those in favor of finding Melissa
15 Johnson Emery, qualified and nominated raise your
16 hand.

17 MS. SHULER: Seven. Next is Randall
18 McGee.

19 REPRESENTATIVE DELLENEY: All those in
20 favor of finding Randall McGee, qualified and
21 nominated raise your hands.

22 MS. SHULER: Nine. So let's do Thomas
23 Quinn again.

24 REPRESENTATIVE DELLENEY: All those in
25 favor of finding Thomas Quinn qualified and

1 nominated raise your hand.

2 MS. SHULER: Four. So it's 10 for
3 Davisson, Melissa Johnson Emery, seven, Randall
4 McGee, nine, and Quinn just got four.

5 (Lunch recess was held at 11:30 a.m.
6 until 12:20 p.m.)

7 REPRESENTATIVE DELLENEY: We have
8 before us this afternoon Ms. Patricia Lynn Forbis
9 who is seeking the position of Family Court
10 At-Large seat number 6. Ma'am, how are you doing
11 this afternoon?

12 MS. FORBIS: Fine, thank you.

13 REPRESENTATIVE DELLENEY: Do you have
14 anyone with you that you'd like to introduce us
15 to?

16 MS. FORBIS: Yes, this is my husband,
17 Dr. Joel Duncan.

18 REPRESENTATIVE DELLENEY: Dr. Duncan,
19 we're glad to meet you.

20 MS. FORBIS: He's a cardiologist so
21 he's here for you.

22 SENATOR MARTIN: I'm eating fruit.

23 REPRESENTATIVE DELLENEY: Please raise
24 your right hand to be sworn.

25 (Patricia Lynn Forbis, was duly sworn,

1 after which testimony began at 12:21 p.m.)

2 REPRESENTATIVE DELLENEY: Ms. Forbis,
3 have you had an opportunity to review your
4 Personal Data Questionnaire summary?

5 MS. FORBIS: Yes, sir.

6 REPRESENTATIVE DELLENEY: Is it
7 correct?

8 MS. FORBIS: Yes, sir.

9 REPRESENTATIVE DELLENEY: Do you object
10 to our making that summary a part of the record
11 of your sworn testimony?

12 MS. FORBIS: No, sir.

13 REPRESENTATIVE DELLENEY: It will be
14 done at this point in the transcript.

15 (EXH. 13, Patricia Lynn Forbis'
16 Personal Data Questionnaire, was marked for
17 identification.)

18 REPRESENTATIVE DELLENEY: The Judicial
19 Merit Selection Commission has thoroughly
20 investigated your qualifications for service on
21 the bench. Our inquiry is primarily focused on
22 nine evaluative criteria which has included a
23 survey of the bench and the bar, a thorough study
24 of your application materials, verification of
25 your compliance with the State ethics laws, a

1 search of any newspaper articles in which your
2 name may have appeared, a study of previous
3 screenings and a check of any economic conflicts
4 of interest.

5 There are no affidavits filed in
6 opposition to your election nor are there any
7 witnesses here to testify.

8 Do you have a brief opening statement
9 you'd like to make?

10 MS. FORBIS: No, sir, I know you all
11 have been here a great many days and a great many
12 hours and I just want to thank you for your
13 service and I appreciate your time and effort
14 you've put into this.

15 REPRESENTATIVE DELLENEY: If you would
16 answer any questions our counsel Mr. Dennis might
17 have for you.

18 MR. DENNIS: Thank you. Ms. Forbis,
19 you have before you the Sworn Statement which has
20 your answers on several subjects. Are there any
21 additional amendments that you would like to add
22 at this time?

23 MS. FORBIS: No, sir, not at this time.

24 MR. DENNIS: Mr. Chairman, I'd like to
25 ask that that be made part of the record this

1 afternoon.

2 REPRESENTATIVE DELLENEY: It will be
3 done without objection.

4 (EXH. 14, Patricia Lynn Forbis' Sworn
5 Statement was marked for identification.)

6 MR. DENNIS: As a procedural matter I
7 would note for the record that based on the
8 testimony contained in Ms. Forbis' PDQ which has
9 been included in the record with the candidate's
10 consent, Ms. Forbis meets the statutory
11 requirements regarding age, residence and years
12 of practice.

13 Ms. Forbis, before you begin would you
14 tell us what county, what city and what judicial
15 circuit you reside in, please.

16 MS. FORBIS: I currently live in
17 Richland County, Columbia, South Carolina 5th
18 Circuit.

19 MR. DENNIS: Thank you, ma'am. Please
20 tell the commission why would you like to be a
21 Family Court judge.

22 MS. FORBIS: In going through this
23 process it really makes you step back and think
24 about what it is you want to do as a Family Court
25 judge. And I think at this point in my life this

1 is where I would like to be. I think the job of
2 Family Court judge is very, very important. You
3 have people coming before you in the most
4 difficult time in their lives and they are
5 expecting and should expect that they're going to
6 have a fair hearing and compassionate hearing. I
7 come before you as someone with a vast amount of
8 experience and it is somewhat non-traditional.

9 I have a masters in business from Duke
10 University and I went on to work in business and
11 some years later determined that I would like to
12 attend law school which I did at the age of 40.
13 Since that time I have only worked in the area of
14 Family Court and I have done everything in Family
15 Court. I have handled small cases, I've worked
16 for the law firm of McDougall and Self handling
17 large cases, I've been a termination of parental
18 rights attorney for DSS. I have taught child
19 support courses in DSS, I have served as a
20 guardian ad litem and I have taught both lay and
21 attorney guardian ad litem for the Children's
22 Law Center which I also served as a resource
23 attorney. I feel very comfortable. There is not
24 a whole lot in the Family Court that I've not had
25 to do and I believe that if someone comes before

1 me they can rely on my experience and background
2 and truly my compassion and interest in their
3 case.

4 MR. DENNIS: Are there any areas maybe
5 substantively of family law that you feel you
6 would need extra preparation for before becoming
7 a Family Court judge?

8 MS. FORBIS: Yes, I do and I believe
9 that would probably be the area of juvenile
10 justice. That is one area I have not had a lot
11 of experience. I have been appointed on cases, I
12 have represented them whenever I worked at the
13 Children's Law Center I was a resource for people
14 who had concerns about juvenile cases. But I
15 think I would make a concerted effort from that
16 time when hopefully I would be elected until the
17 time I assumed the bench to spend that time with
18 practicing judges on the bench to learn more
19 about that particular area and service
20 applications of what we have available to meet
21 the needs of those children.

22 MR. DENNIS: Thank you, ma'am. You
23 addressed this a little bit in your Sworn
24 Statement, but would you please discuss with the
25 commission what you think the appropriate

1 demeanor for a Family Court judge is.

2 MS. FORBIS: A Family Court judge has a
3 very, very big responsibility. There's nobody
4 there helping them determine the matters of fact.
5 They are it. So when somebody comes before them
6 I think it is very important that that person
7 feels they have received a fair hearing, a
8 compassionate hearing and an interesting hearing.
9 I think that a Family Court judge is not so much
10 a personal position but you are representing the
11 court of South Carolina, so I think the judicial
12 temperament is one of fairness, openness and
13 compassion.

14 MR. DENNIS: Ms. Forbis, is there a
15 Family Court judge currently on the bench that
16 you would like to model yourself after?

17 MS. FORBIS: Currently on the bench, I
18 have the experience of having a wide variety of
19 judges since I have lived and worked throughout
20 the various counties in the state. One judge I
21 am fond of, not so much I've appeared before him,
22 but know him to be a good friend and who takes
23 interest and compassion in what he does is Judge
24 Vincent, and we've spoken at length about what he
25 feels a Family Court judge does. He talks a lot

1 about problem solving and realizing that the
2 problems that are before each judge in each case
3 are different and should have the personal
4 attention and concern and interest in that
5 situation. And I think that's very true. I
6 think that it's not cookie cutter cases. I am
7 concerned that sometimes we see these visitation
8 schedules for instance that everybody just
9 applies. Maybe that's not in the best interest
10 of the children in that situation, maybe they
11 need to step back and look at what these
12 particular people need. And I think that's a
13 situation or kind of an interest or approach to
14 this that I would take.

15 MR. DENNIS: Thank you, ma'am. Do you
16 have any improvements you'd like to offer for
17 alleviating the backlog in the Family Court
18 docket?

19 MS. FORBIS: I am thinking that now we
20 have six At-Large Family Court judges that this
21 is definitely going to help the situation. I am
22 hoping that we will have a much more speedy
23 resolution for the problems that people bring
24 before the Family Court. I think one of the
25 major problems we have had is in the lengthy

1 period of time that various constituents, parties
2 or whatever have to go through before they can
3 have their case finally heard, so I think there
4 needs to be a real commitment to looking at all
5 opportunities for the Family Court to resolve the
6 backlog. With addition to the six At-Large seats
7 we need to look seriously at where the greatest
8 need is, take these new judges and apply them
9 there and then work very hard to make sure that
10 the cases are brought before the court in a
11 timely fashion.

12 Here in Richland County we have a very
13 effective means of bringing cases before the
14 court. We have status conferences, we have
15 pretrials, we do a lot of things to move that
16 along. But again we would have one judge in
17 Richland County who will spend a day or two going
18 through these cases. That's a person who is not
19 sitting on the bench hearing cases, so by
20 bringing additional judges in I think we can have
21 a better pretrial system that will allow each of
22 us to get our cases moved more quickly.

23 There are I think just the whole
24 application of many and time management is
25 useful. I would hope that the business

1 background that I would have would help me do
2 that as well, but there is very much a need to
3 pay attention to cases we have before us and move
4 towards the final resolution.

5 MR. Dennis: Thank you, ma'am.

6 Ms. Forbis, you are aware and we
7 discussed the South Carolina Bar Association
8 raised some questions concerning your
9 temperament. Would you respond to that for me,
10 please.

11 MS. FORBIS: Thank you and I appreciate
12 the opportunity to address that.

13 Needless to say I think anybody would
14 be somewhat taken aback to learn that maybe some
15 of your peers might be concerned about your
16 judicial temperament, and I have had the
17 opportunity for several weeks to step back and
18 reflect on this and to talk to friends, peers and
19 associates to get a better idea of what this
20 might mean. I think judicial temperament could
21 be are you flighty or are you superficial or do
22 you not care enough or are you somewhat difficult
23 to work with. I think that maybe I fall into the
24 last category and I think that is as because as
25 one friend told me I have a large personality,

1 I'm enthusiastic and energetic. And I care ver,
2 very much about hose I represent.

3 When somebody comes into your office
4 and you close that door and you sit down with
5 them, you basically are taking their lives into
6 your hands. And I felt very strongly and still
7 feel very strongly about the importance of that
8 responsibility. And I believe that I have been a
9 very zealous advocate for my clients in this
10 position. And if that spills over to being
11 considered somewhat difficult or zealous, I don't
12 know if that's all bad. I would hope that we
13 would have judges who are zealous and
14 compassionate and interested in your clients.

15 I also do a great deal of guardian ad
16 litem work. In that capacity you are in a
17 different place, you're representing children.
18 You're representing children that have parents
19 who are represented by attorneys that may want
20 the guardian to behave, make decisions and
21 suggestions more in line with what they would
22 like to see happen with their clients. Maybe I
23 wasn't always that compliant with that.

24 I believe I have always been a very,
25 very zealous advocate for children who have found

1 themselves in a very difficult situation and I
2 want to make sure that I have done everything
3 that I can to ensure that their best interests
4 are addressed.

5 So I'm thinking that maybe that's where
6 that came from but I can't tell you. I've become
7 very, very sensitive to the issue and thinking
8 long and hard now about how this may have come
9 across.

10 MR. DENNIS: Along those same lines,
11 ma'am, you received seven written comments from
12 the ballot box survey, six of which I would note
13 were glowingly positive. One refers to you,
14 however, as a loose cannon and entrenches you in
15 your own agenda. Do you offer a similar or
16 perhaps different response to that?

17 MS. FORBIS: I would think that that
18 probably parallels my previous comments that I am
19 a zealous advocate and want to make sure that
20 what I think and feel has been heard by those
21 that I am communicating with, and that may be I
22 would hope would be where that comes from. I
23 would hope that that never goes to the detriment
24 of the children I represent or to my clients but
25 maybe it did offend in some way to some of the

1 people I was working with.

2 MR. DENNIS: I just have some
3 housekeeping matters I need to go over with you
4 quickly.

5 Have you sought or received the pledge
6 of any legislator pending the outcome of your
7 screening?

8 MS. FORBIS: No, sir.

9 MR. DENNIS: Have you sought or have
10 you been offered a conditional pledge of support
11 from any legislator pending the outcome of your
12 screening?

13 MS. FORBIS: No, sir.

14 MR. DENNIS: Have you asked any third
15 parties to contact the members of the General
16 Assembly on your behalf?

17 MS. FORBIS: No.

18 MR. DENNIS: Are you aware of anyone
19 attempting to intervene in any part of this
20 process on your behalf?

21 MS. FORBIS: No.

22 MR. DENNIS: Have you contacted any
23 members of this commission?

24 MS. FORBIS: No, sir.

25 MR. DENNIS: Do you understand that you

1 are prohibited from seeking a pledge of
2 commitment until 48 hours after the formal
3 release of the commission's report?

