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JUDICIAL MERIT SELECTION COMMISSION

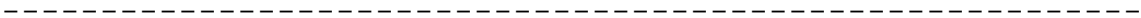
PUBLIC HEARINGS

Tuesday, April 17, 2012

9:00 a.m.

1101 Pendleton Street
Gressette Building, Room 308
Columbia, South Carolina

REPORTED BY: LISA GARSON
COURT REPORTER



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1 MEMBERS IN ATTENDANCE:

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

3 SENATOR LARRY MARTIN, VICE-CHAIRMAN

4 REPRESENTATIVE DAVID J. MACK, III

5 H. DONALD SELLERS, ESQUIRE

6 PROFESSOR JOHN P. FREEMAN

7 SENATOR FLOYD NICHOLSON

8 JOHN DAVIS HARRELL, ESQUIRE

9 SENATOR JOHN M. "JAKE" KNOTTS, JR.

10 AMY JOHNSON McLESTER

11 ERIN B. CRAWFORD, ESQUIRE

12

13 COUNSEL:

14 JANE SHULER, CHIEF COUNSEL

15 PATRICK G. DENNIS

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18 (INDEX AT REAR OF TRANSCRIPT)

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1 REPRESENTATIVE DELLENEY: We'll call the public
2 hearing on judicial qualifications to order. The
3 Judicial Merit Selection Commission is called pursuant to
4 Chapter 19 of Title 2, South Carolina Code of Laws,
5 requiring review of candidates for judicial office.

6 The function of the Commission is not to choose
7 between candidates but, rather, declare whether or not
8 the candidates who offer for positions on the bench, in
9 our judgment, are qualified to fill the positions they
10 seek.

11 The inquiry we undertake is a thorough one. It
12 is centered around the Commission's nine evaluative
13 criteria, and it involves a complete personal and
14 professional background check on each candidate.

15 These public hearings are convened for the
16 purpose of screening candidates. Today we will screen
17 two vacancies for the Family Court and two vacancies for
18 the Master-in-Equity Court.

19 At this time, Counsel advises me that we need
20 to do a short period of executive session, but prior to
21 that we'd like to welcome our newest member and the
22 Vice-Chairman, Senator Martin.

23 SENATOR MARTIN: Thank you very much. It's a
24 pleasure to be with you. I look forward to working with
25 you and appreciate your leadership on this committee.

1 REPRESENTATIVE DELLENEY: Thank you, sir. Do I
2 hear a motion to go into executive session?

3 MR. SELLERS: So moved.

4 SENATOR NICHOLSON: Second.

5 REPRESENTATIVE DELLENEY: All in favor?

6 MULTIPLE SPEAKERS: Aye.

7 (The Judicial Merit Selection Commission went
8 into executive session from 9:21 a.m. to 9:32 a.m.)

9 REPRESENTATIVE DELLENEY: All right. We're
10 back in open session. Ms. Shuler, do you have anything?

11 MS. SHULER: Mr. Chairman, I would like to
12 offer and have made exhibits to the record the following:
13 the Citizens Committee reports for the Spring 2012, from
14 the Midlands Citizens Committee, two reports; Pee Dee
15 Citizens Committee, one report; and the Upstate Citizens
16 Committee, two reports.

17 REPRESENTATIVE DELLENEY: Are there any
18 objections to making the Citizens Committee Report part
19 of the record?

20 (No response.)

21 REPRESENTATIVE DELLENEY: There being none, the
22 Citizens Committee Reports from the Midlands, Pee Dee,
23 and the Upstate will be marked as exhibits and entered
24 into the public record.

25 Anything further?

1 MS. SHULER: No, sir.

2 (EXH. 1, Citizens Committee Reports, marked for
3 identification.)

4 REPRESENTATIVE DELLENEY: I believe first we
5 have Ms. Ballenger.

6 (Off the record.)

7 REPRESENTATIVE DELLENEY: Ms. Ballenger, good
8 morning. We appreciate you being here.

9 We have before us Ms. Karen F. Ballenger who
10 seeks a judicial position on the Family Court, 10th
11 Circuit, Seat number 2. If you would, Ms. Ballenger,
12 please raise your right hand to be sworn.

13 (Karen F. Ballenger, was duly sworn, after
14 which testimony commenced at 9:43 a.m.)

15 REPRESENTATIVE DELLENEY: Thank you, ma'am.

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

25 There have been no affidavits in opposition to

1 your election. There are no witnesses here to testify.
2 Do you have a brief opening statement that you would like
3 to make?

4 MS. BALLENGER: I would just like to thank you
5 for allowing me to be here today to present myself as a
6 judicial candidate for the 10th Judicial Circuit, and I
7 also would like to take the opportunity to thank each of
8 you all for the courtesy you've shown through this
9 process.

10 Ms. Shuler and Ms. Traywick have been extremely
11 kind and helpful and have made this process a lot less
12 stressful for me and, I'm sure, for the rest of the
13 candidates. I would just like to thank them and thank
14 the Members of the Commission.

15 REPRESENTATIVE DELLENEY: Thank you, ma'am.

16 If you would please answer any questions Ms.
17 Shuler might have for you.

18 MS. SHULER: Good morning, Ms. Ballenger.

19 MS. BALLENGER: Good morning.

20 MS. SHULER: Mr. Chairman and Members of the
21 Commission, I have a few procedural matters to take care
22 of with this candidate. You have before you, your
23 Personal Data Questionnaire that you submitted as part of
24 your application. Are there any additional amendments
25 that you would like to make at this time to your PDQ?

1 MS. BALLENGER: Not that I'm aware of.

2 MS. SHULER: Mr. Chairman, I would ask that
3 Ms. Ballenger's Personal Data Questionnaire and the
4 amendment that she previously submitted be entered as an
5 exhibit in this record.

6 REPRESENTATIVE DELLENEY: Without objection it
7 will be made part of the record and this transcript.

8 (EXH. 2, Karen Ballenger's Personal Data
9 Questionnaire, marked for identification.)

10 MS. SHULER: Ms. Ballenger, you also have
11 before you the sworn statement you provided with detailed
12 answers to over 30 questions regarding judicial conduct,
13 statutory qualifications, office administration, and
14 temperament.

15 Are there any additional amendments that you
16 would like to make at this time to your sworn statement?

17 MS. BALLENGER: No, ma'am.

18 MS. SHULER: At this time, Mr. Chairman, I
19 would ask that Ms. Ballenger's sworn statement be entered
20 as an exhibit in these hearing records.

21 REPRESENTATIVE DELLENEY: It will be made part
22 of the record at this point in the transcript.

23 (EXH. 3, Karen F. Ballenger Sworn Statement,
24 marked for identification.)

25 MS. SHULER: One final procedural matter.

1 I note for the record that based on the
2 testimony contained in the candidate's PDQ, which has
3 been included in the record with the candidate's consent,
4 Ms. Ballenger meets the statutory requirements for this
5 position regarding age, residence, and years of practice.

6 Ms. Ballenger, please state the city and
7 circuit in which you reside.

8 MS. BALLENGER: I live in Seneca, South
9 Carolina, in the Circuit for the 10th Judicial Circuit.

10 MS. SHULER: Thank you.

11 Ms. Ballenger, after practicing law for 25
12 years, why do you now want to serve as a Family Court
13 Judge?

14 MS. BALLENGER: When I graduated from law
15 school in 1987, I had no idea that my career path would
16 take the road that it did. I had no idea that I'd become
17 a Family Court practitioner, but from day one the
18 majority of my focus was the issues dealing with Family
19 Court. Then, approximately 10 to 15 years ago, I
20 streamlined my practice to do only Family Court
21 litigation.

22 I can say without any doubt that my Family
23 Court practice has been challenging but also has been
24 very, very rewarding. As you can see from looking at my
25 questionnaire, I have a 20-year-old daughter, and I have

1 always told her, To whom much is given, much is expected.
2 That's the way I have lived my life, so becoming a Family
3 Court Judge I want to be able to give that to my
4 community, and it would allow me to continue working in a
5 field that I'm very, very passionate about, and that is
6 family law.

7 MS. SHULER: Thank you, Ms. Ballenger.

8 Is there anything in your legal and
9 professional experience thus far that would assist you in
10 being an effective Judge?

11 MS. BALLENGER: Well, as you just stated, I've
12 practiced for 25 years. You know, I've handled lots of
13 different cases. I've handled custody cases, both
14 representing litigants and also as Guardian ad litem. I
15 have represented people in all areas. I've done
16 Equidivision where there's million dollar cases and also
17 cases where we're fighting over a mobile home that's
18 upside down.

19 I've done TPRs. I have done adoptions, family
20 adoptions, DSS adoptions. I've been the contact attorney
21 for DSS. I have also been the attorney for the Guardian
22 ad litem program. I have, you know, there is not a seat
23 in the Family Court, besides the Judge's, seat that I've
24 not sat in in my 25 years. I've said to lots of
25 different people that I felt like I've been running for

1 this judgeship for 24 years and didn't realize that I'd
2 been running for it.

3 My experience and the opportunities that I've
4 been given have given me experience and led me to the
5 decision that I've made to run for this Family Court
6 judgeship.

7 MS. SHULER: Thank you.

8 Are there any areas, including subjective areas
9 of the law, that you feel you would need additional
10 preparation for in order to serve as a Judge and how
11 would you handle that additional preparation?

12 MS. BALLENGER: As I said, I've practiced in
13 all different areas. Probably the one that may be the
14 least that I've had experience in is the juvenile area.
15 But there again, I have had experience in that area too.

16 I've been appointed, and I've represented
17 people that have retained me, which is kind of unusual
18 because usually litigants in juvenile get appointed
19 attorneys. But I've been appointed as the 10th Judicial
20 Circuit Workforce With Juveniles about 10 years ago.
21 Right now I'm the attorney for juveniles in the Oconee
22 County Drug Court. So I have experience in that area,
23 but if there is one field that I probably have the least,
24 it would be the juvenile area.

25 And, you know, I've already started preparing.

1 Like I said, because I do have experience there, I don't
2 think it will take me very long to catch up in that
3 field, but that would be the one area that I would
4 probably need to do a little bit of work on.

