

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?

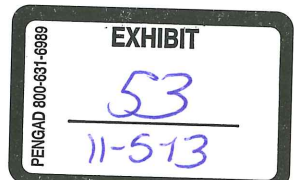
I would like to be a Family Court Judge for several reasons: professional challenge, public service and an opportunity to help others. I have had a active family law practice throughout my legal career that has spanned twenty-two years. Family law is my favorite practice area, and if I should be fortunate enough to be elected, it would then be the exclusive area of my legal activity. I find this area of the law to be interesting and challenging form a professional standpoint and I enjoy keeping up with the law in this area.

Also, if I were elected, it would allow me to devote myself jully to public service. I have been very fortunate in my career to have devoted the majority of my time to public service, and I have found it to be more emotionally and spiritually rewarding than private practice. I believe the office of family court judge affords a tremendous opportunity to make a difference in our society on a case-by-case basis. This office provies a unique chance to help and safeguard children who cannot protect themselves. Children are the most valuable resource of a society, and every action that can be done to assist any child in having a productive and fulfilling life is worth undertaking. I have been privileged to serve as a magistrate judge for over sixteen years. I have enjoyed this service to my community, and I have found it to be worthwhile. I would be further honored if the commission and the General Assembly allowed me to expand my public service by serving on the Family Court.

2. Do you plan to serve your full term if elected? Yes.

3. Do you have any plans to return to private practice one day?

If chosen to serve on this court I would anticipate staying in this position until retirement and not return to the private practice of law.



4. Have you met the statutory requirements for this position regarding age, residence, and years of practice?

Yes.

5. What is your philosophy regarding *ex parte* communications? Are there circumstances under which you could envision *ex parte* communications being tolerated?

Ex parte communication is one of the largest ethical problems facing judges on a regular basis. I do not think *ex parte* communications should be tolerated except for the sole purpose of scheduling, which is allowed under our state's ethical canons. If an attorney needs to speak with a judge, it is easy to set up a conference call with all parties, or letters, faxes, and e-mails can be sent to the court with all parties receiving copies of all correspondence. However, I do not think items that go to the merits of a case should be handled this way. Those issues should be heard in court on the record. These methods should be used solely in such situations as when an attorney or party has had a personal emergency or some issue has arisen in a case and the court needs to be informed of the issue so that a correction can be made or to determine if further hearings are needed. When *pro se* litigant seek to "see the judge" or "talk to the judge" it should be explained to them, preferably by staff that such communication is not allowed because it is unfair for one side of a dispute to have a conversation with a judge or to give him any "private" information without the other party being present to know what is being said. They should be politely told to have everything they want to address ready at the hearing and the judge will be happy to consider the entire matter at that time. This procedure should handle most *pro se* attempts at *ex parte* communication. I do not think these litigants should be treated harshly because in almost all cases their attempts stem from not knowing they should not do this and not from some intention to do anything wrong or gain some unfair advantage.

If a judge has received *ex parte* communications, either inadvertently or intentionally, I think the parties should be notified and if the *ex parte* communication affects the merits of the case, and in most cases it would, then the judge should recuse himself or herself from the case. If there is any doubt as to whether a recusal should be done I would err on the side of taking the recusal and safeguarding the integrity of the judicial system.

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

I would prefer to recuse myself from situations involving former associates and law partners. The relationships with these individuals is very close and personal and the ties frequently last a lifetime. If a litigant subsequently learns that the opposing attorney was once the law partner of the judge it destroys the appearance of any unbiased judiciary even if the case was handled with complete competency and honesty.

I do not think that the fact that a lawyer-legislator appears with a client in a judge's courtroom is alone grounds for a recusal. I do not believe one judge is any more compromised than another judge in this situation, so a recusal would not remedy the situation. However, if there was an additional connection between the judge and the lawyer-legislator that went beyond the lawyer solely being a legislator, such as former law partner, or some family or business connection, then that would dictate a recusal and I believe the judge should recuse himself or herself. The lawyer-legislators who I have seen appear in court did not appear to have sought or expected special treatment, and I have not heard of any judge experiencing repercussions from a lawyer-legislator.

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 would almost always grant any motion for recusal so long as I did not think it was just some ploy for delay and would be used on the next judge also. Our system of justice will lose its credibility if the public loses faith in the impartiality of the judges. I think that if a litigant or an attorney feel strong enough about a matter to seek a recusal it should be granted if it is in any way justified. No harm can come to the justice system from a recusal, but a case could appear tainted from a denial of a recusal. It is better for the system of justice to err on the side of a recusal in any doubtful situation.

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 is as bad as a true impropriety. The perception of the judicial system and the judiciary is greatly based on appearance. If it appears improper, I would not handle the case. If the judge's spouse or close relative had a financial or social relationship with a party, I believe it is proper for the judge to recuse himself or herself.

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

I would only accept gifts from people who would give me a gift regardless of what my job might be, such as my father, my in-laws, and my brother. As to social hospitality, I would not accept anything more than a beverage and finger-food or buffet-table type food at some social function from someone with whom I would not normally have a social relationship. I would have lunch or something of that nature with someone who had no interest in my position, but was close to me such as my college roommate or other such school or scouting friend, but these would be individuals I would recuse myself from hearing cases involving also.