4 MS. FORBIS: Yes.

5 MR. DENNIS: Have you reviewed the
6 commission's guidelines on pledging?

7 MS. FORBIS: Yes, sir.

8 MR. DENNIS: As a follow up are you
9 aware that it is a fine to violate the rules of
10 this pledging and it is a misdemeanor with up to
11 a \$1,000 fine or up to 90 days imprisonment?

12 MS. FORBIS: Yes, sir.

13 MR. DENNIS: I would note the Midland's
14 Citizen's Committee found Ms. Forbis well
15 qualified for all of the criteria for which the
16 designation is available by six and qualified
17 which is the highest designation possible for the
18 other three. They concluded by stating that Ms.
19 Forbis is most eminently qualified to serve on
20 the Family Court and I would note for the record
21 that any concerns raised during the investigation
22 for this candidate were incorporated in my
23 questioning of her today.

24 Mr. Chairman, I have nothing further.

25 REPRESENTATIVE DELLENEY: Does any

1 member of the commission have any questions of
2 Ms. Forbis?

3 (No response)

4 There being none, thank you Ms. Forbis,
5 for appearing before us today and thank you for
6 your willingness to serve. This concludes this
7 portion of your screening process.

8 As you know we will issue a draft
9 report and it eventually will mature into the
10 final report from the commission. Once that
11 happens the screening process is completely over,
12 however, before that happens if we so chose to
13 reconvene the public hearing on your candidacy we
14 could bring you back and ask other questions we
15 might have. I don't anticipate that happening
16 but it is a possibility. And you have said you
17 understand the 48 hour rule.

18 So again we thank you for offering and
19 hope you all and have a good day.

20 MS. FORBIS: Thank you.

21 REPRESENTATIVE DELLENEY: Good
22 afternoon, Mr. Hodges.

23 MR. HODGES: Good afternoon.

24 REPRESENTATIVE DELLENEY: We have
25 before us this morning Mr. Thomas Tredway Hodges

1 who is seeking the position of Family Court
2 At-Large seat number 6.

3 Do you have anyone here you'd like to
4 introduce us to?

5 MR. HODGES: I do, this is my wife
6 Carroll Anne Hodges. We've been married almost
7 25 years.

8 REPRESENTATIVE DELLENEY: Is she a
9 lawyer also?

10 MR. HODGES: She is. She worked for
11 Nelson Mullins for most of her career and now she
12 works for McAngus Goudelock and Courie.

13 REPRESENTATIVE DELLENEY: Good to see
14 you.

15 If you would, please raise your right
16 hand to be sworn.

17 (Thomas Tredway Hodges, was duly sworn,
18 after which testimony began at 12:35 p.m.)

19 REPRESENTATIVE DELLENEY: Thank you,
20 sir.

21 Have you had an opportunity to review
22 your Personal Data Questionnaire?

23 MR. HODGES: Yes, I have.

24 REPRESENTATIVE DELLENEY: Is it
25 correct?

1 MR. HODGES: It is. I would point out
2 that there was a question about how much money I
3 spent on the campaign and I put zero. Since I
4 submitted this I sent a letter for \$60 in postage
5 or something less than \$100.

6 REPRESENTATIVE DELLENEY: So Other than
7 that is there anything else that needs to be
8 changed?

9 MR. HODGES: No, sir.

10 REPRESENTATIVE DELLENEY: Do you object
11 to our making your summary a part of your sworn
12 testimony?

13 MR. HODGES: No, sir.

14 REPRESENTATIVE DELLENEY: It will be
15 done at this point in the transcript.

16 (EXH. 15, Thomas Tredway Hodges'
17 Personal Data Questionnaire, was marked for
18 identification.)

19 REPRESENTATIVE DELLENEY: The Judicial
20 Merit Selection Commission has thoroughly
21 investigated your qualifications for service on
22 the bench. Our inquiry is primarily focused on
23 nine evaluative criteria which has included a
24 survey of the bench and the bar, a thorough study
25 of your application materials, verification of

1 your compliance with the State ethics laws, a
2 search of any newspaper articles in which your
3 name may have appeared, a study of previous
4 screenings and a check of any economic conflicts
5 of interest.

6 There are no affidavits filed in
7 opposition to your election nor are there any
8 witnesses here to testify.

9 Do you have a brief opening statement
10 you'd like to make?

11 MR. HODGES: Just very briefly, thank
12 you for the opportunity to be here. I know you
13 all have had a long couple of days and I
14 appreciate the efforts that you've put into this
15 process.

16 REPRESENTATIVE DELLENEY: Sir, if you
17 would answer any questions that counsel may have
18 for you.

19 MS. WELLS: Mr. Hodges, you have before
20 you your Sworn Statement that you filled out. Do
21 you have any amendments to that at this time?

22 MR. HODGES: No, other than the same...

23 MS. WELLS: So there are no amendments?

24 MR. HODGES: No.

25 MS. WELLS: Mr. Chairman, I would ask

1 that Mr. Hodges Sworn Statement be entered as an
2 exhibit to the hearing record.

3 REPRESENTATIVE DELLENEY: It will be
4 done at this point in the transcript.

5 (EXH. 16, Thomas Tredway Hodges' Sworn
6 Statement was marked for identification.)

7 MS. WELLS: I note for the record that
8 based on the testimony contained in the
9 candidate's PDQ which has been included in the
10 record Thomas Hodges meets the statutory
11 requirements for age, residence and years of
12 practice.

13 Mr. Hodges, would you please state the
14 city and county and circuit in which you reside.

15 MR. HODGES: I live in Greenville
16 County, city of Greenville, and that's the 13th
17 Circuit.

18 MS. WELLS: Would you explain to the
19 commission why you would want to be a Family
20 Court judge.

21 MR. HODGES: Yes, at the risk of
22 sounding immodest I believe I would make a good
23 judge. I think I have the skills and experience,
24 the demeanor and the temperament that the State
25 looks for in Family Court judges and circuit

1 court judges. Throughout my career I have dealt
2 very closely with individuals going through very
3 stressful situations and I've found that I can
4 have a calming effect on those people. I think I
5 can bring that to the bench. People coming in
6 Family Court are under very stressful situations
7 and I think that would be an asset.

8 And if I'm a good judge then I would be
9 an asset to the state, thus I would know that I
10 am making a valuable contribution.

11 MS. WELLS: Is there anything in
12 addition of your legal or professional experience
13 that you would like to add before the commission
14 that you believe would assist you to be an
15 effective judge?

16 MR. HODGES: As I said, I've been a
17 Family Court lawyer now for nine years. Before
18 that I was a labor lawyer, and I have dealt with
19 people from all sorts of economic backgrounds and
20 social backgrounds and invariably -- and dealt
21 very closely with these people -- but invariably
22 family is what's important to everybody. And it
23 doesn't matter where you come from and how much
24 you have, that's what's important. And the
25 factory worker as well as the factory owner wants

1 to know that there's somebody there that takes an
2 interest in their situation, and that's what I
3 have gleaned over 25 years in addition to the
4 experience of being in the courtroom is that I
5 know these people are sincere and they want help
6 and I believe I could be there to help them.

7 MS. WELLS: Are there any areas that
8 you would need to additionally prepare for as to
9 areas of law in order to serve as a Family Court
10 judge, and if there are how would you handle that
11 additional preparation?

12 MR. HODGES: There are two areas of
13 Family Court that I would say I have limited to
14 no experience in and that's juvenile and
15 adoptions. And the reason juvenile being I think
16 that's a criminal situation and lawyers who deal
17 with criminal law ought to be doing that.
18 Adoption work I have taken -- made the decision
19 to not get into adoption work primarily because I
20 believe that it is a sub-category or
21 sub-specialty to Family Court law. There are
22 plenty of people who want to adopt babies but
23 there's not that supply.

24 Then on a personal note my
25 sister-in-law works with Jim Thompson's firm in

1 Spartanburg and she's his main person to go to do
2 home studies. And for 25 years she's developed
3 that relationship with the birthing centers and
4 we'll have Thanksgiving dinner this year and
5 she'll get a call, I guarantee you, that there's
6 a baby available.

7 So I don't have that supply to meet the
8 demand and so if I get those type of situations I
9 pass them on to someone else. I think that
10 there's plenty of time between now and when this
11 term begins for this judge in July to associate
12 myself on cases. I have plenty of friends who do
13 that so I could see firsthand from there, I could
14 observe plenty of courtroom proceedings to get
15 there. I know a lot of the substantive law but I
16 just I don't have that hands-on experience.

17 MS. WELLS: Thank you. Now, you did
18 address this in your Sworn Affidavit but would
19 you explain to the members of the commission what
20 you think is the appropriate demeanor for a
21 Family Court judge.

22 MR. HODGES: Yes, I think a Family
23 Court judge needs to be open-minded, needs to be
24 fair but firm, needs to be polite, needs to be
25 even-tempered, needs to be diligent and treat

1 everyone with the utmost dignity and respect. As
2 I said, most of these people aren't there because
3 they want to, they are going through something
4 stressful in their lives. And the judge is the
5 face of the state and he needs to present himself
6 as a good -- I can't think of the word I want to
7 say but -- a good representative of the state and
8 needs those qualities so that those individuals
9 in the courtroom knows there is someone listening
10 to them, knows that they are being given the same
11 opportunities as everyone else and comes out with
12 a solution to their problems and feels like the
13 judge listened to them.

14 MS. WELLS: Mr. Hodges, is there a
15 Family Court judge currently on the bench that
16 you would like to model yourself after or whom
17 you believe exemplifies the characteristics that
18 you believe a Family Court judge should have?

19 MR. HODGES: There's several. Phil
20 Sinclair in Spartanburg, Ed Long in Anderson. I
21 think all the judges in Greenville. There are
22 not many judges that you're afraid to appear
23 before and none of those am I ever afraid to
24 appear before and not because I am afraid of how
25 the decision might come out, but maybe just their

1 demeanor. So I would say all the Greenville
2 judges, all the Spartanburg judges, Anderson
3 judges who I appear before regularly would be
4 those that I would try to emulate.

5 MS. WELLS: Do you have any suggestions
6 you would offer about alleviating the backlog of
7 cases in the Family Court?

8 MR. HEDGES: In Greenville we're a
9 mandatory mediation county and that alleviates a
10 lot of cases. I am probably just as guilty as
11 the other person in waiting maybe too long to go
12 to mediation. We have a year to complete it. I
13 think if maybe there was a rule you complete
14 mediation in six months that that might at least
15 shorten some of these cases.

16 Most cases get resolved in mediation.
17 I think lawyers need to consult with each other
18 more before going to court and one of the things
19 -- and I think this is beyond the ability of any
20 judge to do but for temporary hearings those
21 motions have to be served seven days before the
22 hearing. I think that time should be broadened.

23 And it's terrible and you know it will
24 happen tomorrow you get a call from somebody who
25 just got served on Monday that works all week and

1 can't come to see a lawyer until Friday and then
2 have a hearing on Monday, and then scramble to
3 try to talk to the lawyer or get something done.
4 But if he had more time, like two weeks or three
5 weeks, then I think that would give that person
6 an opportunity to find a lawyer. And I'd much
7 rather have a lawyer in advance so I can deal
8 with a lawyer and try to work out those
9 situations.

10 But to alleviate the backlog is going
11 to take both the bench and the bar working
12 together to do that. I think lawyers could do
13 more consent orders and it would free up some
14 time.

15 MS. WELLS: If you were elected to the
16 bench what would you like your legacy to be when
17 you left it as a judge in the Family Court?

18 MR. HODGES: Generally I would like to
19 be remembered as a good person. As a judge I
20 would like to be remembered as being fair and
21 predictable. I think if you're given a set of
22 facts you ought to be able to predict what the
23 answer and outcome is going to be. I think that
24 would be beneficial to the litigants and lawyers
25 as well to know I am here, Judge Hodges is going

1 to hear this and that's what is going to happen.

2 MS. WELLS: As a practicing attorney,
3 do you currently carry malpractice insurance in
4 your law practice and if so for how long have you
5 carried that.

6 MR. HODGES: I have had malpractice
7 insurance since -- when I was with Haynesworth we
8 had a firm policy but I have an individual policy
9 since 2003.

10 MS. WELLS: Mr. Hodges, the bar
11 received 83 ballot box surveys for you with 11
12 additional comments. Seven of those comments
13 expressed your excellent temperaments, calming
14 and sober demeanor and that you were well-known
15 and respected in the community. Four of those
16 comments however expressed some concerns; one
17 expressed concerns about filing frivolous
18 motions, one expressed concerns about your
19 necessary academic ability, one expressed being
20 unprofessional by berating an attorney in front
21 of his clients and another mentioned the academic
22 ability. So how do you respond to the comments
23 and concerns about filing frivolous motions, the
24 academic ability and being unprofessional?

25 MR. HODGES: I was sworn in 25 years

1 ago this month. In 25 years I have not received
2 a grievance that I am aware of. No one has ever
3 come up to me personally and said you are
4 unprofessional or you can't handle this case. I
5 really don't know without the specifics I don't
6 know exactly how to respond. I am concerned that
7 there were four comments along those lines.

8 Taking each one, frivolous motions; I
9 really don't file that many motions and I know
10 that there's a rule that you contact the other
11 side to say, hey, can we work this motion out.
12 And you have to put that in the motion itself
13 that we conferred and it was unsuccessful or what
14 have you. I don't know where that comes from.
15 You don't do that when you file a motion for
16 temporary relief, there's no one to confer with.