5 MS. SHULER: Ms. Ballenger, although you
6 address this in your sworn affidavit, could you please
7 explain to the Members of the Commission what you believe
8 is the appropriate demeanor of a Judge.

9 MS. BALLENGER: When I was looking back at the
10 questionnaire, I saw that I put the first thing that came
11 to my mind was a judicial servant. What I meant by that
12 is when you're dealing in Family Court, you're both the
13 Judge and jury. You're probably the only person that
14 that litigant may ever see, and you become the picture of
15 the judicial system. So if you keep that in mind, I
16 think that all the other adjectives, such as, being fair,
17 being patient, treating people with respect, if you keep
18 in mind, that you're there and you're serving your
19 community and you uphold the law, I think all the other
20 adjectives and all the other characteristics of a Judge
21 fall into place.

22 MS. SHULER: Ms. Ballenger, if you're selected
23 to the Family Court bench, what would you like your
24 legacy to be as a Judge on the Family Court?

25 MS. BALLENGER: Probably all of you all are too

1 young to remember Judge Ballenger, but that was my
2 father-in-law. He died in 1997, and in Oconee County he
3 is still so well respected. So if my legacy is that I
4 carried on the Ballenger name and that I did that name
5 proud, that's the best legacy that I could ever have.

6 MS. SHULER: Ms. Ballenger, do you currently
7 carry malpractice insurance in your law practice, and if
8 so, how long have you carried malpractice insurance?

9 MS. BALLENGER: I do. I can't tell you the
10 limits, but I know they far exceed what we're supposed to
11 take. I've carried malpractice the entire time I've
12 practiced.

13 MS. SHULER: Thank you.

14 Ms. Ballenger, what suggestions would you offer
15 for improving the backlog of the cases on the docket for
16 the Family Court?

17 MS. BALLENGER: I'm not sure if you're aware,
18 but Judge Cain -- he went to the Federal bench -- came
19 off the bench in Oconee County in June of last year. So
20 we have not had a resident Judge in a year, so our case
21 log in Oconee County is very backlogged at the present
22 time.

23 Before he left the bench, he implemented the
24 mandatory mediation. Even though it's been a year, that
25 is still in the process and we've been seeing a little

1 bit of help that mediation has been offering the litigant
2 in getting their cases moved. There are some simple
3 things, such as doing consent orders on cases that we can
4 do. I know in Anderson County they've started doing the
5 block system for temporary hearings, and they indicate
6 that's really helped them.

7 But I think the main thing that I would want to
8 implement would be to be more active in the docket. I
9 think having pretrial conferences -- I don't know if this
10 is just the way it is in Oconee County or across the
11 State, but some of the attorneys in our circuit are
12 procrastinators. We can have situations where attorneys
13 don't get along very well, and they don't like talking to
14 each other. So sometimes just bringing them into the
15 same room and holding their feet to the fire gets cases
16 resolved because our court backlog is so great.

17 I would not want to dictate precious court time
18 to do those status conferences. I would want to do them
19 on an in-chambers week, and if we reach an agreement then
20 try to in the next term of court, to schedule them in
21 like on a Friday afternoon or early in the morning
22 because if they reach an agreement in that status
23 conference I think it would be -- they don't need to wait
24 four months until I can get them on the docket. I need
25 to get them in there as quickly as possible.

1 So, you know, I just think that being more
2 proactive as the Judge and holding the attorneys' feet to
3 the fire would be the way I would try to address the
4 issue.

5 MS. SHULER: Thank you.

6 Ms. Ballenger, you were screened previously by
7 the Commission in 1999; however, your SLED report and
8 your Personal Data Questionnaire for this screening
9 reflected several lawsuits in which you were named as a
10 defendant.

11 In 2003 you were sued by a former client,
12 Amanda Frick. Please explain the nature of this suit and
13 its disposition.

14 MS. BALLENGER: It was dismissed without any
15 findings of liability on my part. I think it was filed
16 in June and dismissed in August.

17 MS. SHULER: Ms. Ballenger, in 2010, 2011, and
18 2012, you were named as the defendant in a foreclosure
19 action due to unpaid Guardian ad litem fees. Could you
20 briefly explain the nature of these suits and their
21 disposition.

22 MS. BALLENGER: Well, it was a foreclosure
23 action where I had been awarded \$400 in Guardian ad litem
24 fees, and I had not been paid. So initially, when they
25 filed the foreclosure action against the litigants they

1 named me as the party defendant, and I filed an answer
2 and apparently something worked out and they dismissed
3 that case.

4 And then there was another case that was filed.
5 The same parties. I was named again. At that time I
6 filed a disclaimer saying, you know, I was only owed
7 \$400. This was costing me more money than recouping that
8 money, so I did a disclaimer. I don't know what happened
9 in that case.

10 They filed a third case, and they named me
11 again. At that time I contacted the attorney, and I
12 said, You know, I filed an executed disclaimer. So they
13 amended the complaint, and they filed that, I think,
14 March 12th of this year, so I am no longer named as a
15 party in that foreclosure action.

16 MS. SHULER: Thank you.

17 Ms. Ballenger, your SLED report and your
18 Personal Data Questionnaire reflects a tax lien filed
19 against you in October 2011, for \$645.19.

20 Please explain the circumstances regarding the
21 filing of this lien and the status of this lien.

22 MS. BALLENGER: First, before I go into the
23 facts, I would like to let everyone know that lien has
24 been expunged. In August of 2011, I received notice,
25 even though I can't find the letter. Apparently, I

1 received notice that I owed penalties and interest due to
2 a 2009 filing. It was \$604.78.

3 Then in September, a letter dated
4 September 28th, I got a notice of unpaid tax balance from
5 the Department of Revenue saying that I owed \$604.78, to
6 the best of my knowledge. I immediately sent a partial
7 payment to the Department of Revenue, and I also
8 scheduled a time to talk to my tax accountant because I
9 couldn't understand why I owed the money because in 2009,
10 I had cut some trees on some property that I owned in
11 Marion County, and I couldn't figure out the basis on the
12 property so I ended up claiming no basis, paying a
13 substantial chunk to the Department of Revenue.

14 And I couldn't understand why in the world I
15 would be owing any money. So I sent this partial payment
16 in September and then October 11th or October 10th I got
17 notice that they were filing a tax lien. So I
18 immediately sent the \$645.19, what they said I owed them.
19 Then like on October the 12th I got another notice, what
20 was called a Notice of Unpaid Tax Balance from the
21 Department of Revenue saying that I owed \$445.19, which
22 was the \$645.19 minus the \$200.

23 So by the time they put the tax lien on, and it
24 was filed on August 17th, I had paid \$1,290.38 toward
25 that liability. So they ended up satisfying the tax lien

1 and refunding me the \$645.19 in two payments. In
2 contacting the Department of Revenue and filling out the
3 questionnaire, I couldn't understand, how did this
4 happen?

5 And the person that I dealt with at that time
6 indicated that I needed to send a letter asking the
7 Department of Revenue to expunge that tax lien. There
8 was a little time period that I didn't write the letter
9 because I was trying to get all the process as far as
10 filling out the questionnaire and studying for the test.

11 But just as soon as I got that over, I went and
12 wrote a three-page letter to the Department of Revenue
13 and within a day I got a call back saying they were
14 expunging the tax lien.

15 MS. SHULER: So it has been expunged since last
16 week?

17 MS. BALLENGER: Well, I received the letter. I
18 didn't check the Clerk of the Court to see if it has
19 actually been done. I just got a letter from the
20 Department of Revenue saying that they were going to.

21 Whether it's actually been expunged already, I
22 can't say on the record because I didn't check.

23 MS. SHULER: Thank you.

24 Ms. Ballenger, the Commission received 243
25 ballot box surveys regarding you with 24 additional

1 comments. One of those surveys indicated concern that
2 you take advantage of persons who do not have attorneys.
3 What response would you offer to those concerns regarding
4 how you treat pro se litigants?

5 MS. BALLENGER: First of all, I want to ask
6 that you look at all the favorable responses and I was
7 very humbled by that. But to address the one issue and
8 that one concern, you know, I think I know the situation
9 that gave rise to that concern, and I would address that
10 if anybody wants to hear that particular situation. But
11 I'd rather take the high road and tell you how I deal
12 with pro se litigants.

13 When my client comes to me and tells me that
14 they have an agreement, what I do is I do a written
15 agreement. And in that written agreement there is a
16 disclosure form where I specifically say, you know, that
17 they voluntarily entered into it and I'm not representing
18 them. But I go one step further than that. I do what I
19 call an acknowledgment form.

20 An acknowledgment form is like a page and a
21 half in which I go down every question that they're asked
22 if they go to Court. And I have them confirm that, that
23 they voluntarily agreed that this is what they want, that
24 there's been no duress. Of course, when they go into
25 Court, I tell the Court, you know, I tell the Court and I

1 do this for my client's protection and also mine. I
2 disclose the fact to the Court whether this was something
3 that was negotiated, if it was something that I had a
4 conversation with the pro se defendant.

5 And I put on the record that I had to speak to
6 her. I disclosed to her her rights, or his rights, to
7 get an attorney. And then I ask the Judge if he will
8 question the pro se defendant. And I'm sure they do this
9 all over the State, but in the 10th Judicial Circuit when
10 there's a pro se litigant they go above and beyond to be
11 sure that the agreement is fair and that the person knows
12 what they're entering into.

13 So I feel like I go above and beyond than most
14 attorneys that I see in our circuit to be sure that that
15 pro se litigant knows that I'm not representing them,
16 knows that they have a right to a trial. You know, I
17 just go way above and beyond, and there again, the Judge
18 does say also.

19 MS. SHULER: Ms. Ballenger, in the specific
20 circumstance that you think gives rise to this comment,
21 did you follow the procedures that you just outlined with
22 the pro se litigant?

23 MS. BALLENGER: Well, this was a situation
24 where the parties reached that agreement and that person
25 went into Court, and I never even spoke to that person to

1 the best of my knowledge. And the Judge questioned them.
2 It was a temporary hearing. The Judge approved the
3 temporary agreement, and then we ended up having a final
4 hearing, and they didn't get an attorney until right
5 before the final hearing, and at the final hearing it was
6 a contested hearing.

