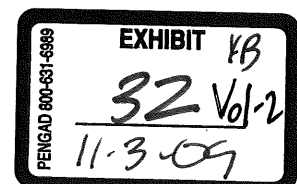


JUDICIAL MERIT SELECTION COMMISSION
Sworn Statement to be included in Transcript of Public Hearings

Family Court
(New Candidate)

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1. Why do you want to serve as a Family Court Judge?
Family Law has been my preferred area of the law during my practice and Family Court has been my preferred forum. While I have no illusions that a Family Court judge will not see heartbreaking situations, I think there is no other job that can give more help to people than a Family Court judge hearing one case at a time. I have enjoyed almost 13 years as a Magistrate also, and I still enjoy that job, but I have gone as far as I can reasonably go in that service. However, that experience has taught me maturity and shown me a career that I enjoy immensely. It has allowed me to learn how to adjudicate matters, deal with people who are in crisis, and has allowed me to become versed in handling *pro se* litigants. I dearly love being a judge and I want to serve in a position where I can do what I love full time in a forum where I can have a broader impact and help more people.
2. Do you plan to serve your full term if elected?
Yes, I would anticipate I would serve the full term.
3. Do you have any plans to return to private practice one day?
If elected, I do not foresee that I would return to private practice.
4. Have you met the statutory requirements for this position regarding age, residence, and years of practice?
Yes, I am 43 years old. I have lived in Greenville County my entire life (except when away for school) and I have been an active member of the South Carolina Bar since 1991.
5. What is your philosophy regarding *ex parte* communications? Are there circumstances under which you could envision *ex parte* communications being tolerated?
Ex parte communications are one of the largest and most continuing ethical problems with which judges must deal. I would not tolerate *ex parte* communications with attorneys other than for the sole purpose of scheduling matters with the offices of the attorney, which is allowed by our ethical standards. If an attorney needed to address an



issue with me it is easy to set up a conference call with all parties on the line, or letters, or even e-mails, can pass between the parties and the court with all parties receiving copies of the correspondence. As a magistrate I have had to set up a procedure to deal with *pro se* litigants who come or call the office and seek to “see the judge” or “speak with the judge in private” which happens frequently. Our policy is that a staff member preferably intercepts the person and explains that one side of an action can not speak with the judge without the other party present as this is not allowed under the ethical rules judges must follow and it would be unfair to the other side. Practically all people, accept this immediately as they had no wrongful intent, but simply did not know they could not have such communications with a judge. I do not believe this would be as big a problem at the Family Court level, but to the extent any litigants sought to speak to a judge, I think these guidelines would serve well. *Ex parte* communication is easy to avoid and really should not happen with attorneys. If a judge receives any *ex parte* communication that judge should recuse himself from the case.

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

If there is even the appearance that something is not fair or ethical I believe there should be a recusal. It is better to err on the side of recusal that to hear a case and have the decision subject to criticism as unethical. The slight delay a recusal causes is a small price to ensure the public’s confidence in unbiased judicial decisions.

As a magistrate, I have had lawyer-legislators appear in cases where I was presiding. It is not a very comfortable situation, but I did not recuse myself and would not in the future recuse myself solely because they were lawyer-legislators. I do not believe I was or would be any more compromised than any other judge that could be called upon to hear the case, so a recusal would not help this situation. If there was a connection between me and a lawyer-legislator that went beyond their solely being a legislator that would dictate a recusal then I would recuse myself as I would in any other case. However, to the credit of the lawyer-legislators who have appeared as lawyers before me none have sought special treatment nor have I given special treatment. Further, I have experienced no repercussions when I have ruled against the position of a lawyer-legislator.

As to former associates or law partners, it has been my practice to recuse myself in any case that comes before me for the first five years after I ended my relationship with the former associate or partner as a matter of course. After that time, I disclose my former relationship with that attorney and make it clear that I will recuse myself if any

party prefers. This situation has occurred a few time and on one occasion an attorney stated his client would prefer another judge, and I gladly recused myself and I believe this attorney and his client were well within their rights to request such a recusal. Some of my former relationships now exceed ten years, but I still disclose them and believe I should continue to do this no matter how much time has elapsed.

7. If you disclosed something that had the appearance of bias, but you believed it would not actually prejudice your impartiality, what deference would you give a party that requested your recusal? Would you grant such a motion?