17 Academic ability; I graduated with a
18 3.0 from law school, got a job with an excellent
19 law firm. I think when we met before you said
20 one of the comments along these lines was an
21 inability to handle complex cases, and as a labor
22 lawyer I handled extremely complex cases the
23 outcome of which could affect thousands of
24 people.

25 Today as a Family Court lawyer I have

1 handled cases with people that have millions of
2 dollars to people have less than nothing. I
3 don't think having a bunch of zeros behind your
4 net worth necessarily makes your case complex or
5 not. One of the cases I sited as an example was
6 the Johnson case and that involved multi-state
7 jurisdictional issues, attorney issues, there was
8 a new statute at the time so it had those issues.
9 I handled that fine.

10 Most of my clients come and they are
11 scared and desperate and need help. They are not
12 asking me to make their life more complicated,
13 they are asking me to fix the complications and
14 that's what I have done. I don't receive
15 complaints back from clients.

16 As far as berating an attorney in front
17 of their client, I know how delicate an
18 attorney/client relationship can be, and I
19 certainly wouldn't want anybody doing that to me.
20 I don't believe I ever berated anybody. And if I
21 said something to somebody and I was overly firm,
22 maybe they took it the wrong way. One of the
23 things I have learned through life is perception
24 is reality and if that's the way they perceived
25 it that was reality to them. I wish I knew the

1 circumstances so I could go and correct that.
2 Because I don't think the majority of the bar
3 that I work with has that opinion of me but there
4 is one person that does and that concerns me.
5 I'll have to make sure that I watch how I speak
6 to people.

7 MS. WELLS: Thank you. For the
8 commission I would note that of the remaining
9 three ballot box surveys and the other seven
10 spoke highly of Mr. Hodges' temperament and
11 ability and all the criteria that are listed.

12 I just have a few housekeeping issues.
13 Have you sought or received the pledge
14 of any legislator prior to this date?

15 MR. HODGES: No.

16 MS. WELLS: Have you been offered a
17 pledge of support from any legislator pending the
18 outcome of this screening?

19 MR. HODGES: No.

20 MS. WELLS: Have you asked any third
21 parties to contact the members of the General
22 Assembly on your behalf?

23 MR. HODGES: No.

24 MS. WELLS: Are you aware of anyone
25 attempting to intervene on any part of the

1 process on your behalf?

2 MR. HODGES: No.

3 MS. WELLS: Have you contacted any
4 members of this commission.

5 MR. HODGES: No.

6 MS. WELLS: Do you understand that you
7 are prohibited from seeking a pledge of
8 commitment until 48 hours after the formal
9 release of the commission's report?

10 MR. HODGES: Yes, ma'am.

11 MS. WELLS: Have you reviewed the
12 commission's guidelines on pledging?

13 MR. HODGES: I have.

14 MS. WELLS: As a follow up are you
15 aware of the penalties for violating the pledging
16 rules are that it's a misdemeanor and upon
17 conviction the violator must be fined not more
18 than \$1,000 or imprisoned for not more than 90
19 days?

20 MR. HODGES: I understand that, yes.

21 MS. WELLS: I would note that the
22 Upstate Citizen's Committee found Mr. Hodges
23 qualified in the evaluative criteria of
24 constitutional qualifications, physical health,
25 mental stability, ethical fitness, professional

1 and academic ability, character, reputation,
2 experience and judicial temperament.

3 For the record, Mr. Chairman, any
4 concerns raised regarding the candidate were
5 incorporated into the questioning of him today
6 and I have no further questions.

7 REPRESENTATIVE DELLENEY: Thank you,
8 ma'am.

9 Does any member of the commission have
10 any questions?

11 (No response)

12 There being none, thank you, Mr.
13 Hodges, we appreciate your willingness to serve
14 and your willingness to subject yourself to this
15 process. This concludes this portion of your
16 screening process.

17 As you know we'll draft a report and
18 eventually that draft will become the final
19 report of the commission and the screening
20 process will be over, however up until that time
21 if we were so inclined we could reconvene and
22 bring you back. It is unlikely that that will
23 happen but it has happened in a few other cases
24 but in any event I'd like to remind you of the 48
25 hour rule and those time parameters will be on

1 the front of the screening report and you have
2 stated that you understand that rule.

3 So we thank you and we hope you have a
4 safe trip back home.

5 MR. HODGES: Thank you.

6

7 REPRESENTATIVE DELLENEY: We have
8 before us today David Earl Phillips who seeks a
9 position in Family Court At-Large seat 6.

10 MR. PHILLIPS: Yes, sir.

11 REPRESENTATIVE DELLENEY: Do you have
12 someone with you you'd like to introduce us to?

13 MR. PHILLIPS: I do, my wife Mary Ann
14 Phillips is with us this afternoon.

15 REPRESENTATIVE DELLENEY: Please raise
16 your right hand to be Sworn.

17 (David Earl Phillips, was duly sworn,
18 after which testimony began at 12:51 p.m.)

19 REPRESENTATIVE DELLENEY: Have you had
20 an opportunity to review your Personal Data
21 Questionnaire?

22 MR. PHILLIPS: I have.

23 REPRESENTATIVE DELLENEY: Is there
24 anything that needs to be changed or amended?

25 MR. PHILLIPS: Nothing other than the

1 amendments I presented and are before you dated
2 November 7 of this year.

3 REPRESENTATIVE DELLENEY: Do you have
4 an objection to us making that summary a part of
5 the record of your sworn testimony?

6 MR. PHILLIPS: No objection.

7 REPRESENTATIVE DELLENEY: It will be
8 done at this point in the transcript.

9 (EXH. 17, David Phillips' Personal Data
10 Questionnaire was marked for identification.)

11 REPRESENTATIVE DELLENEY: The Judicial
12 Merit Selection Commission has thoroughly
13 investigated your qualifications for service on
14 the bench. Our inquiry is primarily focused on
15 nine evaluative criteria which has included a
16 survey of the bench and the bar, a thorough study
17 of your application materials, verification of
18 your compliance with the State ethics laws, a
19 search of any newspaper articles in which your
20 name may have appeared, a study of previous
21 screenings and a check of any economic conflicts
22 of interest.

23 There are no affidavits filed in
24 opposition to your election nor are there any
25 witnesses here to testify.

1 Do you have a brief opening statement
2 you'd like to make?

3 MR. PHILLIPS: I do. I just want to
4 thank this body and the members and also the
5 screening attorneys and everyone else. I believe
6 there are numerous folks who graded the tests and
7 those things. Thank you for this opportunity
8 today.

9 REPRESENTATIVE DELLENEY: Would you
10 please answer our able counsel's questions?

11 MR. DAVIDSON: Good afternoon, Mr.
12 Phillips. You have your Sworn Statement you
13 provided with detailed answers to over 30
14 questions regarding your judicial conduct,
15 statutory qualifications, office administration
16 and temperament.

17 Are there any additional amendments
18 that you would like make to this copy of your
19 Sworn Statement?

20 MR. Phillips: No, sir.

21 MR. DAVIDSON: At this time, Mr.
22 Chairman, I'd like to ask that Mr. Phillips'
23 Sworn Statement be entered into as an exhibit
24 into the hearing record.

25 REPRESENTATIVE DELLENEY: Without

1 objection it will be entered at this time.

2 (EXH. 18, David Earl Phillips' Sworn
3 Statement, was marked for identification.)

4 MR. DAVIDSON: One final procedural
5 matter. I note for the record that based on the
6 testimony contained in Mr. Phillips' PDQ, which
7 has been included in the record, Mr. Phillips
8 meets the statutory requirements for this
9 position regarding age, residence and years of
10 practice.

11 Mr. Phillips, please state the city and
12 the circuit in which you reside.

13 MR. PHILLIPS: I live in Anderson
14 County, South Carolina which is in the 10th
15 Judicial Circuit.

16 MR. DAVIDSON: Please explain to the
17 commission why you would like to serve as a
18 Family Court judge.

19 This is something that I have spent a
20 great deal of time considering and praying about.
21 I ran in 2008 for the residency in Anderson
22 County. I feel like the Family Court position
23 has more of an opportunity than any other court
24 that we have that impacts families in a positive
25 way and I think that I feel like that's a place

1 where I would like to serve and I feel I am
2 qualified for that and I'd do a good job.

3 MR. DAVIDSON: How do you feel your
4 legal and professional experience thus far will
5 assist you to be an effective judge?

6 MR. PHILLIPS: I have a great deal of
7 experience from the very beginning of my career
8 in Family Court. I started out in Anderson
9 County doing a tremendous amount of Family Court
10 work. That was probably the first court that I
11 actually went to was Family Court and I spent a
12 great deal of time there. Over the years I think
13 in 2000 I served as the juvenile public defender
14 for six months on a contract basis so I have some
15 extra experience doing that.

16 I now serve for the past I believe six
17 years, if my memory is correct, I've served as
18 the juvenile prosecutor for Anderson County, so I
19 have a great deal of experience with families who
20 are going through that kind of crisis.

21 So those are some of the things that I
22 feel make me well prepared for this position.

23 MR. DAVIDSON: Are there any areas of
24 law that you would need to additionally prepare
25 for in order to serve as a judge and if so how

1 would you handle that additional preparation?

2 MR. PHILLIPS: I really don't think I
3 have any areas where I need additional
4 preparation. I am familiar with every area that
5 we handle in Family Court and I think with
6 everything the law being the dynamic and the many
7 entities, it changes so much that there are
8 always going to be things that you have to stay
9 on top of, but I don't know that I need any
10 additional preparation at this point.

11 MR. DAVIDSON: Thank you. Although you
12 addressed this in your Sworn Affidavit would you
13 please explain to the members of the commission
14 what you think is the appropriate demeanor for a
15 judge.

16 MR. PHILLIPS: My goal would be to be
17 the kind of judge I would want to appear in front
18 of as an attorney and that is someone who is
19 fair, someone who is courteous to all the people
20 involved. Family Court is a very stressful court
21 by it's very mature, a lot of emotional issues
22 are going on and I would want to be the kind of
23 judge who hears everyone, keeps the cases going
24 forward in an orderly manner and tries to help
25 families come through the crises that they are in

1 in the best manner possible.

2 MR. DAVIDSON: Is this any Family Court
3 judge currently on the bench that you would like
4 to model yourself after or particularly
5 exemplifies the characteristics that a Family
6 Court judge should have?

7 MR. PHILLIPS: I think that one of the
8 ones I really look up to is Judge Edwards and
9 Judge Long, our resident judges in Anderson
10 County, and I think they have been a very good --
11 they have set a very good role -- acted as very
12 good role models for all of us in their demeanor
13 they have on the bench.

14 MR. DAVIDSON: What suggestions would
15 you have for alleviating the backlog of cases on
16 the Family court?

17 MR. PHILLIPS: In Anderson County I
18 served on an ad hoc committee that was formed
19 under the leadership of Judge Long where numerous
20 members of the Family Court bar got together and
21 met and we tried to look at ways to improve the
22 backlog of cases in Anderson County. I think
23 that that's probably something that would work
24 well in each county for all the counties to
25 consider doing because there are going to be

1 problems with the docketing and scheduling from
2 one county to the next. The sorts of things that
3 we did there include we previously had scheduled
4 cases on an A to B basis, in other words when
5 we'd set the case for trial we'd have an A case,
6 which is the first case going to the bar, and
7 then we'd have a backup case. We found that
8 sometimes putting cases on the docket encourages
9 a settlement just because it gets everybody to
10 communicate.

11 And then one of the things we've done
12 there is we have also put on a C case, and we've
13 shortened the time for uncontested hearings on
14 Fridays from 15 minutes down to 10 with possible
15 -- particularly if both sides are represented by
16 counsel there's less of a need for the judge to
17 in detail go through some of the procedural
18 matters that they would have to for some of the
19 litigants involved.

20 In addition we to try to work -- from
21 my perspective I have handled the juvenile docket
22 there. We have attempted to notify courts as far
23 ahead as we can if we have a case on the trial
24 that settles and it's going to open up a lot of
25 time for other matters that the court can

1 consider and it will shorten that docket.

2 MR. DAVIDSON: Thank you. I understand
3 you're currently employed with the solicitor's
4 office. Prior to your employment there when you
5 maintained a private practice in law, did you
6 carry malpractice insurance in your law practice
7 and if so how long did you carry it?

8 MR. PHILLIPS: I carried it from the
9 very first. If I recall correctly September 1st
10 of 2004 which was my first day in private
11 practice I had malpractice insurance in place on
12 that day.

13 MR. DAVIDSON: The commission received
14 41 ballot box surveys regarding your candidacy
15 with five additional comments. Four of those
16 comments were highly complimentary, however, one
17 comment was negative. The negative comment
18 stated, I have had one case with Mr. Phillips. I
19 enjoyed working with him and found him to be very
20 friendly. I believe he is probably a decent
21 attorney, but I am concerned about his work ethic
22 and ability to deal with more complex issues as a
23 judge. How would you respond to that?