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. I would want to know enough about the situation before the report is made so that I could satisfy myself that there was at least some "probable cause" that something has occurred. Baseless allegations should not be made as they waste the time and resources of the investigators and can unjustly damage the reputation of the judge or lawyer. If, however, a situation was a close call between whether misconduct occurred or not it would be prudent to err on the side of reporting the situation and allow the investigation to clear up the matter.

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, exchange them with each other for review, and then present the order for the court for review and signature. If the order was not forthcoming, I would politely remind the drafting attorney about the order needing to be done. In situations in which that practice would not work, I would draft, sign, and file the order myself. I would expect the situation where the judge drafts his own order to occur very rarely.

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 actual deadline. This method has served me well and I would continue to use it if elected.

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 when so required. If elected, I would have the statutory authority of the guardian *ad litem* set out 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. The guardian's authority is set forth in the statute but I believe this procedure would be helpful to guardians and reassuring to the people from whom confidential information is gathered. In addition, if elected, I would use guardians who have been properly trained.

Guardians file an affidavit that sets forth they are qualified by statute, but at the hearing I would question the guardian about the statutory qualifications on the record. This would only take a moment and in many cases it would reassure the parties that the guardian looking into the case on their children's behalf is properly qualified for the task they are doing because the parties may have no knowledge of the guardian's qualifications.

If the 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 (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 a guardian even if the case were delayed because it is in the best interest of the children that the court have full and accurate information. 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 believe that judges should apply the law as written to the fact of a case and produce a ruling. I believe that the creation of law and the setting of public policy is the task of the people's elected representatives and the elected executive, as appropriate, not the judiciary. I do not think judges should bend and twist a saw to make it fit a situation for which it was not intended, nor do I think that a judge should try to contort an existing law in some novel way to advance the judge's view of what the law should be or the direction that the law should take.

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?

If elected, I would join the appropriate judges' associations that apply to this court. I asked, I would be excited to serve on any commission 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 the members of the legislature, to give them the opportunity to address what I saw as areas of improvement for the law if that body felt my ideas were meritorious.

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?

I do not believe my personal relationships would suffer. All of my family and friends are supportive and understand the demands this office would make, especially the periodic travel.

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

The consideration I would give to a *pro se* litigant is to have patience with that party as they move through the unfamiliar legal system and to 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. In a situation where no prejudice would occur I believe I would be generous in granting a continuance to allow a *pro se* litigant to obtain counsel if he or she changed his or her mind and wanted a lawyer and the case had not yet started. I do not believe it is prejudicial to allow a *pro se* litigant some latitude with procedural matters so long as no prejudice is done to the other party. To go much further than this, I think, would be unfair to the opposing party. Above all, a judge must appear impartial and actually be impartial and fair to all parties.

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. I would not believe it is proper to hear a case where I or a family member had any financial interest in the matter. It would appear improper even if I were completely evenhanded. There are other judges who can hear a case. This would result in a recusal for me.

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: 50%
 - b. Child custody: 40%
 - c. Adoption: 5%
 - d. Abuse and neglect: 5%
 - e. Juvenile cases: 0% While I have never handled a juvenile criminal matter or status offence, I have adjudicated thousands of criminal cases as a magistrate and I have represented numerous criminal defendants as an attorney, so I am very familiar with the underlying criminal law.
 - 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 became a magistrate judge rather young and had to learn this and I have come to believe that the patience to hear a party is the most important attribute a judge has to have, exceeding legal knowledge and intelligence. Most of the litigants who appear in court will remember what the judge said specifically for only a very short time. However, they will remember for their entire lives whether they felt they were treated fairly. A judge has to treat all people with dignity and respect. Even when the case is painfully routine for the judge and attorneys it is the most important case in the world to the parties involved. The judge has to be interested and engaged and consider the case fully. I find the parties seem to be reassured if the judge repeats some significant facts about the case during the matter so that the parties know he was actually listening. This is especially true with *pro se* litigants. The 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 has to appear as someone who can be firm, yet not hateful and unapproachable. People should not be afraid to tell the judge what they need him to know. A judge must not let anger or personal feelings dictate his or her actions when it is time to decide any matter. The judge should make every effort to run the court on a timely schedule and start cases on time. Many people build their schedules around that of the court and the court should consider their time to be valuable as well.

A judge should always be cognizant of the possible impact of his decisions, words, and actions. A litigant's *perception* of the judge and how they *perceive* he treats them is probably the thing the public most takes away from their court appearance and their faith in the judicial system is greatly based upon their impression of the judge.

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 twenty-four hours a day, every day. The public and the bar call the judge a judge twenty-four hours a day and they see a judge as a judge all the time.

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?

All humans feel anger. A judge must put aside anger and avoid expressing anger. A judge must train himself to recognize the emotion when it appears and control his or her responses. The litigant or attorney should never see anger. That is not to say a judge does not have to be firm at times. A judge must be impartial, and displaying anger implies some personal stake in the dispute that the judge should not have. There is no need to be angry with people before you. In hostile situations, the judge be firm, decisive, and willing to support his or her rulings, plus have a strong enough personality to control the courtroom. Anger would not be helpful and indeed would be counter-productive and lead the judge to make errors that would not otherwise be made, and it would lessen the respect given to the judiciary.

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?

None.

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

No.

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 D. Stokes

Sworn to before me this 7th day of August, 2013.

Megan Metcalf

Notary Public for South Carolina

My commission expires: March 7, 2021