7 And there was no issue brought up at the final
8 hearing by the attorney and the litigant that I had done
9 anything improper. In fact, I never even -- it was
10 something that was negotiated between the parties, and I
11 never even met the defendant.

12 MS. SHULER: Mr. Chairman, I would like to
13 request that we now go into executive session.

14 REPRESENTATIVE DELLENEY: Do I hear a motion on
15 executive session?

16 SENATOR KNOTTS: So moved.

17 REPRESENTATIVE DELLENEY: Do I hear a second?

18 (Multiple speakers wherein there was a second
19 to go into executive session.)

20 REPRESENTATIVE DELLENEY: All in favor?

21 (Multiple speakers wherein the Committee went
22 into executive session from 9:58 a.m. to 10:02 a.m.)

23 REPRESENTATIVE DELLENEY: Ms. Shuler?

24 MS. SHULER: Thank you, Ms. Ballenger.

25 I have a few housekeeping issues to cover with

1 you.

2 Have you sought or received the pledge of any
3 legislator prior to this date?

4 MS. BALLENGER: No. I have not.

5 MS. SHULER: Have you sought or have you been
6 offered a conditional pledge of support of any legislator
7 pending the outcome of your screening?

8 MS. BALLENGER: I have not.

9 MS. SHULER: Have you asked any third parties
10 to contact Members of the General Assembly on your
11 behalf?

12 MS. BALLENGER: I have not.

13 MS. SHULER: Have you contacted any Members of
14 the Commission?

15 MS. BALLENGER: I have not.

16 MS. SHULER: Have you reviewed the Commission's
17 guidelines on pledging?

18 MS. BALLENGER: Yes. I have.

19 MS. SHULER: Are you aware of the penalties for
20 violating the pledging rules, that is, it is a
21 misdemeanor and, upon conviction, the violator must be
22 fined not more than \$1,000 or imprisoned not more than 90
23 days?

24 MS. BALLENGER: I'm aware of that.

25 MS. SHULER: I would note that the Upstate

1 Citizens Committee found Ms. Ballenger to be
2 well-qualified in the evaluative criteria areas of
3 constitutional qualifications, ethical fitness,
4 professional and academic ability, character, reputation,
5 physical health, mental stability, experience, and
6 judicial temperament.

7 I would just note for the record that any
8 concerns raised during the investigation regarding this
9 candidate were incorporated into the questioning of the
10 candidate today.

11 Mr. Chairman, I have no further questions of
12 this candidate.

13 REPRESENTATIVE DELLENEY: Do any Members of the
14 Commission have any questions for Ms. Ballenger?

15 Senator Knotts?

16 SENATOR KNOTTS: Thank you.

17 I appreciate you coming in and applying and
18 going through this process but sitting here listening to
19 you, first of all, seems like you have a lot of drama
20 with your financial problems in your life.

21 It always seems, from what I'm hearing, seems
22 to me it sounds like it's everybody else. Not you. Have
23 you done anything to contribute to any of these issues
24 brought before us today, that looking back you could have
25 handled differently?

1 MS. BALLENGER: Oh, yes, sir.

2 I think in 2009, we were letting the paralegal
3 write the checks. Since that time, I've taken it over
4 personally. And so, of course, that's an added pressure
5 for me but that way I can make sure that the bills do get
6 paid on a timely basis.

7 You know, could I have been more proactive in
8 making sure that other people did what they needed to do?
9 Yes, sir. I surely could have. And I tried to take
10 steps to be sure that -- by no means am I trying to say
11 that I'm not responsible. I was trying to explain the
12 difference in the practice.

13 Because I do Family Court, there's a steady
14 income stream; and I'm trying to say my law partner does
15 personal injury cases, and it's like feast or famine.
16 One month he has a good month, and the next month he may
17 not. By no means am I throwing him under the bus.

18 That's just the nature of our practice. No,
19 sir. I'm not trying to not take blame.

20 SENATOR KNOTTS: What do you feel the work
21 ethic of a Judge should be on the bench on a day-to-day
22 basis?

23 MS. BALLENGER: Senator Knotts, I'm almost
24 scared to answer. I'm trying to put the best foot
25 forward for me, but I'm also trying to be extremely

1 honest, and I want you to understand. You know, I come
2 from two parents that have a strong work ethic. I have
3 an extremely strong work ethic. I'm at my office,
4 usually the first one in the morning, and I don't leave
5 until the last at night.

6 You know, I keep telling people, Sometimes I
7 just don't have a life. I like to work. What concerns
8 me the most is being able to scale it back. I'm not
9 worried about, you know, working. I'm worried, you know,
10 because it wouldn't bother me to keep going after five or
11 six o'clock. It wouldn't bother me to continue putting
12 more hours in.

13 As a Judge I have to be concerned about the
14 people that are also in that courtroom that work for
15 other people. You know, that's what concerns me the most
16 is being able to scale back my work ethic.

17 SENATOR KNOTTS: Thank you, Mr. Chairman.

18 REPRESENTATIVE DELLENEY: Any other questions
19 for Ms. Ballenger?

20 MR. SELLERS: Ms. Ballenger, I just want to
21 thank you for suggesting that none of us in this room are
22 old enough to have practiced before Judge Ballenger.

23 MS. BALLENGER: He was a fine, fine, Southern
24 gentleman.

25 REPRESENTATIVE DELLENEY: Any other questions?

1 (No response from members.)

2 REPRESENTATIVE DELLENEY: Well, with that, Ms.
3 Ballenger, I'd like to thank you for participating in the
4 process and for running for the position on the Family
5 Court. This concludes this part of the screening
6 process.

7 At this point the record will be closed, but we
8 reserve the right to reopen if anything should concern us
9 that we need to you bring back and ask you questions.
10 That's very unlikely that would happen, but that remains
11 so until the expiration of the 48-hour period when the
12 report of this Commission becomes final.

13 At that point we cannot reconvene the hearing
14 process. I would like to remind you about the 48-hour
15 rule, which I know you're aware of having been through
16 this process before, and I would like to thank you again
17 for offering, and I hope you have a safe trip back to
18 your home.

19 MS. BALLENGER: Thank you very much.

20 REPRESENTATIVE DELLENEY: We have before us
21 this morning Mr. R. Scott Sprouse, who seeks a judicial
22 position on the Family Court, 10th Judicial Circuit, Seat
23 number 2.

24 If you would be so kind to please raise your
25 right-hand to be sworn.

1 (Scott R. Sprouse, was duly sworn, after which
2 testimony commenced at 10:07 a.m.)

3 REPRESENTATIVE DELLENEY: Thank you, sir.

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

14 We have not received any affidavits in
15 opposition to your election. There are no witnesses here
16 to testify. Do you have a brief opening statement that
17 you would like to make?

18 MR. SPROUSE: Yes, sir.

19 I am seeking this seat because I feel I'm
20 qualified for the seat, and I've had judicial experience
21 and extensive family court experience. I am a native of
22 the Upstate. I moved to Oconee County in 1990. I live
23 in Walhalla. It is a job that I have sought before. I
24 feel like I would do a good job, and I'm prepared at this
25 time.

1 REPRESENTATIVE DELLENEY: Thank you, sir.

2 At this time, please answer any questions
3 Mr. Dennis may have for you.

4 MR. DENNIS: Good morning.

5 You have before you your Personal Data
6 Questionnaire that you have submitted as part of your
7 application, as well as a single amendment.

8 Are there any additional amendments that you
9 would like to make to your PDQ at this time?

10 MR. SPROUSE: I don't believe there were any
11 others. No, sir. I didn't have a cite on the Fourth
12 Appeal's opinion on the Turner versus Oconee County case,
13 but that was listed in my materials.

14 MR. DENNIS: Mr. Chairman, I would ask that his
15 PDQ and the amendment be entered as an exhibit in the
16 record at this point in time.

17 REPRESENTATIVE DELLENEY: It will be done at
18 this point without objection in the transcript.

19 EXH. 4, Scott R. Sprouse's, Personal Data
20 Questionnaire, marked for identification.)

21 MR. DENNIS: Mr. Sprouse, you also have before
22 you a sworn statement that you provided detailed answers
23 regarding judicial conduct, statutory qualifications,
24 office administration, and temperament.

25 Are there any amendments that you would like to

1 make about that statement at this time?

2 MR. SPROUSE: No, sir.

3 MR. DENNIS: Mr. Chairman, I would ask that Mr.
4 Sprouse's sworn statement be made an exhibit in the
5 record.

6 REPRESENTATIVE DELLENEY: That will also be
7 made an exhibit at this point in the transcript without
8 objection.

9 (EXH. 5, Scott R. Sprouse's Sworn Statement,
10 marked for identification.)

11 MR. DENNIS: One final procedural matter. I
12 note for the record that based on the testimony contained
13 in the candidate's PDQ, which has been included in the
14 record with the candidate's consent, Mr. Sprouse meets
15 the statutory requirements for this position regarding
16 age, residence, and years of practice.

17 Mr. Sprouse, would you please, quickly for the
18 record, state your city and Judicial Circuit in which you
19 reside.

20 MR. SPROUSE: 10th Judicial Circuit and I live
21 in the City of Walhalla, South Carolina.

22 MR. DENNIS: Thank you, sir.

23 Mr. Sprouse, you touched on this a little bit
24 earlier. After practicing law for 22 years, would you
25 please explain to the Commission why you now want to be a

1 Family Court Judge.

2 MR. SPROUSE: Like I stated earlier, it's a
3 position that I sought before. In fact, my opponent in
4 the case sought it as well when Judge Cain was elected.
5 It has been a personal goal of mine. I feel that it is a
6 forum where a lot of families in our community are
7 affected. It's a forum that I feel that I could do a
8 good job for the community, and I've had this goal for a
9 while.

10 MR. DENNIS: Mr. Sprouse, can you explain to
11 the Commission how you feel your legal experience and
12 professional experience thus far will assist you in being
13 an effective Judge.

14 MR. SPROUSE: It prepared me on two fronts.

15 First being, that I handled a significant
16 amount of domestic litigation. I've handled domestic
17 cases from million-dollar asset cases all the way down to
18 folks with negative equity in the marital estate, which
19 in our recent economy is a common thing.