24 MR. PHILLIPS: I would respond with
25 regard to my work ethic I would point to the

1 history I have. First of all, I don't know who
2 that person is. I don't know what they are
3 referring to or what they have seen to make them
4 believe that, but I would point to my work record
5 that I have worked for two places other than
6 myself; I worked for Chapman, Byrholdt and Yon
7 who recommend me for this position. They gladly
8 wrote a recommendation for me for that. They
9 wouldn't have done that if I wasn't a hard
10 worker.

11 Additionally I have worked part-time
12 for Christy Adams for six years up until I went
13 full-time a year and a half ago and certainly I
14 would not come on full-time if I were not a hard
15 worker. I would also point to as evidence of my
16 work ethic that at the solicitor's office now.
17 We have several hundred cases. They go through
18 Family Court each year. That's a huge work load.

19 I also handle all the forfeiture cases
20 for Anderson and Oconee Counties and this is all
21 at the same time as transfer court which is a
22 huge adult docket I also have. And I would offer
23 that I have a tremendous case load now and I have
24 had a tremendous case loads for the last 15
25 years. I wish I could answer more about where

1 that is specifically coming from but that is what
2 I would offer.

3 MR. DAVIDSON: Thank you. I just have
4 a few housekeeping issues.

5 Have you sought or received a pledge
6 from any legislator prior to this date?

7 MR. PHILLIPS: No, sir.

8 MR. DAVIDSON: Have you sought or have
9 you been offered a conditional pledge of support
10 of any legislator pending the outcome of your
11 screening?

12 MR. PHILLIPS: No, sir.

13 MR. DAVIDSON: Have you asked any third
14 parties to contact the members of the General
15 Assembly on your behalf?

16 MR. PHILLIPS: No, sir.

17 MR. DAVIDSON: Are you aware of anyone
18 attempting to intervene in any part of the
19 process on your behalf?

20 MR. PHILLIPS: No, sir.

21 MR. DAVIDSON: Have you contacted any
22 members of the commission?

23 MR. PHILLIPS: No, sir.

24 MR. DAVIDSON: Do you understand that
25 you are prohibited from seeking a pledge until 48

1 hours after the formal release of the
2 commission's report?

3 MR. PHILLIPS: Yes, sir.

4 MR. DAVIDSON: Have you reviewed the
5 commission's guidelines on pledging?

6 MR. PHILLIPS: Yes, sir.

7 MR. DAVIDSON: As a follow up are you
8 aware of the penalties for violating the pledging
9 rules are that it's a misdemeanor and upon
10 conviction the violator must be fined not more
11 than \$1,000 or imprisoned for not more than 90
12 days?

13 MR. PHILLIPS: Yes, sir.

14 MR. DAVIDSON: I would note that the
15 Upstate Citizen's Committee found Mr. Phillips
16 qualified in the evaluative criteria of
17 constitutional qualifications of physical health,
18 ethical fitness, professional and academic
19 ability, character, reputation, experience and
20 judicial temperament.

21 I would also note for the record that
22 any questions or any concerns raised during the
23 investigation regarding Mr. Phillips have been
24 incorporated in the questions asked today.

25 Mr. Chairman, I have no further

1 questions.

2 REPRESENTATIVE DELLENEY: Does any
3 member of the committee have any questions for
4 Mr. Phillips?

5 MR. CAMPSSEN: Mr. Phillips, I note the
6 first reference on your -- the first person on
7 the reference from the legal panel is Mr. Chapman
8 and he's about 80 years old and still working?

9 MR. PHILLIPS: I believe just last week
10 he was in the office at 8:00 Monday morning.

11 REPRESENTATIVE DELLENEY: Does any
12 other members have any further questions?

13 MR. DAVIDSON: Not a question but just
14 a comment. Of those surveyed zero found you
15 unqualified in any capacity. I just think that
16 everybody should realize that.

17 MR. PHILLIPS: Thank you.

18 REPRESENTATIVE DELLENEY: All right.
19 Well, with that this concludes this portion of
20 your screening process.

21 Mr. Phillips, as you know we'll issue a
22 report. At first it will be a draft report and
23 it will mature into a final report of the
24 commission. At that point the screening process
25 is over and can't be reconvened. Whatever is

1 done is done, but before that time if we were of
2 such a mind we could reconvene and bring you back
3 and ask you more questions, although I don't
4 anticipate it happening in your case, it has
5 happened in the past. You have described the 48
6 hour rule and you know what it means.

7 With that I'd like to thank you for
8 offering to serve and we hope you and your wife
9 have a safe trip back home.

10 MR. PHILLIPS: Thank you all.

11 REPRESENTATIVE DELLENEY: We have
12 before us today Paul Daniel Schwartz who seeks
13 the position of Family Court At-Large number 6.

14 If you would please raise your right
15 hand to be Sworn.

16 (Paul Daniel Schwartz, was duly sworn,
17 after which testimony began at 1:12 p.m.)

18 REPRESENTATIVE DELLENEY: Do you have
19 anybody you'd like to introduce us to.

20 MR. SCHWARTZ: I have my wife with me
21 here today Nancy.

22 REPRESENTATIVE DELLENEY: Good to have
23 you with us.

24 Have you had an opportunity to review
25 your Personal Data Questionnaire summary?

1 MR. SCHWARTZ: I have.

2 REPRESENTATIVE DELLENEY: Is it
3 correct?

4 MR. SCHWARTZ: It is correct. I do have
5 one slight addition. I had supplemented my
6 report to say that I was on the James Island
7 Charter High School Board of Directors. I am now
8 the chairman of that board and that's the only
9 addition.

10 REPRESENTATIVE DELLENEY: Do you have
11 any objection to our making that summary with
12 that change a part of the record of your sworn
13 testimony?

14 MS. SCHWARTZ: Not at all.

15 REPRESENTATIVE DELLENEY: It will be
16 done at this point in the transcript.

17 (EXH. 19, Paul Schwartz' Personal data
18 Questionnaire was marked for identification.)

19 REPRESENTATIVE DELLENEY: The Judicial
20 Merit Selection Commission has thoroughly
21 investigated your qualifications for service on
22 the bench. Our inquiry is primarily focused on
23 nine evaluative criteria which has included a
24 survey of the bench and the bar, a thorough study
25 of your application materials, verification of

1 your compliance with the State ethics laws, a
2 search of any newspaper articles in which your
3 name may have appeared, a study of previous
4 screenings and a check of any economic conflicts
5 of interest.

6 There are no affidavits filed in
7 opposition to your election nor are there any
8 witnesses here to testify.

9 Do you have a brief opening statement
10 you'd like to make?

11 MR. SCHWARTZ: I do not, I just want to
12 thank you for this opportunity and all the
13 courtesies that I've been extended.

14 REPRESENTATIVE DELLENEY: Thank you,
15 sir. If you would now answer any questions that
16 counsel has for you.

17 MS. DEAN: Mr. Chairman, now that your
18 written amendment has been added and made part of
19 the record, you now have before you your Sworn
20 Statement where you've provide detailed answers
21 to over 30 questions regarding your judicial
22 conduct, statutory qualifications, office
23 administration and temperament. Are there any
24 additional amendments you would like to make to
25 that document at this time?

1 MR. SCHWARTZ: No.

2 MS. DEAN: At this time, Mr. Chairman,
3 I'd like to ask that Mr. Schwartz' Sworn
4 Statement be entered into as an exhibit into the
5 hearing record.

6 REPRESENTATIVE DELLENEY: Without
7 objection it will be entered at this time.

8 (EXH. 20, Paul Daniel Schwartz' Sworn
9 Statement, was marked for identification.)

10 MS. DEAN: One final procedural matter.
11 I note for the record that based on the testimony
12 contained in Mr. Schwartz' PDQ, which has been
13 included in the record, Mr. Schwartz meets the
14 statutory requirements for this position
15 regarding age, residence and years of practice.

16 Mr. Schwartz, could you please state
17 the city and the circuit in which you reside.

18 MR. SCHWARTZ: I live in the 9th
19 Circuit and that's Charleston, South Carolina.

20 MS. DEAN: Mr. Schwartz, why would you
21 like to serve as a Family Court judge?

22 MR. SCHWARTZ: Well, I have been
23 practicing now in fact this month 30 years. At
24 least throughout my practice I have probably
25 averaged 50 percent of my practice in Family

1 Court. In the last 10 years it's probably been
2 more than that. And I feel like with my
3 experience that I am just equipped to do this, I
4 am ready to sort of try and give back. I have
5 watched a lot of judges in my day practicing law.
6 There are some I really respect and enjoy
7 watching them work and I'd like to try to pattern
8 myself after them. I think it would be a good
9 place to conclude my legal career.

10 Obviously I if were to go on the bench
11 I'd stay as long as allowed. If I left the bench
12 I might again practice law in some fashion.

13 MS. DEAN: Mr. Schwartz, are there any
14 areas including substantive areas of law that you
15 would need to additionally prepare for in order
16 to serve as a judge, and if so tell us about
17 those additional preparations.

18 MR. SCHWARTZ: If anything that I have
19 the least amount of experience in it would be in
20 the juvenile justice area. I've handled a number
21 of those, I do some criminal work, I would hone
22 up on my criminal law. Probably if anything that
23 would be my weakest area, if at all, because I
24 have tried a couple of those in my career and I
25 have handled a few. As of right now I have got a

1 couple of criminal cases I am handling but that
2 would be the one area that I would probably have
3 to hone up on some.

4 Mr. Schwartz, although you addressed
5 this in your Sworn Affidavit, would you please
6 explain to the members of the commission what you
7 think the appropriate demeanor of a judge is.

8 MR. SCHWARTZ: I think a judge needs to
9 be open-minded, he needs to be patient, he needs
10 to remain calm, he needs to listen and he needs
11 to be firm, keep control over the courtroom, but
12 don't make a stressful situation any more
13 stressful than it already is. You need to be
14 able to express yourself in such a way that
15 maintains control yet make sure that everybody
16 remains comfortable in that courtroom. And keep
17 an open mind, listen to everything, weigh all the
18 facts and apply the law.

19 That's pretty much how I see it.

20 MS. DEAN: Thank you. Mr. Schwartz,
21 you alluded to this earlier. Are there any
22 Family Court judges you currently would like to
23 model yourself after?

24 MR. SCHWARTZ: Probably Judge Wylie up
25 in Dorchester County is a good example as

1 somebody who just has this calm demeanor. I've
2 been there as a guardian where lawyers continue
3 to argue a point beyond any sense of reason --
4 this lawyer I know has since been suspended --
5 and Judge Wylie handled himself in such a
6 professional manner. He didn't raise his voice,
7 he didn't have to, he's up there on the bench,
8 he's got on the robe, he handled it, he called
9 the attorney down properly and handled it. And
10 he's always handled himself that way. His
11 demeanor is one that I would fashion myself
12 after.

13 And then Judge Cate in Charleston, i
14 like the way she handles guardian ad litem. If
15 you get in there with a temporary hearing she
16 places an order in effect and she puts a return
17 date. She doesn't just issue an order and allow
18 a case to languish in a report DMA that nobody
19 ever reads, she calls you back within a time
20 frame and she deals with that report. And those
21 are two of the judges that I would fashion myself
22 after.

23 MS. DEAN: Thank you. What suggestions
24 would you offer for clearing the backlog of cases
25 on docket?

1 MR. SCHWARTZ: Well, for one thing
2 Charleston has started this fast track program
3 primarily in custody cases. I think that is a
4 great idea. I have done a lot of guardian ad
5 litem cases for the past 20 years or so and there
6 is no reason why a guardian can't be appointed
7 and complete an investigation in no later than
8 sixty days. As far as I'm concerned a custody
9 case could be decided in no more than sixty days.
10 I don't think it requires any more than that.
11 When they drag out beyond that you have to start
12 over because conditions change.

13 So that's one way I would like to move
14 it along. Also with the guardian ad litem when
15 I appointed a guardian there would be a return
16 date, we'd be back in court, we would deal with
17 the report in a timely fashion. Those are the
18 two ways I'd like to move it along.

19 MS. DEAN: Do you currently carry
20 malpractice insurance in your law firm and if so
21 how long have you carried malpractice insurance?

22 MR. SCHWARTZ: I have always carried
23 malpractice insurance and I do carry it in my law
24 firm.

25 MS. DEAN: I will just note for the

1 record now that Mr. Schwartz' SLED report
2 initially indicated two lawsuits however with
3 help of Mr. Schwartz and SLED's assistance we
4 were able to ascertain that those were not
5 lawsuits that you were involved with at all?

6 MR. SCHWARTZ: That's correct.

7 MS. DEAN: In your PDQ you stated that
8 there was a tax lien filed in error in 2012.
9 Would you like to address that?

10 MR. SCHWARTZ: You know, I think that
11 was an error on the part of the South Carolina
12 Tax Commission. They showed it as not being paid
13 and we contacted them and they actually rescinded
14 that as opposed to satisfying it.

15 MS. DEAN: You also stated that you had
16 an interest in the company Half Rubber, LLC. Do
17 you feel that that interest would distract you
18 from the duties of the bench?

19 MR. SCHWARTZ: I don't think so. That
20 would be something -- I have a step-son who
21 pretty much handles most of that anyway. I could
22 just devolve myself from that.

23 It has nothing to do with family law at
24 all, it's a stick ball game that's a derivative
25 from Charleston and Savannah and it has to do

1 with balls and bats.