I think that once a legitimate request for recusal has been made it should be granted. If it is not the case will always have a stigma attached to it in the eyes of at least one of the litigants. I do think the recusal request must be in good faith for a reason that can be articulated because otherwise recusal request could become a vehicle to allow judge shopping.

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

The appearance of impropriety can be as bad as true impropriety. The perception of the judicial system and the judiciary is based on appearance. If it appears improper, I will not handle the case. I think a recusal is necessary in such situations.

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

I only accept gifts from people who would give me a gift regardless of what my job might be. I receive gifts only from my immediate family, my parents, my in-laws and my brother. As to social hospitality, I do not accept anything more than a beverage and finger-food from someone who I would not normally have a social relationship with. I will have a lunch or something of that nature with someone who has no relationship with my position, such as my collage roommate or a friend from school. I do not receive gifts from such friends.

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

As much as it would be distasteful, the rules and canons require that misconduct must be reported.

11. Are you affiliated with any political parties, boards or commissions that, if you were elected, would need to be evaluated? No.

12. Do you have any business activities that you would envision remaining involved with if elected to the bench?

No, I plan to end all non-judicial business activities if elected.

13. Since family court judges do not have law clerks, how would you handle the drafting of orders?

I would follow the existing practice of requesting lawyers in the case to draft orders. If the order was not forthcoming I would politely remind the drafting attorney. In situations in which that practice would not work, I would draft, sign, and file the order myself.

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

I have followed the general practice of calendaring all deadlines with a reminder scheduled for a few days before the deadline. This method has served me well for all purposes and I will continue to use it.

15. If elected, what specific actions or steps would you take to ensure that the guidelines of the Guardian Ad Litem statutes are followed during the pendency of a case?

Children must be appointed legal representation and a guardian *ad litem* pursuant to statute. In an effort to make the gathering of information easier for the guardian, I would place the statutory authority of a guardian *ad litem* in the appointing order so that the guardian can simply show individuals such as doctors, day care facilities, and school officials that the guardian has court authorization to gather the information the guardian is seeking. This authorization is granted by statute, but I believe this procedure would be very helpful. In addition, I would use only guardians *ad litem* who have been properly trained. Furthermore, I would question the guardian to insure that the guardian is qualified by statute to serve and has not done any actions that would prohibit the guardian from serving. If a guardian's report did not provide the court with adequate information or the guardian did not carry out the statutory duties of a guardian *ad litem*, I would require the guardian to bring the report up to statutory requirements (probably without additional expense to the parties, if the guardian alone was at fault), and if that did not correct the problem I would not hesitate to replace the guardian even if the case was delayed because it is in the best interest of the minor children, who can not speak for themselves, that the court have full and accurate information. Finally, I am a great believer in check-list, and I would keep a GAL check-list with the statutory requirements listed in an easy form on the bench that would allow me to quickly confirm that the Guardian statutes are followed.

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

I think that judges should apply the law as written to the facts of a case and produce a ruling. I think the creation of law and the setting of public policy is a task for the legislature and the executive, not the judiciary. However, if there was an area of law that I thought needed improvement, I think it is the duty of a judge to bring the matter to the

attention of the legislative branch, but it would be the task of the legislature to decide if the law should actually be modified.

17. Canon 4 allows a judge to engage in activities to improve the law, legal system, and administration of justice. What activities would you plan to undertake to further this improvement of the legal system?

I would join the appropriate judges associations that apply to this court. If asked, I would readily serve on any commissions created by the legislature or the Supreme Court for the purpose of reviewing and improving the areas of family law. Further, I would make specific suggestions as were proper to the legislature, or members of the legislature, to address problems that I saw in the law for them to modify if they see fit.

18. Do you feel that the pressure of serving as a judge would strain personal relationships (i.e. spouse, children, friends, or relatives)? How would you plan to address this?

No, I do not believe any hardship would arise.

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

The only special consideration I think is allowed to be given a *pro se* litigant is to have patience with that party and assure myself that they understood the process of what was or would be happening in the case. I would also want to assure myself that they were capable of handling their own case and understood the danger incumbent with *pro se* representation. In a situation where no prejudice would occur, which would be most situations, I would be very lenient in granting a continuance to allow a *pro se* litigant to obtain counsel. I understand some litigants have little or no choice but to proceed *pro se* and it is proper for the court to have some patience as the litigant tries to understand the process.

20. Are you involved in any active investments from which you derive additional income that might impair your appearance of impartiality?

No.