20 I've handled custody visitation issues
21 pertaining to children, handled Department of Social
22 Services cases, handled a few juvenile cases. Not that
23 many. I've also served as Guardian ad litem. I am also
24 a Family Court Certified Mediator. I don't do a
25 tremendous amount of mediations, but I found going

1 through the mediation training and doing some that, it
2 helps me in representing the litigants. It helps to
3 understand the cases better and what is going through the
4 mind of the litigants.

5 On the other front, I have judicial experience.
6 I've been a Municipal Judge for the City of Walhalla
7 since 1996. Last year I also became the Municipal Judge
8 for the town of Salem. I served as an Interim Municipal
9 Judge for the City of Seneca. They have a full-time
10 Judge, but during the time they didn't have a Judge the
11 City Attorney contacted me and asked if I would serve as
12 their Interim Judge, and I did that for a while.

13 I also served as a Judge for the City of West
14 Union during the period when Walhalla and West Union
15 entered into a police protection contract where the city
16 provided police services for West Union for a period of
17 time, and my service there terminated when that contract
18 terminated.

19 So I have a good deal of judicial experience in
20 handling summary court criminal matters. And I mentioned
21 earlier that I haven't done many juvenile cases in the
22 Family Court, but I deal with basically the same factual
23 situations a lot of times in Municipal Court since I deal
24 with juveniles with traffic offenses, and a lot of times
25 criminal offenses in which they're co-conspirators. The

1 17-year-old comes to me instead of the 15-year-old that
2 goes to Family Court.

3 So I'm familiar with the rules and familiar
4 with those situations. Family court is a court without a
5 jury. A nonjury proceeding. That's mainly what I do in
6 Municipal Court. Some people request jury trials which
7 we certainly give them, but the majority of the cases are
8 nonjury, so I'm experienced in hearing cases, difficult
9 cases, where there's direct conflict and testimony, and
10 the Judge has to be the trier of the facts in the case.
11 So I'm prepared for that.

12 MR. DENNIS: Mr. Sprouse, are there any areas,
13 including subjective areas of the law, that you would
14 need additional preparation for before you serve as a
15 Judge, and if so, how would you go about gaining that
16 additional preparation?

17 MR. SPROUSE: Well, certainly, you deal with
18 certain things every day in your law practice, and you
19 deal with other things rarely. I don't feel like I would
20 have to be educated on any area. I may have to re-read a
21 statute and look up applicable case law, but I'm
22 generally familiar with most of the things that go before
23 the Family Court Judge.

24 Some things I don't deal with. Like I'll give
25 you an example. I've handled just a few foreign

1 adoptions. I've handled a few of those, but that's not
2 something that I deal with on a daily basis. So I'd have
3 to go back and review the statute before handling that,
4 but most of the things that come before the Family Court,
5 I'm well versed in the procedures.

6 MR. DENNIS: Mr. Sprouse, you touch on this in
7 your sworn statement, but would you explain to the
8 Commission what you feel the appropriate demeanor for a
9 Judge is.

10 MR. SPROUSE: A Judge should have as his or her
11 primary goal that each litigant that comes into the
12 courtroom feels like they're heard and feels like they
13 are treated fairly.

14 A Judge should have demeanor to which it shows
15 that the Judge is not taking sides, and that the Judge is
16 a neutral arbiter of the proceedings. It is human nature
17 for emotions to take hold of the litigants in court. The
18 Judge has to keep control of the courtroom. It's also
19 human nature on the part of the Judge. Sometimes lawyers
20 say things make the Judge angry, but you have to keep
21 under control. If it's something that is very
22 inappropriate, the Judge certainly has to hold in
23 contempt. But if it's something that doesn't go toward
24 contempt, sometimes it's useful to take a break. Restart
25 the proceedings after you've had a chance to gather your

1 thoughts.

2 I would say in my court in Walhalla, in 16
3 years, I've only had to put one person in jail for
4 contempt. That's only happened one time where their
5 behavior got so bad that I felt it was appropriate to
6 incarcerate them. Usually a warning takes care of that.
7 Bob Cureton was the Judge when I became a resident of
8 Oconee and began practicing law. He was an even-tempered
9 Judge.

10 As a young lawyer, I made lots of mistakes and
11 he held me to the rules, but he was -- he was in a kind
12 way. He would not seek to embarrass lawyers in front of
13 the litigants. He was an excellent teacher of the law to
14 young lawyers. Following him was Timmy Cain who was as
15 polite and courteous to the lawyers and the litigants as
16 you could ever find in a Judge.

17 He's a model on the bench in dealing with the
18 people in the courtroom and treating them with respect.
19 It doesn't mean that the Judge should let the courtroom
20 get out of control, but the Judge should never seek to
21 embarrass the lawyers or the litigants.

22 MR. DENNIS: Mr. Sprouse, what suggestions
23 would you offer for improving the backlog of cases on the
24 docket in the Family Court?

25 MR. SPROUSE: Well, ultimately the problem can

1 only be solved with more Judges, and that's outside of
2 the Judge's control, and that's subject to budgetary
3 limitations which, again, we don't have control of the
4 economy.

5 But from what a Family Court Judge sitting on
6 the bench can do, there may be opportunities to use
7 chambers for weeks to do uncontested hearings.
8 Certainly, enlisting retired Judges to hold special terms
9 in court. I don't know if you've been to Oconee's
10 courthouse or not, but we have a nice, new courthouse.
11 We went from having some of the worst facilities in the
12 State to one of the better ones. We have two courtrooms
13 that we can use for Family Court; however, due to
14 limitations on the budget and what Judges are available,
15 we've only run multiple courtrooms on a few occasions.

16 But we have a crisis in Oconee. I know it's
17 statewide. For instance, it takes over two months to get
18 a temporary hearing. Some cases it may take up to three
19 months to get a temporary hearing. That places a lot of
20 pressure on the litigants. A lot of bad things can
21 happen. From start to finish, cases are taking three to
22 four years to complete, if you need a big block of court
23 time. If you have an A-B system. You start as a B case
24 and you go through the loop, and by the time you get to
25 court, three years have passed. It's very difficult for

1 litigants and the children involved. The whole facts and
2 circumstances.

3 So as a Judge, I would try to schedule special
4 times to try to clean off the uncontested things to free
5 up more time for the contested cases which are taking so
6 long.

7 MR. DENNIS: Mr. Sprouse, do you carry
8 malpractice insurance in your private practice, and if
9 so, how long have you carried that insurance?

10 MR. SPROUSE: Our firm -- yes. We have
11 malpractice insurance and we've had that. In fact, the
12 policy was in existence before I joined the firm, and
13 it's still in existence.

14 MR. DENNIS: Thank you, sir.

15 I have just a couple housekeeping questions
16 that I'm going to run through.

17 Have you sought or received the pledge of any
18 legislator prior to this date?

19 MR. SPROUSE: No.

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

23 MR. SPROUSE: No.

24 MR. DENNIS: Have you asked any third parties
25 to contact the Members of the General Assembly on your

1 behalf?

2 MR. SPROUSE: No.

3 MR. DENNIS: Have you contacted any members of
4 this Commission?

5 MR. SPROUSE: No.

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

10 MR. SPROUSE: Yes.

11 MR. DENNIS: Have you reviewed the Commission's
12 guidelines on pledging?

13 MR. SPROUSE: Yes.

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

19 MR. SPROUSE: Yes.

20 MR. DENNIS: Thank you, sir.

21 I would note that the Upstate Citizens
22 Committee found Mr. Sprouse "Well-qualified" in all nine
23 of the evaluative criteria. And I would note for the
24 record that any concerns raised during the investigation
25 regarding this candidate were incorporated into the

1 questioning of the candidate today.

2 Mr. Chairman, I have nothing further.

3 REPRESENTATIVE DELLENEY: Any of the Commission
4 have any questions for Mr. Sprouse?

5 (No response.)

6 REPRESENTATIVE DELLENEY: There being none,
7 thank you Mr. Sprouse for appearing before us today.
8 Thank you for your willingness to serve on the Family
9 Court if elected.

10 That concludes this portion of the screening
11 process. At this point the record will be closed, but we
12 reserve the right to re-open the record and bring you
13 back down and ask you more questions if we have a matter
14 to clarify.

15 Of course, that remains true up until the
16 48-hour rule expires, and at that point in time the
17 report becomes a final report and we cannot reconvene the
18 screening.

19 With that, I would again remind you about the
20 48-hour rule, which you have expressed that you
21 understand, and I'd like to thank you again for offering
22 to serve and hope you have a safe trip home.

23 MR. SPROUSE: Thank you, sir.

24 REPRESENTATIVE DELLENEY: Eleventh Circuit,
25 Seat number 3. If you would, Mr. Newton, please raise

1 your right-hand to be sworn.

2 (Robert E. Newton, was duly sworn, after which
3 testimony commenced at 10:22 a.m.)

4 REPRESENTATIVE DELLENEY: Thank you, sir.

5 Do you have anybody that you'd like to
6 introduce us to?

7 MR. NEWTON: I do. Thank you, Mr. Chairman.
8 My wife, Caroline, is with me today as she's done for 30
9 years of my life. She's here to support me.

10 REPRESENTATIVE DELLENEY: Well, we appreciate
11 having her here today.

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

22 We have not received any affidavits in
23 opposition to your election. There are no witnesses here
24 to testify. Do you have a brief opening statement that
25 you would like to make at this time?

1 MR. NEWTON: Yes, sir.

2 If I may, Mr. Chairman, I would like to start
3 by thanking this Commission for the opportunity to be
4 here and for the work this Commission does.

5 I've been a practicing trial lawyer for almost
6 23 years. I appreciate the work this group does in
7 vetting the candidates and making sure that we have a
8 strong judiciary.

9 I also would like to thank Ms. Shuler and her
10 staff. They have been very courteous and gracious
11 throughout this process, and I appreciate it very much.

12 REPRESENTATIVE DELLENEY: Thank you, sir.

13 At this time, please answer any questions that
14 Ms. Shuler may have for you.

15 MS. SHULER: Good morning.

16 MR. NEWTON: Good morning.

17 MS. SHULER: Mr. Chairman and Members of the
18 Commission, I have a few procedural matters to take care
19 of with this candidate. Mr. Newton, you have before you
20 a Personal Data Questionnaire that you submitted as part
21 of your application.