2 MS. DEAN: As part of this process the
3 commission received ballot box surveys. The
4 commission received 98 ballot box surveys
5 regarding you including 14 additional written
6 comments. These comments included very positive
7 statements such he has vast experience and he is
8 a very qualified candidate. Also someone
9 stating, excellent attorney, would make a
10 wonderful judge as well as he is an outstanding
11 judge of character and has the ability to be
12 impartial in the courtroom as seen as his service
13 as a guardian ad litem.

14 One comment, however, expressed some
15 concern that you were very child focused. That
16 certainly is not necessarily negative but do you
17 believe that that would cause you to be biased in
18 any way on the bench?

19 MR. SCHWARTZ: I do not. I think that
20 being child-focused in the Family Court is
21 necessary in any custody related matter but it's
22 just one of the issues that has to be dealt with.
23 As a guardian ad litem, I am only child focused;
24 I am not involved with the property and those
25 other matters. So in that case as a guardian ad

1 litem I am child focused.

2 As far as being on the bench that would
3 not be the case at all, although I would never
4 lose sight of the children.

5 MS. DEAN: Thank you. And Mr.
6 Schwartz, I just have one quick question. You
7 mentioned your step-son. We noticed on your PDQ
8 you listed no children. Would you like to orally
9 amend that expound on that?

10 MR. SCHWARTZ: Yes, I do have two grown
11 step-sons. The reason I didn't list them is when
12 we got married they were already 18 and 19 years
13 old. Jason Smoake and James Smoake (ph).

14 MS. DEAN: Back to the ballot box
15 surveys. One other comment expressed some
16 concern about your experience with complex family
17 cases. Would you like to speak to that?

18 MR. SCHWARTZ: I have handled -- I
19 don't know that I have had any problems with
20 complex family cases, I have handled just about
21 every kind of Family Court case. One in
22 particular I noted down in Charleston was a very
23 hotly contested case of an elderly couple with a
24 lot of assets where, unfortunately the husband --
25 I represented the wife -- the husband had a

1 criminal history. He ended up attacking the wife
2 during the course of the proceeding. She was in
3 the hospital. I contemplated having to bring an
4 action to preserve the marital estate not knowing
5 whether she was going to survive or not.
6 Ultimately he went into jail, subsequently he
7 tried to hire a prominent criminal lawyer out of
8 Charleston and we went into court. I
9 successfully defended his motion to get \$100,000
10 released from the marital estate to hire a
11 criminal defense lawyer to defend him for trying
12 to kill my client. I succeeded and ultimately
13 resolved the case.

14 I've been involved in complex Family
15 Court matters and I don't think that would be a
16 problem for me.

17 MS. DEAN: Lastly, one comment has
18 concerns of your judicial temperament
19 specifically your permissibility for potential
20 bias. Again these were anonymous but could you
21 speak again to the temperament that you'd display
22 on the bench.

23 MR. SCHWARTZ: Certainly. I would
24 remain open-minded. I certainly wouldn't show
25 any bias. And in particular regarding the ad

1 litem realm, sometimes particularly when you do a
2 lot of that work, somebody is going to be upset
3 with you when you conclude your investigation.
4 And I think I had Judge Macklin say about two
5 weeks ago that it's not wrong for a guardian to
6 be biased as long as it's based on your
7 investigation and not on anything else. And
8 that's probably where that arises. Sometimes
9 during an investigation after you've completed
10 your investigation you do tend to lean one way or
11 the other because of the facts that you have
12 uncovered. That is not biased on parties, that's
13 biased based on the facts of the case, and that's
14 what I limit myself to.

15 MS. DEAN: Mr. Chairman if we could
16 have a brief executive session.

17 REPRESENTATIVE DELLENEY: Can I get a
18 motion that we go into executive session?

19 SENATOR MARTIN: So moved.

20 SENATOR NICHOLSON: Second.

21 REPRESENTATIVE DELLENEY: All in favor?

22 MULTIPLE SPEAKERS: Aye.

23 (The Judicial Merit Selection

24 Commission went into executive session from 1:24
25 p.m. to 1:27 p.m.)

1 REPRESENTATIVE DELLENEY: We are back
2 on the record.

3 MS. DEAN: I just have some
4 housekeeping issues now at this time.

5 Have you sought or received a pledge
6 from any legislator prior to this date?

7 MR. SCHWARTZ: No.

8 MS. DEAN: Have you sought or have you
9 been offered a conditional pledge of support of
10 any legislator pending the outcome of your
11 screening?

12 MR. SCHWARTZ: No.

13 MS. DEAN: Have you asked any third
14 parties to contact the members of the General
15 Assembly on your behalf?

16 MR. SCHWARTZ: No.

17 MS. DEAN: Are you aware of anyone
18 attempting to intervene in any part of the
19 process on your behalf?

20 MR. SCHWARTZ: No.

21 MS. DEAN: Have you contacted any
22 members of this commission?

23 MR. SCHWARTZ: No.

24 MS. DEAN: Do you understand that you
25 are prohibited from seeking a pledge or

1 commitment until 48 hours after the formal
2 release of the commission's report?

3 MR. SCHWARTZ: I do.

4 MS. DEAN: Have you reviewed the
5 commission's guidelines on pledging?

6 MR. SCHWARTZ: Yes.

7 MS. DEAN: As a follow up are you
8 aware of the penalties for violating the pledging
9 rules are that it's a misdemeanor and upon
10 conviction the violator must be fined not more
11 than \$1,000 or imprisoned for not more than 90
12 days?

13 MR. SCHWARTZ: Yes, I'm aware of that.

14 MS. DEAN: I would note that the
15 Lowcountry Citizen's Committee found Mr. Schwartz
16 qualified in the constitutional qualification of
17 physical health and mental stability, qualified
18 with the highest rating for those three
19 categories.

20 The committee also found Mr. Schwartz
21 well qualified in the remaining six categories.

22 I would just note for the record that
23 any questions or any concerns raised during the
24 investigation regarding Mr. Schwartz have been
25 incorporated in the questions asked today.

1 Mr. Chairman, I have no further
2 questions.

3 REPRESENTATIVE DELLENEY: Does any
4 member of the committee have any questions for
5 Mr. Schwartz?

6 (No response)

7 There being none, I'd like to thank
8 you, Mr. Schwartz, for appearing before us today.

9 This concludes this portion of your
10 screening process.

11 Mr. Schwartz, as you know we'll issue a
12 draft report which will later turn into a final
13 report of the commission and once that happens
14 the screening process is over and can't be
15 reopened, but before that time if we were of such
16 a mind we could reconvene and bring you back and
17 ask you more questions, although I don't
18 anticipate it happening in your case, it has
19 happened in the past.

20 You have described the 48 hour rule and
21 you understand it?

22 MR. SCHWARTZ: Yes, sir.

23 REPRESENTATIVE DELLENEY: With that,
24 I'd like to thank you for offering to serve and
25 we hope you and your wife have a safe trip back

1 home.

2 MR. SCHWARTZ: Thank you very much.

3 REPRESENTATIVE DELLENEY: Good
4 afternoon, Mr. Thigpen.

5 MR. THIGPEN: Good afternoon.

6 REPRESENTATIVE DELLENEY: We have
7 before us this morning Michael Todd Thigpen who
8 seeks the position of the Family Court At-large
9 seat number 6.

10 If would please raise your right hand
11 and be sworn.

12 (Michael Todd Thigpen, was duly sworn,
13 after which testimony began at 1:30 p.m.)

14 REPRESENTATIVE DELLENEY: Have you had
15 an opportunity to review your Person Data
16 Questionnaire?

17 MR. THIGPEN: Yes, sir.

18 REPRESENTATIVE DELLENEY: Is it
19 correct?

20 MR. THIGPEN: Yes, sir.

21 REPRESENTATIVE DELLENEY: Do you object
22 our making that summary a part of the record of
23 your sworn testimony?

24 MR. THIGPEN: No, sir. I see the
25 amendment I prepared is attached.

1 REPRESENTATIVE DELLENEY: With the
2 amendment it will be made part of the record.

3 (EXH. 21, Michael Thigpen's Personal
4 Data Questionnaire was marked for
5 identification.)

6 REPRESENTATIVE DELLENEY: The Judicial
7 Merit Selection Commission has thoroughly
8 investigated your qualifications for service on
9 the bench. Our inquiry is primarily focused on
10 nine evaluative criteria which has included a
11 survey of the bench and the bar, a thorough study
12 of your application materials, verification of
13 your compliance with the State ethics laws, a
14 search of any newspaper articles in which your
15 name may have appeared, a study of previous
16 screenings and a check of any economic conflicts
17 of interest.

18 There are no affidavits filed in
19 opposition to your election nor are there any
20 witnesses here to testify.

21 Do you have a brief opening statement
22 you'd like to make?

23 MR. THIGPEN: Yes, sir. First of all
24 I'd like to thank you, the commission and staff
25 for the opportunity to be here today.

1 Specifically I'd like to personally thank Chief
2 Counsel Shuler and Mr. Fiffick for their valuable
3 assistance they've provided to me throughout this
4 process. Finally I'd just like to say I have
5 been very humbled by the encouragement I have
6 received from my family, friends, colleagues and
7 even current judges throughout this process.

8 Thank you.

9 REPRESENTATIVE DELLENEY: Please answer
10 any questions counsel may have for you.

11 MR. FIFFICK: Mr. Thigpen, you have
12 before you your Sworn Statement you provided with
13 detailed answers to over 30 questions regarding
14 your judicial conduct, statutory qualifications,
15 office administration and temperament.

16 Are there any additional amendments
17 that you would like make at this time to your
18 Sworn Statement?

19 MR. THIGPEN: No, sir.

20 MR. FIFFICK: At this time, Mr.
21 Chairman, I'd like to ask that Mr. Thigpen's
22 Sworn Statement be entered into as an exhibit
23 into the hearing record.

24 REPRESENTATIVE DELLENEY: Without
25 objection it will be entered at this time.

1 (EXH. 22, Michael Todd Thigpen's Sworn
2 Statement, was marked for identification.)

3 MR. FIFFICK: Mr. Chairman, I note for
4 the record that based on the testimony of the
5 candidate's PDQ, which has been included in the
6 record with the candidate's consent, Mr. Thigpen
7 meets the statutory requirements regarding age,
8 residence and years of practice.

9 Mr. Thigpen, please state the city and
10 circuit in which you reside.

11 MR. THIGPEN: I reside in Spartanburg
12 County which is the 7th Judicial Circuit.

13 MR. FIFFICK: Why do you now want to
14 serve as a Family Court judge?

15 MR. THIGPEN: When I started law school
16 I pursued a joint jurist doctorate, master of
17 business administration. I already had an
18 undergraduate in business because I thought I
19 wanted to be a corporate lawyer, however, while I
20 was in law school my brother became involved in a
21 contested child custody case. At or about the
22 same time I took family law, and the Family Court
23 has been my sole interest and passion since that
24 time.

25 As evidenced on my PDQ my practice has

1 been devoted almost exclusively in Family Court.
2 I have represented thousands of clients in about
3 every type of Family Court case imaginable. I
4 have also served as a guardian ad litem in I
5 would say hundreds of cases, probably a thousand
6 cases of adoptions, termination of rights, those
7 kinds of cases. I have also been a contract
8 attorney for Spartanburg County volunteer
9 (inaudible) program for over two years and in DSS
10 child abuse and neglect cases, so I have a
11 thorough understanding of the DSS cases.

12 In short I am a Family Court attorney
13 and it's basically all I have ever done. I
14 believe that my experience and training at this
15 point prepares me to be a Family Court judge. I
16 cannot think of any higher honor than I could
17 ever expect to achieve in my career than being
18 elected to the Family Court bench. I believe it
19 will allow me to provide a noble public service
20 to the citizens of the South Carolina and I would
21 like to add if I am lucky enough to get elected
22 and stay elected I fully intend to retire as a
23 Family Court judge. I have no desire to work for
24 any other court.

25 MR. FIFFICK: Thank you, sir. Are

1 there any areas including subjective areas of law
2 that you think you would further need to prepare
3 for in order to serve as judge and how would you
4 handle that initial preparation?

5 MR. THIGPEN: The only area I would
6 probably do more training in would be in the
7 Department of Juvenile Justice cases. Although I
8 have been involved in a handful of those, I have
9 not been involved in a lot of them, however, I
10 have been representing adults in criminal cases
11 so I do believe I have sufficient understanding,
12 of criminal laws and procedures but I will spend
13 more time in that area prior to taking the bench.

14 MR. FIFFICK: Thank you, sir. Although
15 you addressed this in your Sworn Affidavit, would
16 you please explain to the members of the
17 commission what you think is the appropriate
18 demeanor for a judge.

19 MR. THIGPEN: First of all I think a
20 judge should be fair, it should never matter to
21 the judge who the lawyers or litigants are
22 because the judge should always treat everyone
23 the same. A judge must be patient, courteous and
24 respectful to everyone inside and outside the
25 courtroom. A judge needs to be knowledgeable

1 about the law but also cognizant of the fact that
2 everyone always has more to learn. And the
3 magnitude of the case should never matter to the
4 judge because first of all a judge should be a
5 careful listener, but careful to listen to all
6 the facts of every case big or small because that
7 case is always important to the litigants of that
8 case regardless of the magnitude of the case.

9 MR. FIFFICK: Is there any Family Court
10 judge currently on the bench that you would like
11 to model yourself after that you believe
12 exemplifies the characteristics that a Family
13 Court judge should have?