21. Would you hear a case where you or a member of your family held a *de minimis* financial interest in a party involved?

No, as this would give the appearance of impropriety even if I were completely evenhanded. The ethical rules do contain a provision for the interest to be disclosed and the parties to have time to confer and then consent to the judge with a interest to hear the case, but I would prefer to take the safer route and not become involved in the case and let another judge who had no interest hear the case.

22. Do you belong to any organizations that discriminate based on race, religion, or gender? No.

23. Have you met the mandatory minimum hours requirement for continuing legal education courses? Yes, my CLE hours are current.

24. What percentage of your legal experience (including experience as a special appointed judge or referee) concerns the following areas? If you do not have experience in one of these areas, can you suggest how you would compensate for that particular area of practice?
- a. Divorce and equitable distribution: 52%
 - b. Child custody: 40%
 - c. Adoption: 3%
 - d. Abuse and neglect: 5% (DSS related primarily)
 - e. Juvenile cases: 0% While I have not ever handled a juvenile criminal or status case, I have adjudicated hundreds of criminal matters as a Magistrate and represented numerous criminal defendants as an attorney, so I am very familiar with the underlying criminal law. As preparation for this attempt for a seat on Family Court, I have studied the procedure for juvenile cases and I think I would be competent in this area.
 - f. I have answered these percentages based on my family law experience and have excluded other areas. If this is not correct, please advise.
25. What do you feel is the appropriate demeanor for a judge?
- A judge has to be patient. I find I have gotten more patient as I get older. A judge has to listen to what each litigant has to say. A litigant deserves to believe the judge listened even if the judge does not rule in that litigant's favor. This duty to listen applies equally to a routine matter as it does to a complex matter that has sparked the judge's professional interest. I like it when a judge will repeat back a few facts a party has presented as this shows the judge listened and several of my clients have commented favorably about this. A judge must be deliberate in all decisions and consciously weigh all the factors in each case and resist the urge to produce a boilerplate ruling. A judge must appear firm but not formidable. There is no reason a judge can not be pleasant to the litigants, lawyers and court employees. A judge can not be moved by anger. Anger is an emotion we all have. It is normal. However, a judge must be able to set aside anger and other emotions and make a fair legal decision. Most importantly, a judge must be someone who inspires confidence. He or she must be a person that litigants and lawyers routinely report was fair to everyone even when the ruling did not go their way. Our judicial system is based on trust. The judge must make the honest decision.
26. Would the rules that you expressed in your previous answer apply only while you are on the bench or in chambers, or would these rules apply seven days a week, twenty-four hours a day?
- A judge must conduct himself or herself as a judge at all times. The public and the bar observe a judge as a judge at all times. A judge

should always act as if he is on camera and speaking into a microphone for all the world. This is probably not fair to our judges, but as our court system is greatly based on the respect for our judges, it is necessary conduct.

27. Do you feel that it is ever appropriate to be angry with a member of the public who would appear before you, especially with a criminal defendant? Is anger ever appropriate in dealing with attorneys or a pro se litigant?

Anger with a litigant or an attorney is never appropriate. It is a human emotion and does sometimes occur. A judge should train himself to know the emotion when it appears and force it to the side. If a ruling is made in anger, then the judge should be big enough to recognize the fact and correct the matter.

28. How much money have you spent on your campaign? If the amount is over \$100, has that been reported to the House and Senate Ethics Committees? I have spent no money during this campaign. I have some materials left over from an earlier campaign but have purchased nothing new. The earlier expenditures have been reported previously.

29. If you are a sitting judge, have you used judicial letterhead or the services of your staff while campaigning for this office?

I used one sheet of stationary to request this application. The envelope and postage were paid for by me personally.

30. Have you sought or received the pledge of any legislator prior to this date? No.

31. Have you sought or been offered a conditional pledge of support by any legislator pending the outcome of your screening? No.

32. Have you asked any third parties to contact members of the General Assembly on your behalf before the final and formal screening report has been released? Are you aware of any friends or colleagues contacting members of the General Assembly on your behalf? No.

33. Have you contacted any members of the Judicial Merit Selection Commission? No.

34. Are you familiar with the 48-hour rule, which prohibits a candidate from seeking pledges for 48 hours after the draft report has been submitted? Yes.

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

s/ Michael Don Stokes

Sworn to before me this 12th day of August, 2009.

Notary Public for South Carolina

My commission expires: 10-03-2013