22 Are there any additional amendments that you'd
23 like to make at this time to your PDQ?

24 MR. NEWTON: None, Ms. Shuler, other than the
25 letter that I sent you that I'm assuming is now

1 supplemented regarding my expenditures.

2 MS. SHULER: Yes. It is.

3 MR. NEWTON: Nothing; with that qualification.

4 MS. SHULER: Mr. Chairman, I would like to ask
5 that Mr. Newton's Personal Data Questionnaire and Letter
6 Amendment be entered as an exhibit into the hearing
7 record.

8 REPRESENTATIVE DELLENEY: It will be done as
9 part of the transcript without objection.

10 (EXH. 6, Robert E. Newton's Personal Data
11 Questionnaire, marked for identification.)

12 MS. SHULER: Mr. Newton, you have before you a
13 sworn statement you provided with detailed answers to
14 over 30 questions regarding judicial conduct, statutory
15 qualifications, office administration, and temperament.

16 Are there any additional amendments that you
17 would like to make at this time to your sworn statement?

18 MR. NEWTON: No, ma'am.

19 MS. SHULER: Mr. Chairman, I would like to ask
20 at this time that Mr. Newton's sworn statement be entered
21 as an exhibit into the hearing record.

22 REPRESENTATIVE DELLENEY: That will also be
23 made part of the hearing transcript without objection.

24 (EXH. 7, Robert E. Newton's Sworn Statement,
25 marked for identification.)

1 MS. SHULER: One final procedural matter. I
2 note for the record that based on the testimony contained
3 in the candidate's PDQ, which has been included in the
4 record with the candidate's consent, Mr. Newton meets the
5 statutory requirements for this position regarding age,
6 residence, and years of practice.

7 Mr. Newton, please state the city and circuit
8 in which you reside.

9 MR. NEWTON: Lexington. The 11th Judicial
10 Circuit.

11 MS. SHULER: Mr. Newton, after practicing law
12 for almost 23 years, why do you now want to serve as a
13 Family Court Judge?

14 MR. NEWTON: Ms. Shuler, I think probably the
15 best answer that I can give is because I think I can do a
16 good job. As you said, it's been 23 years, primarily
17 practicing in Family Court that I bring to the process
18 and the table as a candidate.

19 I have 26 years as a husband and 16 years as a
20 parent, so I bring those collective life experiences to
21 the table. As I noted, 23 years primarily in the Family
22 Court. I think that if you ask most lawyers about
23 practice in Family Law, it's fairly unique. It takes a
24 unique individual and a certain type of character to
25 survive in that environment, and I've demonstrated the

1 ability to do that.

2 I think that this is a good time for me to move
3 forward. I've cultivated a mediation/arbitration
4 practice over the past five years, and that has given me
5 a very unique perspective on being in the middle of
6 cases. So I think that all that combined history will
7 assist me in doing a good job, and that's really my goal.

8 MS. SHULER: Are there any areas, including
9 subjective areas of the law, that you would need
10 additional preparation for in order to serve as a Judge,
11 and if so, how would you handle that additional
12 preparation?

13 MR. NEWTON: Ms. Shuler, I will answer it this
14 way. As a lawyer we have an obligation to always try and
15 do better. I've always tried to improve. I've always
16 tried to learn. I've taken information and tried to
17 gather that and better myself in my practice.

18 As a Judge, I would try and do the same thing.
19 I know this will come across possibly at the risk of
20 sounding a little pompous, and it's not intended to do
21 so, but 23 years of practicing what I would call street
22 law, meaning Main Street, Lexington, South Carolina, not
23 knowing what was going to walk in the door each day.
24 I've had experience in anything that you could encounter
25 in the Family Court arena, so I would say that I think

1 I'm not necessarily well-versed in all areas, but I know
2 enough to be prepared to address the issues, and I
3 certainly know where to look to find answers in areas
4 that I don't know.

5 MS. SHULER: Thank you, Mr. Newton.

6 Although you address this in your sworn
7 affidavit, would you please explain to the Members of the
8 Commission what you believe is the appropriate demeanor
9 for a Judge.

10 MR. NEWTON: I think that I may have used the
11 word professionalism. What I would mean by that, and the
12 way I would do that is, we are to treat everybody with
13 civility, we are to be patient, we are to give folks an
14 opportunity to be heard, and we are to recognize that
15 when they're in front of you that is one of the most
16 important, if not the most important day in their life.
17 They're entitled to that deference to be treated as such.

18 So I think those things would be -- civility
19 and patience would be the benchmarks that I would try and
20 set for myself as a Judge if I'm successful.

21 MS. SHULER: Mr. Newton, if you're selected to
22 the Family Court bench, what would you like your legacy
23 to be known as on the bench?

24 MR. NEWTON: That I worked hard and that I did
25 a good job. I would like people to think that I was

1 honest and that I did what I thought was the very best
2 thing in my heart with any set of facts that was
3 presented to me.

4 MS. SHULER: Mr. Newton, do you carry
5 malpractice insurance for your law firm, and if so, how
6 long have you carried that malpractice insurance?

7 MR. NEWTON: We do carry malpractice insurance
8 and I've been covered by malpractice insurance my entire
9 career.

10 MS. SHULER: Thank you.

11 Mr. Newton, what suggestions would you offer
12 for improving the backlog of cases on the docket in
13 Family Court?

14 MR. NEWTON: Interesting. We had a CLE last
15 night in Lexington County where our Chief Administrative
16 Judge spoke to the Family Court bar and we talked about
17 that.

18 Our county right now has about 2,800 filings a
19 year, as I understand it. So we have a lot of work to
20 do. I'm a keen advocate of, not only through my personal
21 experience as a litigator but now in the last couple
22 years as a person who has cultivated an ADR practice, in
23 moving forward with the ADR, Alternative Dispute
24 Resolution. I've seen it work. I know mediation works.
25 I know that many people are now embracing arbitration as

1 well. I think pretrials are an effective tool for a
2 Family Court Judge to educate folks on that, and that's
3 one thing that I would try to cultivate is to make sure
4 that people understand that they have an alternative
5 available to craft their own result.

6 We know what our job will be as a Judge, and
7 that is to make a decision, but to help these folks have
8 an opportunity to address these issues themselves,
9 particularly if they're parenting decisions that are
10 involved. I believe that giving folks an opportunity as
11 parents to come to an ADR mediation conference is
12 effective. I think we've seen that it works within our
13 Circuit. I know it helps move cases in the Fifth
14 Judicial Circuit, where I do a lot of work as well.

15 So I would certainly work to try and help move
16 that process forward within the confines of what I'm
17 allowed to do.

18 MS. SHULER: Mr. Newton, the Commission
19 received 340 ballot box surveys regarding you with 44
20 additional comments. Of those comments, two indicated
21 concerns. The first concern related to you demeanor,
22 contending that you can be rude, arrogant, and difficult
23 to deal with in a professional setting.

24 What response would you offer to this concern?

25 MR. NEWTON: Ms. Shuler, I've thought about

1 this a lot since you and I met and you shared those two
2 comments with me. I've thought a lot. Probably more
3 than most folks would think I would considering there was
4 two out of so many.

5 The easy answer I think I could give to that is
6 you spend 23 years in Family Court litigation, which is
7 some of the most emotionally charged litigation there is,
8 and it would be very rare at some point if somebody had
9 not perceived something a lawyer had done that had maybe
10 crossed a line. That would be the easy answer, and
11 that's not the answer I would take out of that.

12 What I'm going to take is that I use that as a
13 learning tool because it struck me, even though it was
14 only two, two people left their dealings with me with the
15 perception that I had crossed the line, that I had been
16 rude, possibly inconsiderate, and the things that you
17 shared. That's a concern as a lawyer, but as a Judge it
18 would be inexcusable.

19 It would not be something that I would want
20 anybody ever to have the perception of. So I will take
21 those two comments. I will never forget those if I'm
22 successful, and I will constantly have those in the back
23 of my head to remind myself how those folks in that
24 courtroom may be perceiving me and use that as a check.

25 MS. SHULER: Thank you.

1 And I would note the second concern relates to
2 temperament. You can be hotheaded at times, but the
3 surveyor says that you would make an excellent Judge. Is
4 there any comment that you would like to make at this
5 time?

6 MR. NEWTON: No, ma'am.

7 MS. SHULER: Mr. Newton, some housekeeping
8 issues to cover with you. Have you sought or received
9 the pledge of any legislator prior to this date?

10 MR. NEWTON: No, ma'am.

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

14 MR. NEWTON: No, ma'am.

15 MS. SHULER: Have you asked any third parties
16 to contact Members of the General Assembly on your
17 behalf?

18 MR. NEWTON: No, ma'am.

19 MS. SHULER: Have you contacted any Members of
20 the Judicial Merit Selection Commission?

21 MR. NEWTON: No, ma'am.

22 MS. SHULER: Do you understand that you are
23 prohibited from seeking a pledge or commitment until
24 48-hours after the formal release of the Commission's
25 report?

1 MR. NEWTON: Yes, ma'am.

2 MS. SHULER: Have you reviewed the Commission's
3 guidelines on pledging?

4 MR. NEWTON: I have.

5 MS. SHULER: As a follow-up, are you aware of
6 the penalties for violating the pledging rules, that is,
7 it is a misdemeanor and, upon conviction, you can be
8 fined not more than \$1,000 and imprisoned not more than
9 90 days?

10 MR. NEWTON: Yes, ma'am.

11 MS. SHULER: I would note that the Midland
12 Citizens Committee found Mr. Newton to be
13 "Well-qualified" in the evaluative criteria areas of
14 constitutional qualifications, ethical fitness,
15 professional and academic ability, character, reputation,
16 physical health, mental stability, experience, and
17 judicial temperament.

18 In summary, the Committee stated that they were
19 honored to interview Mr. Newton. "We strongly believe
20 that Mr. Newton is eminently qualified to serve on the
21 Family Court. We are most confident he would serve our
22 state in an exemplary manner".

23 I would just note for the record that any
24 concerns raised during the investigation regarding this
25 candidate were incorporated into my questioning of the

1 candidate today.