14 MR. THIGPEN: In our circuit we are
15 very fortunate we have Judge Phillip Sinclair,
16 Judge Bridges. I don't know that I could emulate
17 them but I've probably been before forty or fifty
18 Family Court judges over the last 16 years and I
19 would try to use the best traits I've seen in all
20 of them.

21 MR. FIFFICK: Thank you, sir. What
22 suggestions would you have to offer for relieving
23 the backlog of cases in the Family Court docket?

24 MR. THIGPEN: In Spartanburg I believe
25 we beat the benchmark of 80 percent or more but I

1 think that mediation has been successful. We are
2 now doing a Friday afternoon docket where we
3 actually if you have an uncontested divorce case
4 or an agreement you can come in on Friday
5 afternoons, everybody comes at 2:00 and the judge
6 might hear 10 or 15 cases that afternoon. I
7 think that would help to continue with that.

8 Also we have what we call an A, B and C
9 docket where we are scheduling more different
10 types of cases. If I was assigned to another
11 area of the state where they weren't doing this
12 type of thing that's the things I would use.

13 Also Spartanburg is still not a
14 mandatory mediation county or the circuit is
15 still not mandatory mediation, but our chief
16 administrator judge, Judge Sinclair is now
17 requiring more and more mediation, and I'm seeing
18 that's helpful in cases as I have actually
19 successfully mediated cases myself. I do believe
20 it's been helpful in the process to free the
21 courts up to do other cases.

22 MR. FIFFICK: Thank you. Do you
23 currently carry malpractice insurance in your law
24 practice and if so how long have you carried
25 malpractice insurance?

1 MR. THIGPEN: I was admitted to the bar
2 on November 18, 1996 and I believe I got my first
3 policy of December 15 of that same year. I've
4 had malpractice insurance for the entire time
5 I've been practicing law.

6 MR. FIFFICK: The commission received
7 85 ballot box surveys regarding you with 10
8 additional comments. Four of those expressed
9 some concerns. The first survey expressed
10 concern that your visual impairment may impair
11 your ability to observe the demeanor of litigants
12 and review litigants. While staff has noticed no
13 such impairments would you care to respond to the
14 ballot box survey.

15 MR. THIGPEN: I do not believe that's
16 an accurate picture of me. Like I said I have
17 been practicing law in Family Court for over 16
18 years and I have sat in every chair in the Family
19 Court other than the judge's seat. I've sat at
20 the guardian's table, defense table, plaintiff's
21 table, tried numerous cases over the years and my
22 vision has never in my opinion impaired me in my
23 ability to do my job, and I don't think it would
24 impair me to be a judge either.

25 MR. FIFFICK: Again that was one ballot

1 box that expressed that concern.

2 The second one, a single ballot box
3 indicates you are lazy, disrespectful of the
4 legal profession and difficult to work with.
5 Would you care to respond to that?

6 MR. THIGPEN: I am assuming that was an
7 anonymous posting and I don't know how to respond
8 to that. I think anybody who knows me knows I'm
9 not lazy or disrespectful. I've been a sole
10 practitioner since I started straight out of law
11 school. I've ran my own practice successfully in
12 my opinion for that many years. Sometimes I've
13 had to work as much as 80 or more hours a week.
14 Very rarely do I work less than 40 hours a week
15 so I don't understand where the term lazy would
16 come from.

17 MR. FIFFICK: Thank you, sir. Another
18 anonymous ballot box comment indicates that you
19 may lack impartiality and may be swayed by the
20 lawyers you work with. Again, would you care to
21 respond?

22 MR. THIGPEN: I totally disagree with
23 that comment. As I have stated it should never
24 matter to a judge who the lawyers or litigants
25 are. I think a judge should always treat

1 everyone the same and I would specifically try to
2 address that if I'm lucky enough to get elected
3 and be a judge.

4 MR. FIFFICK: I have some housekeeping
5 issues now.

6 Have you sought or received a pledge
7 from any legislator prior to this date?

8 MR. THIGPEN: No, sir.

9 MR. FIFFICK: Have you sought or been
10 offered a conditional pledge of support of any
11 legislator pending the outcome of your screening?

12 MR. THIGPEN: No, I have not.

13 MR. FIFFICK: Have you asked any third
14 parties to contact the members of the General
15 Assembly on your behalf?

16 MR. THIGPEN: No, sir.

17 MR. FIFFICK: Are you aware of anyone
18 attempting to intervene in any part of the
19 process on your behalf?

20 MR. THIGPEN: No, sir.

21 MR. FIFFICK: Have you contacted any
22 members of this commission?

23 MR. THIGPEN: No, sir.

24 MR. FIFFICK: Do you understand that
25 you are prohibited from seeking a pledge or

1 commitment until 48 hours after the formal
2 release of the commission's report?

3 MR. THIGPEN: Yes, sir.

4 MR. FIFFICK: Have you reviewed the
5 commission's guidelines on pledging?

6 MR. THIGPEN: Yes, sir.

7 MR. FIFFICK: As a follow up are you
8 aware of the penalties for violating the pledging
9 rules are that it's a misdemeanor and upon
10 conviction the violator must be fined not more
11 than \$1,000 or imprisoned for not more than 90
12 days?

13 MR. THIGPEN: Yes, sir. I'm aware of
14 that.

15 MR. FIFFICK: I would note that the
16 Upstate Citizen's Committee reported Mr. Thigpen
17 was qualified in each category to include the
18 constitutional qualifications, ethical fitness,
19 professional and academic ability, character,
20 reputation, experience, judicial temperament,
21 physical health and mental stability.

22 I would emphasize that the Upstate
23 Citizen's Committee found Mr. Thigpen physically
24 qualified despite his impairment and that they
25 specifically noted that while Mr. Thigpen does

1 have some visual difficulties he is well able to
2 perform the duties of a member of our judiciary.

3 I would just note for the record that
4 any concerns raised during the investigation
5 regarding the candidate were incorporated in the
6 questioning of the candidate today.

7 Mr. Chairman, I have no further
8 questions.

9 REPRESENTATIVE DELLENEY: Does any
10 member of the committee have any questions for
11 Mr. Thigpen?

12 SENATOR CAMPSEN: I have a question.
13 Mr. Thigpen I only ask you this because the
14 subject of visual acuity has been raised. Can
15 you read regular like pleadings and such or does
16 it have to be translated into braille or
17 something? And I'm asking that because I don't
18 know if the Family Court has that capability.

19 MR. THIGPEN: Yes, sir, I can read. In
20 fact prior to going to law school which you know
21 all the reading there, I don't think my vision is
22 quite as much but I can actually read -- I may
23 hold the card closer than you would but I still
24 read below the 20/20 line. And I've always read
25 all the pleadings, all the orders. Everything I

1 do is in regular type. I do a lot of that on the
2 computer myself so I mean I have no difficulty
3 reading what would be presented to me as a judge.

4 REPRESENTATIVE DELLENEY: Any further
5 questions of Mr. Thigpen?

6 (No response)

7 There being none, thank you Mr. Thigpen
8 for appearing before us today and your
9 willingness to serve. This concludes this
10 portion of the screening process. We will issue
11 a draft report which will eventually become the
12 final report, but up until that time the process
13 remains open and if we chose to do so we could
14 bring you back and re-open the public hearing and
15 ask you questions about an issue. I don't expect
16 that to happen in your case, but we do have that
17 ability.

18 And you have stated that you understand
19 the 48 hour rule and the parameters of the 48
20 hour rule exactly when you can receive
21 commitments will be on the front of that final
22 report. With that I'd like to thank you for
23 offering to serve and thank you for your service
24 to South Carolina and I hope you have a safe trip
25 home.

1 MR. THIGPEN: Thank you.

2 REPRESENTATIVE DELLENEY: Good
3 afternoon Judge Banks.

4 JUDGE BANKS: Good afternoon.

5 REPRESENTATIVE DELLENEY: We have
6 before us the Honorable Martin Rast Banks who
7 seeks to be re-elected to the position of
8 Master-in-Equity of Orangeburg County.

9 If you would, please raise your right
10 hand.

11 (The Honorable Martin Rast Banks, was
12 duly sworn, after which testimony began at 1:44
13 p.m.)

14 REPRESENTATIVE DELLENEY: Have you had
15 an opportunity to review your PDQ?

16 JUDGE BANKS: Yes.

17 REPRESENTATIVE DELLENEY: Is it
18 correct?

19 JUDGE BANKS: Yes.

20 REPRESENTATIVE DELLENEY: Do you object
21 to our making that summary a part of the record
22 of your sworn testimony?

23 JUDGE BANKS: No, sir.

24 REPRESENTATIVE DELLENEY: It will be
25 done at this point in the transcript.

1 (EXH. 23, Judge Martin Bank's personal
2 Data Questionnaire was marked for
3 identification.)

4 REPRESENTATIVE DELLENEY: The Judicial
5 Merit Selection Commission has thoroughly
6 investigated your qualifications for service on
7 the bench. Our inquiry is primarily focused on
8 nine evaluative criteria which has included a
9 survey of the bench and the bar, a thorough study
10 of your application materials, verification of
11 your compliance with the State ethics laws, a
12 search of any newspaper articles in which your
13 name may have appeared, a study of previous
14 screenings and a check of any economic conflicts
15 of interest.

16 There are no affidavits filed in
17 opposition to your election nor are there any
18 witnesses here to testify.

19 Do you have a brief opening statement
20 you'd like to make?

21 JUDGE BANKS: Yes, thank you Mr.
22 Chairman and members of the commission.

23 I've happily served as the Master of
24 Calhoun County for eight years and I am now
25 applying to be the Master in Orangeburg County.

1 My hope -- and I believe I can fulfill this hope
2 -- is to combine the two offices much like they
3 do in Anderson and Oconee Counties. Although it
4 may be a little bit premature at this time before
5 the job came open I made inquiries in our
6 counties and I think that it could actually be
7 done and I think it would actually save the
8 system some money and provide other efficiencies
9 for both counties.

10 REPRESENTATIVE DELLENEY: Thank you,
11 sir. If you would answer any questions from our
12 able counsel.

13 MS. ANZELMO: Thank you. Judge Banks,
14 you have before you the Sworn Statement with
15 detailed answers to over 30 questions regarding
16 judicial conduct, statutory qualifications,
17 office administration and temperament.

18 Are there any additional amendments
19 that you would like to make at this time?

20 JUDGE BANKS: No, ma'am.

21 MS. ANZELMO: Mr. Chairman, at this
22 time I would ask that Mr. Banks' Sworn Statement
23 be entered into the record as an exhibit.

24 REPRESENTATIVE DELLENEY: It will be
25 done at this point in the transcript.

1 (EXH. 24, Martin Rast Banks' Personal
2 Data Questionnaire, was marked for
3 identification.)

4 MS. ANZELMO: I'd also note for the
5 record that as a Master-in-Equity there is no
6 jurisdictional requirement that he may serve for
7 the commission's knowledge.

8 Also I'll note for the record based on
9 the testimony of the candidate's PDQ, which has
10 been included in the record with his consent,
11 Judge Martin Banks meets the statutory
12 requirements regarding age, residence and years
13 of practice.

14 Judge, after serving as a part-time
15 Master-in-Equity in Calhoun County why do you now
16 want to serve as a Master-in-Equity in
17 Orangeburg?

18 JUDGE BANKS: For 20 years I've been a
19 public defender in Calhoun and I have watched
20 from across I-26 of what's been going on from
21 their criminal side. And I've been a Master-in
22 Equity primarily civil with the exception of
23 Judge Cooper and some others but their docket
24 needs some help and I would be the perfectly
25 positioned person to provide it in that role

1 after -- if I win the election I will apply to be
2 a special circuit judge after I do some docket
3 work of my own because I think Orangeburg
4 Master's docket has gone up considerably, so I
5 would have had to spend some time on that. But
6 then I think I would draw my attention to being a
7 special circuit judge and with that approval I
8 would be willing to do a day of guilty pleadings,
9 probation violation hearings in my offices
10 upstairs and I think it would be good for both
11 counties.

12 MS. ANZELMO: Can you explain for the
13 commission how you feel your legal and
14 professional experience thus far will assist you
15 in being an effective judge.

16 JUDGE BANKS: Twenty years as a public
17 defender and eight years as a Master-in-Equity
18 both of those would be -- if I were able to
19 achieve that goal of really doing some of that
20 criminal work it would help empty that jail over
21 there. I think that answers that question.

22 MS. ANZELMO: Are there any areas of
23 law for you which you would need additional
24 preparation to serve as a Master-in-Equity in
25 Orangeburg and if so how would you handle that

1 preparation?

2 JUDGE BANKS: Well, I can't think of
3 any.

4 MS. ANZELMO: Although you addressed
5 this in your Sworn Affidavit could you please
6 explain to the members of the commission what you
7 think is the appropriate demeanor for a judge.

8 JUDGE BANKS: Again, it's kind of
9 funny. I kind of think some of those abilities
10 are kind of innate in me because I am a little
11 bit not with the crowd, so I kind of stay
12 separate. I think you should be -- some of the
13 Christian qualities that one should have and that
14 would be just fairness, you should have -- you
15 should be cool tempered, especially on the bench.
16 You should be reserved in all that you do. You
17 should -- again it's in there, but just don't
18 call attention to yourself, don't create
19 controversy, have a good temperament and those
20 things.