2 My Chairman, I have no further questions of
3 this candidate.

4 REPRESENTATIVE DELLENEY: Does any member of
5 the Commission have any questions for Mr. Newton?

6 Senator Knotts.

7 SENATOR KNOTTS: Mr. Newton.

8 MR. NEWTON: Yes, sir.

9 SENATOR KNOTTS: There's a concern that was
10 raised in your questionnaire about a bar concern. And it
11 says, "He is only getting elected because of his
12 connections with Senator Knotts".

13 Can you tell this Committee what connection you
14 and I have, and have we ever even been to dinner
15 together?

16 MR. NEWTON: No, sir.

17 SENATOR KNOTTS: Never even spoken except in
18 passing, saying, Hello.

19 MR. NEWTON: No, sir.

20 SENATOR KNOTTS: Has anybody from your firm or
21 your previous firm or anybody else even contacted me to
22 even let me know that you were running?

23 MR. NEWTON: Not to my knowledge, Senator.

24 SENATOR KNOTTS: And I'd like to tell this
25 Committee, that's what I have a problem with these bar

1 surveys that don't have any basis to say who it is that
2 sent it.

3 Have you ever represented me, my family, or
4 anybody that I've ever sent you as a client?

5 MR. NEWTON: No, sir.

6 SENATOR KNOTTS: In fact, I didn't even know
7 that you existed in the Family Court.

8 MR. SELLERS: Take it easy on him.

9 SENATOR KNOTTS: Well, I mean, he's a reputable
10 lawyer, but we don't have any connection, do we?

11 MR. NEWTON: No, sir.

12 SENATOR KNOTTS: Thank you.

13 REPRESENTATIVE DELLENEY: Professor Freeman.

14 PROFESSOR FREEMAN: Just briefly. Out of 400
15 responses, to have so few negative is, I think, splendid
16 in itself. Secondly, I think your response to the
17 criticism that you got was exemplary, but I want to say
18 this.

19 Temperament is a major, major issue with this
20 Commission, and I just want to make sure that you have
21 that in mind as you go on the bench. Otherwise, kudos to
22 you.

23 MR. NEWTON: Thank you, sir.

24 REPRESENTATIVE DELLENEY: Senator Martin.

25 SENATOR MARTIN: Thank you, Mr. Chairman.

1 Mr. Newton, I'm a new member of the Commission,
2 never had the chance to ask a Judge, or potential
3 candidate for the Judge, a question in this setting or
4 make a comment, but I just want to echo what Professor
5 Freeman just said, that I appreciate the fact that you
6 had as many positive comments as you had, but that one
7 incident where you leave a terrible impression with
8 litigants or with lawyers in a courtroom setting is going
9 to be the one that your local delegation is going to hear
10 about, and it's going to reflect poorly on the
11 profession, and I just want to echo that as well.

12 MR. NEWTON: Thank you.

13 I hope everyone knows that I truly understand
14 that, and as I say when I began my comments, I've
15 agonized over that. I've shared it with some friends,
16 and I routinely heard, Rob, it's only two.

17 But to me, there shouldn't have been any, and I
18 recognize the importance of that.

19 REPRESENTATIVE DELLENEY: Any further questions
20 from Members of this Committee?

21 (No response.)

22 REPRESENTATIVE DELLENEY: There being no
23 further questions, Mr. Newton, we'd like to thank you
24 again for your willingness to subject yourself to the
25 process and your willingness to serve.

1 This concludes this portion of your screening.
2 At this point the record will be closed, but we reserve
3 the right to re-open the record at any point until the
4 expiration of the 48-hour period, at which time this
5 report becomes a final report. At that point we cannot
6 really do anything, but up until then we can if something
7 came to light to us that we felt we needed to, we could
8 call you back down here, although that probably won't
9 happen, but in any event we do reserve that right.

10 With that, I'd like to remind you about the
11 48-hour rule and which you acknowledge that you
12 understand, and I'd like again to thank you for your
13 willingness to serve and I hope you have a safe trip back
14 home.

15 SENATOR KNOTTS: Mr. Chairman.

16 REPRESENTATIVE DELLENEY: Sir.

17 SENATOR KNOTTS: I'd like to make a motion to
18 go into executive session for just a second.

19 MR. HARRELL: Second.

20 SENATOR MARTIN: All in favor?

21 (Multiple speakers respond, "Aye.")

22 REPRESENTATIVE DELLENEY: All right. We're in
23 executive session.

24 (The Committee went into executive session from
25 10:35 a.m. to 10:39 a.m.)

1 SENATOR MARTIN: We have two remaining
2 candidates.

3 Good morning, Judge Crosby.

4 JUDGE CROSBY: Good morning.

5 SENATOR MARTIN: We have before us for
6 reelection the Honorable Joe M. Crosby, who seeks
7 reelection for Master-in-Equity for Georgetown County.

8 If you would at this time, Mr. Crosby, please
9 raise your right-hand to be sworn.

10 (The Honorable Joe M. Crosby, was duly sworn,
11 after which testimony commenced at 10:40 a.m.)

12 REPRESENTATIVE DELLENEY: Thank you, sir.

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

23 There are no affidavits filed in opposition to
24 your election. There are no witnesses here to testify.
25 Do you have a brief opening statement that you would like

1 to make?

2 JUDGE CROSBY: May it please the Commission? I
3 certainly appreciate the opportunity to be here. It's
4 always an honor to be able to apply for the position of
5 Master-in-Equity.

6 I've served in this position for the past --
7 since my election several years ago. As you all may
8 know, the foreclosure process has been a very hectic
9 time. Georgetown County is 25 percent Master-in-Equity
10 position, and we see a great number of foreclosures from
11 the, what I call speculators to the folks that -- it's a
12 heartbreaking story when it's now moving to the death,
13 illness, divorce, and economic loss as opposed to simple
14 speculation.

15 So it is a challenging position, but I'm
16 certainly here seeking reelection and would be happy to
17 answer any questions that the board may have for me.

18 REPRESENTATIVE DELLENEY: Thank you, sir.

19 If you would answer any questions that Mr.
20 Dennis may have for you.

21 MR. DENNIS: Good morning, Judge Crosby.

22 JUDGE CROSBY: Good morning.

23 MR. DENNIS: You have before you the Personal
24 Data Questionnaire that you submitted as part of your
25 application. Are there any amendments that you would

1 like to make to this document at this time?

2 JUDGE CROSBY: There are not.

3 MR. DENNIS: Mr. Chairman, I would like to ask
4 that Judge Crosby's Personal Data Questionnaire be
5 entered as an exhibit into the hearing record.

6 REPRESENTATIVE DELLENEY: It will be done at
7 this point in the transcript without objection.

8 (EXH. 8. The Honorable Joe M. Crosby's Personal
9 Data Questionnaire, marked for identification.)

10 MR. DENNIS: Judge Crosby, you also have before
11 you a sworn statement provided with detailed answers to
12 over 30 questions regarding judicial conduct, statutory
13 qualifications, office administration, and temperament.
14 Are there any amendments that you would like to make to
15 this document?

16 JUDGE CROSBY: There are not.

17 MR. DENNIS: At this time, Mr. Chairman, I
18 would like to ask for Judge Crosby's sworn statement to
19 be entered as an exhibit into the record.

20 REPRESENTATIVE DELLENEY: The sworn statement
21 will be made part of the record, as part of the
22 transcript without objection.

23 (EXH. 9, The Honorable Joe M. Crosby's Sworn
24 Statement, marked for identification.)

25 MR. DENNIS: Judge Crosby, why do you want to

1 continue serving as a Master-in-Equity?

2 JUDGE CROSBY: Well, I think part of what I
3 said earlier in the opening statement addresses some of
4 that. It is a position in which I do enjoy dealing with
5 the public. It's a necessary position in Georgetown
6 County. Our Circuit Court is certainly full. In cases
7 that are referred over to me, it is a position I enjoy
8 serving in.

9 MR. DENNIS: Judge Crosby, you address this in
10 the sworn affidavit. Could you please explain to the
11 Members of the Commission what you think the appropriate
12 demeanor is for a Judge.

13 JUDGE CROSBY: Well, as always, and I think in
14 talking to Judge Spence earlier, when we have somebody
15 come in who is going to lose their home through what I
16 consider to be no fault of their own: Illness, death,
17 divorce, they've lost their job; they're entitled to be
18 treated with respect.

19 Folks come in and you can see a lot of times
20 when you explain the process and what's going to happen,
21 you can see a lot of the fear, concern, and apprehension.
22 They may not like the result, but they at least
23 understand how and why they have a foreclosure going on.
24 It's the same thing with partition action when you
25 explain there are too many heirs. You cannot equitably

1 divide, split off a parcel, to satisfy the moving
2 parties. They at least understand why.

3 Again, you know, many, many times this is not a
4 matter of making somebody happy. It's a matter of
5 treating them with the courtesy and respect that they
6 deserve and explaining the process to them.

7 MR. DENNIS: Judge Crosby, are there any
8 changes to the Master-in-Equity docket that you assisted
9 in implement for Georgetown County in order to clear that
10 County Master-in-Equity docket and what's the nature of
11 those changes?

12 JUDGE CROSBY: We recently installed the State
13 system, which I think will make a great deal of effort as
14 opposed to going through and hand-logging each individual
15 one which is a nightmarish system. I think the system
16 that we've recently installed, we're a long way from
17 managing that case load.

18 MR. DENNIS: Judge, as you're a part-time
19 Master-in-Equity, you also maintain a private practice.
20 Do you carry malpractice insurance in your private
21 practice and for how long have you done so?

22 JUDGE CROSBY: We've carried malpractice since
23 we started. I joined my wife in the Crosby Law Firm five
24 years ago at this point, and we certainly are fully
25 insured and have been since our inception.

1 MR. DENNIS: Judge, as you and I have
2 discussed, you did not meet expectations on the written
3 portion of this screening process. Would you please
4 respond to the Commission.

5 JUDGE CROSBY: Certainly that is a very
6 embarrassing result, but I think part of it is going
7 through and answering questions in an extremely short
8 fashion, and that's clearly my fault. I think that the
9 experience that I've had on the bench certainly speaks
10 towards my ability to carry out the position.

11 MR. DENNIS: Thank you, Judge. Just a couple
12 housekeeping matters.

13 Have you sought or received the pledge of any
14 legislator prior to this date?

15 JUDGE CROSBY: No.

16 MR. DENNIS: Have you sought or have you been
17 offered a conditional pledge of support of any legislator
18 pending the outcome of your screening?

19 JUDGE CROSBY: I have not.

20 MR. DENNIS: Have you asked any third parties
21 to contact Members of the General Assembly on your
22 behalf?

23 JUDGE CROSBY: I have not.

24 MR. DENNIS: Have you contacted any members of
25 this Commission?

1 JUDGE CROSBY: I have not.

2 MR. DENNIS: Do you understand that you are
3 prohibited from seeking a pledge or commitment until
4 48-hours after the formal release of the Commission's
5 report?

6 JUDGE CROSBY: I do.

7 MR. DENNIS: Have you reviewed the Commission's
8 guidelines on pledging?

9 JUDGE CROSBY: Yes, I have.

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

15 JUDGE CROSBY: I do.

16 MR. DENNIS: I would just note for the record
17 that any concerns raised during the investigation
18 regarding the candidate were incorporated in the
19 questioning today.

20 Mr. Chairman, I have nothing further.

21 REPRESENTATIVE DELLENEY: Any Member of the
22 Commission have any questions? There being none.

23 Judge, you are the first person to wind up in
24 that position. I think the last time we had that it was
25 a Circuit Judge who had just received awards from the

1 plaintiff and the defense bar. Study next time for it.

2 JUDGE CROSBY: Yes, sir.

3 REPRESENTATIVE DELLENEY: With that, I think
4 there are no further questions.

5 Judge Crosby, thank you for your willingness to
6 serve and thank you for the job you've done. I think you
7 had zero complaints on the bench bar survey, which tells
8 us you're doing a good job.

9 This concludes this portion of your screening.
10 The record will be closed at this point. It could be
11 reopened at any point up to the time the 48-hour rule
12 expires. At that point, the report becomes final and we
13 cannot reopen for screening, but if anything comes to us
14 before that time occurs we could call you back and
15 question you again if we so desire.

16 But anyway, I'd like to thank you for your
17 service on the bench, and thank you for your willingness
18 to continue serving, and I hope you have a safe trip back
19 to Georgetown.

20 JUDGE CROSBY: Thank you, sir.

21 REPRESENTATIVE DELLENEY: Judge Spence, how are
22 you this morning?

23 JUDGE SPENCE: I'm doing well.

24 REPRESENTATIVE DELLENEY: We have before us
25 this morning the Honorable James O. Spence who seeks to

1 be reelected as Master-in-Equity for Lexington County.
2 If you would at this time, please raise your right-hand
3 to be sworn.

4 (The Honorable James. O. Spence, was duly
5 sworn, after which testimony commenced at 11:15 a.m.)

6 REPRESENTATIVE DELLENEY: Thank you, sir.

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

17 There are no affidavits filed in opposition to
18 your election. There are no witnesses here to testify.
19 Do you have a brief opening statement that you would like
20 to make?

21 JUDGE SPENCE: Yes, sir. I do. I would like
22 to say two things. I want to thank the Committee for the
23 work that you all do in doing judicial screening. As
24 Judges, we tend to get a little isolated and treat it a
25 little bit with kid's gloves. So please continue to have

1 rigorous screenings where you ask attorneys about Judges
2 because we need film study and we need feedback to help
3 us do what we're supposed to do. We're not kings. We're
4 stewards, and we need to be questioned, and we need this
5 questioning at this time.

6 REPRESENTATIVE DELLENEY: Thank you, sir. At
7 this time answer any questions that our Counsel, Ms.
8 Shuler, might have for you.

9 MS. SHULER: Good morning, Judge Spence.

10 JUDGE SPENCE: Good morning.

11 MS. SHULER: Mr. Chairman and Members of the
12 Commission, I have a few procedural matters to take care
13 of with this candidate.

14 Judge Spence, you have before you your Personal
15 Data Questionnaire that you submitted as part of your
16 application. Are there any amendments that you like to
17 make at this time to your PDQ?

18 JUDGE SPENCE: Yes, ma'am. I had sent in an
19 amendment on PDQ question number 10 to indicate that I
20 did the Equity Court Seminar Presentation on March 6th,
21 2012. And also on PDQ 50E. I deleted Terry Burnett as a
22 reference and substituted Roslyn Frierson, South Carolina
23 Court Administrator.

24 MS. SHULER: Thank you.

25 Mr. Chairman, I would ask that Judge Spence's

1 Personal Data Questionnaire and additional amendment be
2 admitted as an exhibit into this hearing record today.

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

5 (EXH. 10, The Honorable James O. Spence's
6 Personal Data Questionnaire, marked for identification.)

7 MS. SHULER: Judge Spence, you have before you
8 the sworn statement with detailed answers to over 30
9 questions regarding judicial conduct, statutory
10 qualifications, office administration, and temperament.

11 Are there any amendments that you would like to
12 make at this time to your sworn statement?

13 JUDGE SPENCE: No, ma'am. I don't believe.

14 MS. SHULER: Mr. Chairman, I would like to ask
15 that Judge Spence's sworn statement be entered as an
16 exhibit into this hearing record.

17 REPRESENTATIVE DELLENEY: The sworn statement
18 will be made part of the record as part of the transcript
19 without objection.

20 (EXH. 11, James O. Spences's Sworn Statement,
21 marked for identification.)

22 MS. SHULER: Judge Spence, you have been
23 serving as Master-in-Equity of Lexington County since
24 2007. Please explain to the Commission why you want to
25 continue serving as a Master-in-Equity.

1 JUDGE SPENCE: As you all know, the last five
2 years have been very traumatic for our economy. The
3 foreclosure crisis has not only effected individuals. It
4 has effected churches, it leads into supplemental
5 proceedings, it leads into divorce court. There is a
6 flood of pro se folks who are involved in the court
7 system, and I feel very strongly that I need to continue
8 in this position, so we can adequately and respectfully
9 treat the defendants when they come to the court and are
10 losing their home or losing their assets.

11 So that's the chief reason. I just feel very
12 strongly that folks need to have things explained to them
13 and need to be treated respectfully, so they can continue
14 to respect the judicial system especially in hard
15 economic times.

16 MS. SHULER: Judge Spence, you alluded to this
17 in your last answer, but could you explain to the Members
18 of the Commission what you think is the appropriate
19 demeanor for a Judge.

20 JUDGE SPENCE: I think you have to treat
21 everybody respectfully. You have to understand that
22 people come to your Court under a lot of different life
23 circumstances and there are a lot of folks that get
24 divorced and they lose their home or lose their home and
25 get divorced. You have to treat them with dignity,

1 courtesy, and respect, and you have to take the time
2 that's necessary to explain to them that's what's
3 happening because you can't help them losing their home.
4 You don't have a magic wand.

5 But you can explain what's going to happen, and
6 you can treat them with respect, and you can answer all
7 their questions.

8 MS. SHULER: Thank you.

9 Judge Spence, I would note that I have provided
10 the Commission Members with a letter that you put on the
11 website under the Master-in-Equity section Lexington
12 County. It's called Lexington County Master-in-Equity
13 SRL Letter, to assist in advising pro se litigants.

14 Could you explain what changes as
15 Master-in-Equity you have made in addition to updating a
16 website, for example, to the docket, that you have
17 assisted in Lexington County in order to clear the docket
18 especially in foreclosure matters, and what were the
19 nature of those changes?

20 JUDGE SPENCE: We do a couple of things a
21 little bit differently. We process all order of
22 references. When cases come to a Master-in-Equity, they
23 have to come by order of reference. They used to go to
24 Circuit Court and that would cause a time delay. So we
25 require them to come into my office, and I screen them

1 for possible conflicts. We also screen them to make sure
2 that military people are not being foreclosed on when
3 they're in active duty. We screen them for conflicts.
4 We look for contested cases. We then, if they're on a
5 default roster, they're moved. If they're contested
6 cases, we have status conferences where we bring the
7 folks in and explain the rules, and we set a schedule
8 order. So we have one of two tracks. You don't just
9 sit.

10 We have four annual meetings with attorneys
11 that practice in our court, Lexington-Richland County,
12 where we discuss procedure and case law four times a year
13 at the courthouse. We've added a lot of things on the
14 website. The foreclosure FAQs. Those are the things
15 that we've done.

16 MS. SHULER: Thank you.

17 Judge Spence, the Commission received 445
18 ballot box surveys regarding you with 57 additional
19 comments. Three of those surveys indicated concerns.
20 The first concern questioned your ability to analyze
21 legal issues and noted that you inject yourself into a
22 dispute beyond your role as a Judge in the case.

23 What would you offer to those concerns?

24 JUDGE SPENCE: I don't mean this to be
25 flippant, but when somebody questions my brainpower, I'm

1 not offended by that. They might be right. I've never
2 claimed to be the smartest person in the world. The
3 problem about interjecting yourself in the Court is
4 related to the pro se issue. I see Professor Freeman
5 here on the Committee. Everybody is struggling with pro
6 se litigation.

7 In the last three seminars that we've had,
8 three years ago we had Professor Freeman come talk to the
9 Masters about pro se. We had Justice Ballard two years
10 ago. We had Justice Pleicones last year.

11 A lot of times attorneys are frustrated because
12 pro se people come in, they handwrite answers, they
13 handwrite discovery, they pull stuff off the internet.
14 And attorneys kind of want you to be hyper technical
15 sometimes. I don't believe that's the proper response.

16 I think you have to get to the meat of what
17 they're asking, and you have to explain things, and you
18 have to treat pro se people fairly, and by the same
19 standards as you do attorneys.

20 If attorneys can ask for documents, so can pro
21 se people. The fact that they don't necessarily cite it
22 by the correct rule number of civil procedure, I don't
23 think that should prohibit them from having a fair
24 hearing in Court.

25 MS. SHULER: Judge Spence, the second concern

1 related to your impartiality, as the surveyor contended
2 that you strain the court rules in order to favor
3 self-represented litigants, sort of dovetails the first
4 question, especially mortgage foreclosure cases.

5 Judge Spence, what response would you offer to
6 this concern?

7 JUDGE SPENCE: Well, we talk about that
8 constantly with attorneys. The issue seems to be this:
9 When a person is served with a foreclosure and they don't
10 answer, they are in default. The problem is when they
11 come to Court, we find out for the first time they've
12 been dealing with a servicer for eight months and they're
13 talking about a loan modification.