21 MS. ANZELMO: Is there any
22 Master-in-Equity currently on the bench that you
23 would like to model yourself that you believe
24 particularly exemplifies the characteristics that
25 you believe a master-in-Equity should have?

1 JUDGE BANKS: I know him pretty well
2 having been around eight years, but Gordon Cooper
3 in particular who is a friend of mine, and he's
4 got a great sense of humor that he uses to kind
5 of release the pressure that he is under. And he
6 does a lot for his chief administrative judge up
7 there. He does probation violations, he does
8 guilty pleas and of course he works very hard on
9 the civil docket. And he does that as a special
10 circuit judge, and it doesn't pay him any more
11 and that's kind of where I would like to get to.

12 MS. ANZELMO: Thank you. What
13 suggestions would you offer for improving the
14 backlog of cases on the docket in the
15 Master-in-Equity court?

16 JUDGE BANKS: Several years ago when I
17 was just thinking about what if this job ever
18 came open -- and this has been six years ago
19 since I have been planning toward the possible
20 fix for their docket and they need some help over
21 there. And I actually went to talk to the guy
22 who runs the jail on Orangeburg. And Calhoun and
23 Orangeburg have the same jail and up until about
24 four years ago I thought every time I went from
25 St. Matthews to Orangeburg and took a guilty plea

1 for a calendar case I was saving my county some
2 money, until about three years ago I did some
3 Freedom of Information Act requests and found out
4 that the way the budget is fixed in that jail it
5 doesn't matter how many people from county to
6 county are in that jail, it's a per capita county
7 budget. I was very disappointed, so we talked to
8 those folks and I believe that being on both
9 sides of things, have a public defender on one
10 side and a Master on the other taking those kinds
11 of pleas, it would have a much bigger effect on
12 the money being spent.

13 MS. ANZELMO: Judge Banks, you are also
14 a practicing attorney as well as a part-time
15 Master. Do you currently carry malpractice
16 insurance in your law practice and if so how long
17 have you carried it?

18 JUDGE BANKS: I have been insured since
19 I started practicing law in late 1992. I believe
20 I've always carried a million dollar policy with
21 a half million dollar per enhancement, and I have
22 to have that to be able to do loan closings for
23 the title transfer people that I work for.

24 MS. ANZELMO: Thank you. Judge Banks
25 since your last screening you reported that you

1 had been sued one time by a former client. Can
2 you explain the circumstances surrounding that
3 case and how it was resolved?

4 JUDGE BANKS: Actually now it's two.
5 The first time I was screened before this
6 committee about eight years ago I was interviewed
7 by my assigned attorney and they told me about a
8 lawsuit that had been filed against me. I
9 recognized the name but I had never been served
10 with any such papers. And it was a 1983 action
11 from a former public defender client that was
12 never served, it was dismissed.

13 Most recently, I think it was earlier
14 this year or very late last year, another public
15 defender client sued me for malpractice, didn't
16 file an affidavit on the back of it from an
17 expert and so forth. I had it dismissed in a
18 summary judgement in Greenville.

19 MS. ANZELMO: Thank you. Judge Banks,
20 the commission received 80 ballot box surveys
21 with 10 written comments concerning your
22 candidacy. Three of those comments contained
23 concerns. The first concern stated that you do
24 not have the requisite skills to be the
25 Master-in-Equity in Orangeburg.

1 How would you respond to that concern?

2 JUDGE BANKS: I think that having an
3 eight year internship has proven me worthy and I
4 would add one more thing. The last four trials I
5 have had in Calhoun County as Master-in-Equity
6 have been -- the first one of the last four was
7 out of Dorchester County. The Master in
8 Dorchester had a conflict in the case and asked
9 me to take it and I took it. She felt I was
10 competent to take that case, and it was a
11 complicated case.

12 The last three have been from
13 Orangeburg County, and I don't have to take those
14 either but I take them because I have that kind
15 of mind set. And that Master wouldn't have asked
16 me to take them if he didn't think I was
17 competent. So I have got both the other Masters
18 in my circuit thinking I'm perfectly capable to
19 do their jobs.

20 MS. ANZELMO: Judge Banks, the second
21 concern questioned your honesty. How would you
22 respond to that.

23 JUDGE BANKS: I'm actually almost
24 speechless at that and I don't want anybody's
25 help with my reputation or anything other than

1 what I do. Unless they are specific, I would
2 think that that would be one of these things,
3 stray things coming from somebody who might be
4 supporting someone else. I will say that I have
5 got two degrees from Columbia International
6 University -- and not that that means I am honest
7 but I think it tells somewhat of a story.

8 MS. ANZELMO: As you are aware your
9 score on the screening commission did not meet
10 the commissions expectations. Would you like to
11 offer an explanation about that?

12 JUDGE BANKS: Yeah, I think I was a
13 quarter of a point from the cut off and I am
14 embarrassed and angry and I am mad at myself
15 about that. I'll tell you what my approach was.
16 I actually don't have the benefit of being able
17 to repeat the test, so I'm a little hamstrung
18 about that. But I'll tell you I think I was told
19 that the first test I took eight years ago I made
20 in the 90s. That shows what I'm capable of. And
21 to be honest with you, over the last two tests I
22 have tried to do enough to just pass the test.
23 And again I am embarrassed by that and I think I
24 can certainly reach the 90s again if I want to
25 buckle down.

1 I spent -- I got the emails to look at
2 all the advance sheets, maybe a month before the
3 test, and I spent -- going to the judicial
4 website and going to September 2011 looking at
5 every event sheet. I spent four and a half hours
6 doing about four and a half months of those
7 writing citations down. I scanned the whole
8 event sheets saying I think I need this one and
9 write the citation down. And it was very time
10 consuming and I probably spent more time
11 evaluating what I needed to do than what I needed
12 to do. But I'll tell you this and I think this
13 is the main reason I came a quarter of a point
14 shy -- I think the test is an hour and a half
15 long and I spent 40 minutes in there and I could
16 have applied a little more time. And I believe
17 that it's simply based on the length of my
18 answers on the short answer portion of the test.
19 And I could have been more verbose.

20 MS. ANZELMO: Thank you. Have you
21 sought or received a pledge from any legislator
22 prior to this date?

23 JUDGE BANKS: No. I've only announced
24 my candidacy so far.

25 MS. ANZELMO: Have you sought or have

1 you been offered a conditional pledge of support
2 of any legislator pending the outcome of your
3 screening?

4 JUDGE BANKS: No.

5 MS. ANZELMO: Have you asked any third
6 parties to contact the members of the General
7 Assembly on your behalf?

8 JUDGE BANKS: No.

9 MS. ANZELMO: Are you aware of anyone
10 attempting to intervene in any part of the
11 process on your behalf?

12 JUDGE BANKS: One person called me and
13 they asked me for permission if they could do
14 anything, and I said do not do anything, not
15 until I tell you, which is sometime in later
16 January.

17 MS. ANZELMO: Have you contacted any
18 members of this commission?

19 JUDGE BANKS: No.

20 MS. ANZELMO: Do you understand that
21 you are prohibited from seeking a pledge or
22 commitment until 48 hours after the formal
23 release of the commission's report?

24 JUDGE BANKS: Oh, yes.

25 MS. ANZELMO: Have you reviewed the

1 commission's guidelines on pledging?

2 JUDGE BANKS: Yes.

3 MS. ANZELMO: As a follow up are you
4 aware that violating the pledging rules are a
5 misdemeanor and upon conviction the violator must
6 be fined not more than \$1,000 or imprisoned for
7 not more than 90 days?

8 JUDGE BANKS: Yes.

9 MS. ANZELMO: I would note that the
10 Lowcountry Citizen's Committee found Judge Banks
11 qualified in the evaluative criteria of
12 constitutional qualifications of physical health
13 and mental stability. The Committee also found
14 him to be well qualified in the evaluative
15 criteria of ethical fitness, professional and
16 academic ability, character, reputation,
17 experience and judicial temperament.

18 Lastly I would note for the record that
19 any questions or any concerns raised during the
20 investigation regarding the candidate have been
21 incorporated in the questions asked today.

22 Mr. Chairman, I have no further
23 questions.

24 REPRESENTATIVE DELLENEY: Any further
25 questions of Mr. Banks?

1 SENATOR CAMPSEN: Judge Banks, study
2 next time.

3 JUDGE BANKS: I apologize to the
4 committee. I'm embarrassed by it, I really am.

5 REPRESENTATIVE DELLENEY: Thank you Mr.
6 Banks. We appreciate you appearing before us
7 today. This concludes this portion of your
8 screening process right now. Of course we will
9 issue a draft report which will eventually become
10 the final report and at that point the process is
11 over, but up until the draft report becomes the
12 final report we could bring you back and
13 reconvene the public hearing and ask you more
14 questions, but I don't expect that to happen in
15 your case, but we do have that ability.

16 With that I wish you well and thank you
17 for offering to serve and you have a safe trip
18 home.

19 JUDGE BANKS: Thank you, Mr. Chairman.

20 REPRESENTATIVE DELLENEY: Good
21 afternoon. We have before us this afternoon Mr.
22 James Benjamin Jackson, Jr., who seeks the
23 position of Master-in-Equity for Orangeburg
24 County. If you would please raise your right
25 hand to be sworn.

1 (The Honorable James Benjamin Jackson,
2 Jr., was duly sworn, after which testimony began
3 at 2:04 p.m.)

4 REPRESENTATIVE DELLENEY: Do you have
5 anybody you'd like to introduce us to?

6 JUDGE JACKSON: Yes, I brought my wife
7 with me, my wife Cynthia Jackson of 35 years now.

8 REPRESENTATIVE DELLENEY: Have you had
9 an opportunity to review your Personal Data
10 Questionnaire?

11 JUDGE JACKSON: Yes.

12 REPRESENTATIVE DELLENEY: Is it
13 correct?

14 JUDGE JACKSON: Yes.

15 REPRESENTATIVE DELLENEY: Do you have
16 any objection of our making that part of your
17 sworn testimony?

18 JUDGE JACKSON: No objection.

19 (EXH. 25, James Jackson's personal Data
20 Questionnaire was marked for identification.)

21 REPRESENTATIVE DELLENEY: The Judicial
22 Merit Selection Commission has thoroughly
23 investigated your qualifications for service on
24 the bench. Our inquiry is primarily focused on
25 nine evaluative criteria which has included a

1 survey of the bench and the bar, a thorough study
2 of your application materials, verification of
3 your compliance with the State ethics laws, a
4 search of any newspaper articles in which your
5 name may have appeared, a study of previous
6 screenings and a check of any economic conflicts
7 of interest.

8 There are no affidavits filed in
9 opposition to your election nor are there any
10 witnesses here to testify.

11 Do you have a brief opening statement
12 you'd like to make?

13 JUDGE JACKSON: Yes, I'd just like to
14 say I have been practicing law now for 32 years.
15 I spent two years in Allendale County in the
16 early 80s and moved to Orangeburg County in 1982
17 and been practicing there in Orangeburg for 30
18 years now both in private practice and for two
19 years in the solicitor's office.

20 I am seeking the office of
21 Master-in-Equity in Orangeburg. I have spent
22 much time in that office as a lawyer for the last
23 30 years doing a fair amount of mortgage
24 foreclosure work and other property dispute work
25 where I have had an opportunity to be before the

1 Master-in-Equity. Again, it's an honor for me to
2 be able to seek that position.

3 It's part-time in Orangeburg so I think
4 I'll be able to practice law a little bit
5 part-time as well, but I think it's certainly a
6 good opportunity for me to sort of do this before
7 the end of my career. I am 57 now, but I would
8 like to keep going for certainly a good while
9 longer. I think if I can have the opportunity to
10 serve as Master-in-Equity in Orangeburg it would
11 be something I'd like to do.

12 Our judge is retiring after some 28
13 years in the office and so I am looking forward
14 to this opportunity. I appreciate the time and
15 the opportunity to meet with you here today.

16 REPRESENTATIVE DELLENEY: If you would
17 answer any questions our able counsel may have
18 for you.

19 MS. DEAN: Thank you, Mr. Chairman.

20 Mr. Jackson, along with your PDQ that
21 is now part of the record, you now have before
22 you your Sworn Statement you've provided with
23 detailed answers to over 30 questions regarding
24 your judicial conduct, statutory qualifications,
25 office administration and temperament.

1 Are there any amendments you would like
2 to make to that document at this time?

3 JUDGE JACKSON: No.

4 MS. DEAN: At this time, Mr. Chairman,
5 I'd like to ask that Mr. Jackson's Sworn
6 Statement be entered into as an exhibit into the
7 hearing record?

8 REPRESENTATIVE DELLENEY: Without
9 objection it will be entered at this time.

10 (EXH. 26, James Jackson's Sworn
11 Statement, was marked for identification.)

12 MS. DEAN: One final procedural matter.
13 I note for the record that based on the testimony
14 contained in the candidate's PDQ, which has been
15 included in the record with the candidate's
16 consent, Mr. Jackson meets the statutory
17 requirements for this position regarding age,
18 residence and years of practice.