14 The attorney then wants to cut the pro se off,
15 saying, You can't talk about that. They're not in
16 default as the loan modification because that wasn't
17 pled. So I do give pro se people great latitude to tell
18 me what they're doing. I don't enforce rules hyper
19 technically.

20 I don't think the rules require that, and I
21 think the person before you or against them, they need to
22 have an opportunity to ask you a question and have it
23 explained to them and answered properly.

24 MS. SHULER: And I would note that the Supreme
25 Court issued an order May 2nd, 2011, dealing with

1 procedures with mortgage foreclosures and servicers and
2 how that needs to be handled.

3 MS. SHULER: Has that changed how you handle
4 pro se now in mortgage foreclosures?

5 JUDGE SPENCE: Yes, ma'am. It has. The
6 administrative order of last May, the key point in that
7 is the order requires now that the party has to deal
8 through the lender's attorney because what was happening
9 before was a law firm would serve John Doe. John Doe
10 would get the complaint and would call back the law firm
11 and say, I want to talk to you about my foreclosure, my
12 modification paperwork. The law firm would then say, You
13 can't talk to me. Call this 800 number. And the person
14 would be in default because they didn't respond.

15 The order requires the attorney's involvement
16 and that has been a great help, whereas before, if we had
17 20 foreclosures scheduled, we now have 12 people coming
18 in saying, We're working on a modification. We probably
19 have two or three. So it has helped a great deal. And
20 the vast majority of the attorneys who come in and
21 practice in Lexington County are ethical, and they're
22 trying to do the right thing, and they treat the folks
23 with respect.

24 There's just a couple of folks that get a
25 little overly frustrated that we spend 20 minutes

1 sometimes explaining things, and they want to move on.

2 MS. SHULER: Judge Spence, a third concern
3 relates to you requiring the unnecessary expense of
4 having a court reporter in uncontested cases and
5 requiring an extra hearing in uncontested cases.

6 Judge Spence, what response would you offer to
7 those concerns?

8 JUDGE SPENCE: Well, I'm a little unclear about
9 that one because number one, Lexington County does not
10 provide a court reporter. They have never provided the
11 Master-in-Equity with a court reporter. The rules
12 require us to make a record. If we have a contested
13 case, then you are required to provide a court reporter.

14 What the rule has always been in Lexington
15 County is the plaintiff provides the court reporter, or
16 the moving party, if you file a motion, provides a court
17 reporter.

18 So we send a notice out a week before the
19 hearing reminding the attorneys of that. The issue of
20 the second hearing is we have situations where you'll
21 have a foreclosure, for example, in April 2012. It will
22 be set initially for a June sale. People will get
23 involved in a modification. They'll readvertise and pull
24 the sale four, five, six, seven, eight, nine, ten months
25 down the road while helping the person do the

1 modification. When modification doesn't work, they want
2 to sell the property then.

3 We require them to come back in and have a
4 supplemental hearing and update the debt. And if it's
5 contested, they have to have a court reporter because in
6 a lot of instances banks are asking for deficiency
7 judgments. Deficiency judgments, as you all know, it's a
8 personal judgment that will last against somebody for ten
9 years. Banks sometimes file affidavits with charges that
10 you have to examine to make sure they're valid. So we do
11 require supplement hearings after a period, and if it's a
12 contested hearing we do require a court reporter. I
13 think that's required by the rules.

14 I don't know how everybody else does it, but I
15 have never gone into a court system where we did not make
16 a record, and I just don't believe you should ever have a
17 court hearing without doing that.

18 MS. SHULER: Judge Spence, I have some
19 housekeeping issues to cover with you. Have you sought
20 or received the pledge of any legislator or local
21 delegate prior to this date?

22 JUDGE SPENCE: No, ma'am.

23 MS. SHULER: Have you sought or have you been
24 offered a conditional pledge of support of any legislator
25 pending the outcome of your screening?

1 JUDGE SPENCE: No, ma'am.

2 MS. SHULER: Have you asked any third parties
3 to contact Members of the General Assembly, such as your
4 local delegation, on your behalf?

5 JUDGE SPENCE: No, ma'am.

6 MS. SHULER: Have you contacted any Members of
7 the Commission?

8 JUDGE SPENCE: Only you when you would tell us
9 what time. Procedural questions. Things like that.

10 MS. SHULER: And I'm not officially a Member of
11 the Commission.

12 JUDGE SPENCE: Okay.

13 MS. SHULER: Do you understand that you are
14 prohibited from seeking a pledge or commitment until
15 48-hours after the formal release of the Commission's
16 report?

17 JUDGE SPENCE: Yes, ma'am.

18 MS. SHULER: Have you reviewed the Commission's
19 guidelines on pledging?

20 JUDGE SPENCE: Yes, ma'am.

21 MS. SHULER: Are you aware of what the
22 penalties are, if you're convicted, it's a misdemeanor
23 and you can be fined not more than \$1,000 or imprisoned
24 not more than 90 days?

25 JUDGE SPENCE: I believe that was in the e-mail

1 that was sent to us. Yes, ma'am.

2 MS. SHULER: I would note that the Midlands
3 Citizens Committee found Judge Spence to be
4 "Well-qualified" in each of the evaluative criteria. The
5 Committee stated in summary, "They are honored to
6 interview Judge Spence and thoroughly enjoyed our
7 interview. We are all very proud he's one of our State's
8 Masters-in-Equity. We believe he is an asset to our
9 State Judiciary, and we all feel his service to our State
10 has been outstanding and honorable in every way. He is
11 most eminently qualified to continue his outstanding
12 service as Master-in-Equity for Lexington County".

13 I would just note for the record that any
14 concerns raised during the investigation regarding this
15 candidate were incorporated into my questions.

16 And Mr. Chairman, no further questions for
17 Judge Spence.

18 REPRESENTATIVE DELLENEY: Does any Member of
19 the Commission have any questions for Judge Spence?

20 (No response.)

21 REPRESENTATIVE DELLENEY: There being none,
22 thank you Judge Spence for your service to the State and
23 for your willingness to continue to serve.

24 This concludes this portion of the process. At
25 this point the record will be closed, but we do reserve

1 the right to re-open the screening process and bring you
2 down for questioning up to the time the 48-hour rule
3 expires. And I'd like to remind you of that 48-hour
4 rule, and I'd like again to thank you for your service,
5 and I hope you have a safe trip back to Lexington.

6 JUDGE SPENCE: Thank you and thanks to all of
7 you.

8 REPRESENTATIVE DELLENEY: All right. I believe
9 we need to go into executive session for a few matters.
10 Do I hear a motion to go into executive session?

11 SENATOR NICHOLSON: So moved.

12 SENATOR KNOTTS: Second.

13 REPRESENTATIVE DELLENEY: All in favor?

14 (Multiple speakers respond, "Aye.")

15 (The Committee went into executive session from
16 11:28 a.m. to 11:30 a.m.)

17 REPRESENTATIVE DELLENEY: Okay. The first
18 thing we need to do is vote on the rule change regarding
19 bench bar surveys being able to be conducted on
20 electronic ballot which is a proposed rule change to Rule
21 28 of the Judicial Merit Selection Commission rules.

22 SENATOR KNOTTS: I so move.

23 MULTIPLE SPEAKERS: Second.

24 REPRESENTATIVE DELLENEY: Are you all in favor?

25 MULTIPLE SPEAKERS: Aye.

1 REPRESENTATIVE DELLENEY: All right. The
2 "Ayes" have it so we have a rule change. Rule 28.

3 All right. We need to raise our hands as we
4 vote on these qualifications. First, we have two folks
5 running for the Family Court 10th Judicial Circuit Seat
6 number 2. All in favor of Ms. Ballenger being qualified.

7 MR. SELLERS: I move that we find them both
8 qualified.

9 MULTIPLE SPEAKERS: Second.

10 REPRESENTATIVE DELLENEY: Qualified and
11 nominated?

12 MR. SELLERS: Qualified and nominated.

13 REPRESENTATIVE DELLENEY: Any further
14 discussion?

15 (No response.)

16 REPRESENTATIVE DELLENEY: All in favor of
17 finding both Ms. Ballenger and Mr. Sprouse qualified and
18 nominated raise your hand.

19 (All Members indicate with raised hands.)

20 REPRESENTATIVE DELLENEY: Okay. Next we have
21 Robert Newton. Qualified and nominated?

22 MULTIPLE SPEAKERS: Qualified and nominated.

23 REPRESENTATIVE DELLENEY: All in favor raise
24 your hand.

25 (All Members indicate with raised hands.)

1 REPRESENTATIVE DELLENEY: All right. Next we
2 have the Honorable Joe O. Crosby. Qualified and
3 nominated?

4 MULTIPLE SPEAKERS: Qualified and nominated.

5 REPRESENTATIVE DELLENEY: All in favor?

6 (All Members indicate with raised hands.)

7 REPRESENTATIVE DELLENEY: Any opposed?

8 (No response.)

9 REPRESENTATIVE DELLENEY: All right. Next we
10 have the Honorable James O. Spence. Qualified and
11 nominated?

12 MULTIPLE SPEAKERS: Qualified and nominated.

13 REPRESENTATIVE DELLENEY: Any opposed?

14 (No response.)

15 REPRESENTATIVE DELLENEY: Unanimous.

16 I think that concludes our business. Do I have
17 a motion to adjourn?

18 SENATOR NICHOLSON: Move to adjourn.

19 MULTIPLE SPEAKERS: Second.

20 (The hearing was concluded at 11:39 a.m.)

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CERTIFICATE OF REPORTER

I, Lisa A. Garson, Court Reporter and Notary Public for the State of South Carolina at Large, do hereby certify:

That the foregoing transcript was taken before me on the date and at the time and location stated on the first page of this transcript; that all statements made on the record at the time of the proceeding were recorded stenographically by me and were thereafter transcribed; that the foregoing transcript as typed is a true, accurate and complete record of the proceeding to the best of my ability.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 26th day of April, 2012, at Greenville, Greenville County, South Carolina.

Lisa A. Garson,
Court Reporter
Notary Public
State of South Carolina
My Commission Expires:
December 19, 2019

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