19 Mr. Jackson, please state for the
20 record the city and the circuit in which you
21 reside.

22 JUDGE JACKSON: I reside in Orangeburg
23 County, 1st Judicial Circuit.

24 MS. DEAN: Thank you, sir. You touched
25 on this briefly in your opening statement but

1 would you now explain to the commission why you
2 want to serve as a Master-in-Equity.

3 JUDGE JACKSON: The Master-in-Equity's
4 job is an important job, it's an opportunity I
5 think for me to give back to Orangeburg County.
6 Orangeburg County has been very good to me. It's
7 where I've practiced law for 30 years now.
8 Again, it's important work goes on in the
9 Master-in-Equity's office. We don't travel, we
10 get to stay right within the county. In terms of
11 property disputes and the foreclosure work that
12 goes on there, the judicial sales, I am familiar
13 with all of that and regularly in the Master's
14 office. I am actually the person that does most
15 of the bidding in the Master sales, I've been
16 doing that for a number of years. So I am well
17 familiar with that and just feel like I am well
18 qualified for this position.

19 MS. DEAN: Are there any areas of law
20 for you which you would need additional
21 preparation to serve as a Master-in-Equity in
22 Orangeburg and if so how would you handle that
23 preparation?

24 JUDGE JACKSON: I think I am pretty
25 well versed in all that for having done it for 30

1 years. There's not much that's gone on that I
2 haven't done, and I feel that in addition to just
3 being in the Master's office that I could serve
4 and sometimes as a part-time circuit judge as
5 well. I know Judge Dixon our circuit judge would
6 like for me to do that. He's discussed that with
7 me. Again Judge Burgdorf our retiring judge has
8 not been able to do much of that for the last
9 year or two because of his health and so I feel
10 like that I can help with that.

11 MS. DEAN: Mr. Jackson although you
12 explained this in your Sworn Statement could you
13 please explain for the members of the commission
14 what you think the appropriate demeanor for a
15 judge is.

16 I think a judge has to be even keeled
17 at all times. I have served in a number of
18 different courts with a number of different
19 judges. Fortunately the vast majority of the
20 judges in South Carolina are able to do that so I
21 have had good role models in Orangeburg. Judge
22 Smith, Judge Dixon, Judge Charles Whetstone,
23 Judge Judy Williams were all very good at that
24 sort of thing. I think a judge has to keep his
25 wits about him at all times. You have to keep an

1 open mind throughout the process, you have to
2 certainly listen to both sides. As
3 Master-in-Equity you get to be judge and jury,
4 and that's a little different and you have to
5 take that into account so you certainly have to
6 keep an open mind and hear all the evidence.
7 Often times you have to wait until the very end
8 to hear the important evidence that impacts your
9 ability to make a decision on the case.

10 So I feel as though I can do all those
11 things and I feel that I certainly have the
12 judicial temperament it takes to be
13 Master-in-Equity.

14 MS. DEAN: You touched on this but if
15 you could explain to the commission if there is a
16 specific Master-in-Equity you would try to model
17 yourself after.

18 JUDGE JACKSON: When I first started
19 practicing in Orangeburg our Master-in-Equity was
20 Judge Hydrick. He was there for a long time. I
21 think really probably since the unified system
22 came to be in the mid 1970s then Davie Burgdorf
23 has been our judge since I think 1985. Judge
24 Burgdorf does an excellent job and I think I'd
25 model myself after him.

1 I've been in his court a lot. I have
2 won some and I've lost some, haven't always
3 agreed with his decisions, but I do know that all
4 of his decisions were made after careful thought,
5 consideration, listening to all the facts, giving
6 everybody an opportunity to be heard. He's kept
7 up with the law, which I certainly intend to do
8 and I would model myself after Judge Burgdorf.
9 He's been an excellent example for what any good
10 Master-in-Equity ought to be.

11 MS. DEAN: Thank you. What suggestions
12 would you offer for improving the backlog of
13 cases on the docket.

14 JUDGE JACKSON: Well, in Orangeburg
15 it's a little different because it's part-time
16 but certainly I would put in whatever time it
17 takes to get that done. I think it can be done
18 in Orangeburg. I think right now we have had a
19 little backlog because of the health of Judge
20 Burgdorf, he hasn't been able to work as much as
21 he's done over the long haul of his career and I
22 would put in whatever time is necessary,
23 full-time if necessary for the first few months
24 until we got caught up, and then after that I
25 believe on a part-time basis I could keep up with

1 them.

2 MS. DEAN: Mr. Jackson, do you
3 currently carry malpractice insurance in your law
4 practice and if so how long have you carried it?

5 JUDGE JACKSON: I've had malpractice
6 coverage since I started practicing law and it's
7 always been maintained.

8 MS. DEAN: As part as this process the
9 comission received ballot box surveys. The
10 commission received 82 responses for you which
11 include nine written comments. Many of those
12 comments were positive including one that said he
13 has the experience, temperament intelligence to
14 be a great Master. Another one said honest and
15 exhibits the character and integrity and
16 experience in this position.

17 Two comments however listed concerns
18 over your work ethic specifically your attention
19 to detail and ability. Could you please respond.

20 JUDGE JACKSON: I am not sure exactly
21 how best to respond to that. I think that
22 whatever comments were made about inattention to
23 detail are probably by somebody maybe doesn't
24 know me as well. I have always tried to do the
25 things I'm supposed to do, always tried to do

1 everything on a timely basis. I think most
2 people will tell you I have done that, so I am
3 not familiar with those comments. I'm not sure
4 exactly what they're aimed at. So far as I know
5 I have always been in court on time including
6 everything that needed to be done. So it's
7 difficult to comment on that because I'm not sure
8 exactly what the specifics of that would be.

9 MS. DEAN: Thank you, Mr. Jackson. We
10 just have some housekeeping issues now.

11 Have you sought or received a pledge
12 from any legislator prior to this date?

13 JUDGE JACKSON: No, ma'am.

14 MS. DEAN: Have you sought or have you
15 been offered a conditional pledge of support of
16 any legislator pending the outcome of your
17 screening?

18 JUDGE JACKSON: No.

19 MS. DEAN: Have you asked any third
20 parties to contact the members of the General
21 Assembly on your behalf?

22 JUDGE JACKSON: No.

23 MS. DEAN: Are you aware of anyone
24 attempting to intervene in any part of the
25 process on your behalf?

1 JUDGE JACKSON: Some folks told me they
2 would support me and they would speak to people.
3 Whether they have or not I don't know.

4 MS. DEAN: Did you remind those
5 supporters of the 48 hour rule.

6 JUDGE JACKSON: Yes.

7 MS. DEAN: Have you personally
8 contacted any members of this commission?

9 JUDGE JACKSON: No.

10 MS. DEAN: Do you understand that you
11 are prohibited from seeking a pledge or
12 commitment until 48 hours after the formal
13 release of the commission's report?

14 Judge JACKSON: Yes, ma'am.

15 MS. DEAN: Have you reviewed the
16 commission's guidelines on pledging?

17 JUDGE JACKSON: Yes.

18 MS. DEAN: As a follow up are you
19 aware of the penalties for violating the pledging
20 rules, that is it's a misdemeanor and upon
21 conviction the violator must be fined not more
22 than \$1,000 or imprisoned for not more than 90
23 days?

24 JUDGE JACKSON: Yes, I'm aware of that.

25 MS. DEAN: I would note that the

1 Lowcountry Citizen's Committee found Mr. Jackson
2 to be qualified in the constitutional
3 qualification of physical health and mental
4 stability, qualified with the highest rating for
5 those three categories.

6 The committee also found Mr. Jackson
7 well qualified in the remaining categories.

8 I would just note for the record that
9 any concerns raised during the investigation
10 regarding the candidate were incorporated in the
11 questions asked today.

12 Mr. Chairman, I have no further
13 questions.

14 REPRESENTATIVE DELLENEY: Does any
15 member of the commission have any questions for
16 Mr. Jackson?

17 Mr. Jackson, we thank you very much for
18 your willingness to serve and this concludes this
19 portion of your screening process. We will issue
20 a draft report which will eventually become the
21 report of the commission. At that point in time
22 nothing can be added or taken away the process is
23 over, but up until that time if we were of such a
24 mind we could reconvene the public hearing and
25 bring you back and ask you more questions.

1 Nevertheless the 48 hour rule does apply and I
2 thank you for offering and hope you have a safe
3 trip home.

4 JUDGE JACKSON: Thank you.

5 We need to have a short executive
6 session. Do I hear a motion?

7 SENATOR MARTIN: So moved.

8 SENATOR NICHOLSON: Second.

9 REPRESENTATIVE DELLENEY: All in favor?

10 MULTIPLE SPEAKERS: Aye.

11 (The Judicial Merit Selection
12 Commission went into executive session from 2:15
13 to 2:20 p.m.)

14 REPRESENTATIVE DELLENEY: We have
15 lifted the veil and are back in public session
16 and ready to vote.

17 PROF. FREEMEN: I move that we find all
18 the candidates for the Family Court and the judge
19 seat qualified.

20 REPRESENTATIVE DELLENEY: Everybody in
21 favor of finding all the candidates qualified
22 raise your right hand. I am voting for Clemmons
23 --

24 MS. SHULER: And you're voting for
25 Seller?

1 MR. HARRELL: Right.

2 MS. SHULER: Ten.

3 REPRESENTATIVE DELLENEY: All in favor
4 for finding Patricia Forbis qualified and
5 nominated raise your hand.

6 MS. SHULER: Zero.

7 REPRESENTATIVE DELLENEY: All in favor
8 for finding Thomas Tredway Hodges qualified and
9 nominated raise your hand.

10 MS. SHULER: Nine.

11 REPRESENTATIVE DELLENEY: All in favor
12 for finding David Earl Phillips qualified and
13 nominated raise your hand.

14 MS. SHULER: Ten.

15 REPRESENTATIVE DELLENEY: All in favor
16 for finding Paul Daniel Schwartz qualified and
17 nominated raise your hand.

18 MS. SHULER: Ten.

19 REPRESENTATIVE DELLENEY: All in favor
20 of finding Michael Todd Thigpen qualified and
21 nominated raise your hand.

22 One. So it's Thomas Tredway Hodges,
23 David Earl Phillips and Paul Daniel Schwartz.

24 REPRESENTATIVE DELLENEY: Next is the
25 Master-in-Equity. Everybody that believes they

1 qualified and nominated raise your hand.

2 Ten each, both qualified and nominated.

3 REPRESENTATIVE DELLENEY: That takes
4 care of our business.

5

6 (Thereupon the proceedings were concluded at 2:25 p.m.)

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

I N D E X		Page
1		
2		
	CANDIDATE:	
3		
	Martha McCright Rivers Davisson	4
4	Stevens Bultman Elliot	17
	Melissa Johnson Emery	32
5	Bernard F. Mack	53
	Randall Edward McGee	65
6	Thomas Joseph Quinn	78
	Patricia Lynn Forbis	94
7	Thomas Tredway Hodges	108
	David Earl Phillips	125
8	Paul Daniel Schwartz	138
	Michael Todd Thigpen	154
9	Martin Rast Banks	168
	James Benjamin Jackson	182
10		
	E X H I B I T S	
11		Page
	DEFENDANT'S/PLAINTIFF'S	
12		
	1 Martha Davisson's PDQ	5
13	2 Martha Davisson's Sworn Statement	7
	3 Stevens Bultman Elliot's PDQ	18
14	4 Stevens Bultman Elliot's Sworn Statement	20
	5 Melissa Emery's PDQ	33
15	6 Melissa Emery's Sworn Statement	35
	7 Bernard F. Mack's PDQ	54
16	8 Bernard F. Mack's Sworn Statement	57
	9 Randall Edward McGee's PDQ	66
17	10 Randall Edward McGee's Sworn Statement	68
	11 Thomas Joseph Quinn's PDQ	79
18	12 Thomas Joseph Quinn's Sworn Statement	81
	13 Patricia Lynn Forbis' PDQ	95
19	14 Patricia Lynn Forbis' Sworn Statement	97
	15 Thomas Tredway Hodges' PDQ	110
20	16 Thomas Tredway Hodges' Sworn Statement	112
	17 David Earl Phillips' PDQ	126
21	18 David Earl Phillips' Sworn Statement	128
	19 Paul Daniel Schwartz' PDQ	139
22	20 Paul Daniel Schwartz' Sworn Statement	141
	21 Michael Todd Thigpen's PDQ	155
23	22 Michael Todd Thigpen's Sworn Statement	157
	23 Martin Banks' PDQ	169
24	24 Martin Banks' Sworn Statement	171
	25 James Benjamin Jackson's PDQ	183
25	26 James Benjamin Jackson's Sworn Statement	186

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER

I, Mary K. McCormick, Court Reporter and Notary Public for the State of South Carolina, do hereby certify:

That the foregoing proceeding was taken before me at the date and time and location as stated on page 1 of this transcript; that the witnesses were duly sworn to testify to the truth, the whole truth and nothing but the truth; that the testimony of the witnesses made at the time of the examination were recorded stenographically by me and were thereafter transcribed; that the foregoing proceeding as typed is a true, accurate and complete record of the proceedings to the best of my ability.

I further certify that I am not of counsel or kin to any of the parties to this cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal, this 11th day of December, 2012, at Aiken County, South Carolina.



Mary K. McCormick

Mary K. McCormick (Katy McCormick)
Notary Public
State of South Carolina at Large
My Commission Expires:
June 30, 2015