

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

Family Court
(New Candidate)

Full Name: Michael Todd Thigpen

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1. Why do you want to serve as a Family Court Judge?

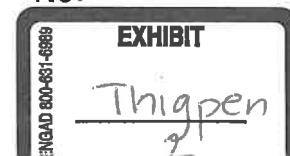
When I was a young child, my parents told me I could be anything I wanted to be when I grew up, and they always emphasized the importance of education. When I was approximately ten (10) years of age, I told my parents I wanted to be a lawyer, and I never changed my mind. In addition, my parents taught me that everyone needs to give back to the community at some point in his or her career.

For almost twenty (20) years, I have devoted my practice almost exclusively to family law. In addition to representing thousands of clients in Family Court, I have also served as a guardian ad litem representing children in hundreds of private cases. Moreover, I served as a contract attorney for the Spartanburg County Volunteer Guardian ad Litem Program in DSS child abuse and neglect cases for over thirteen (13) years. Finally, I have been a certified Family Court Mediator since 2002, and I have mediated hundreds of Family Court cases over the past five (5) years.

In my opinion, a judge holds one of the most important positions in our judicial system and being a Judge carries many responsibilities. In fact, a Family Court Judge's decision can forever change the lives of families, and most importantly children. In short, serving as a Family Court Judge would be the highest honor I could ever expect to achieve, and I would like to serve as a Family Court Judge because I believe my legal experience and training, as well as my real life experiences, will allow me to provide a noble, public service to the citizens of South Carolina.

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? No.



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?

My philosophy is that a Family Court Judge should never consider *ex parte* communications unless it is absolutely necessary for scheduling, administrative purposes, or emergencies and it will not substantially impact the outcome of the case. For example, a Family Court Judge may be required to consider an *ex parte* application from DSS to place a child into emergency protective custody if the child was not taken into emergency protective custody by law enforcement and it is necessary to protect the safety and well being of the child until a hearing can be scheduled, but the parents or guardians are entitled to a probable cause hearing within seventy-two (72) hours of the removal of the child. In addition, a Family Court Judge is permitted to consider an *ex parte* application for an emergency hearing from an alleged victim of domestic violence under the Protection from Domestic Abuse Act, but the alleged perpetrator is allowed to be heard at the emergency hearing. Moreover, the Family Court Rules allow a Family Court Judge to consider an *ex parte* application for an emergency hearing from a private attorney in a private case, but I believe that procedure should only be used if it is necessary to protect the safety and well being of a child or party until a hearing can be scheduled. Finally, the law allows a judge to consider an *ex parte* application from a litigant for an appropriate Restraining Order, but I would specifically note in any such Restraining Order that it would only remain in effect until a hearing can be scheduled. In short, I believe *ex parte* communications should only be permitted in rare emergency situations (i.e. mainly when the safety and well being of a litigant or child cannot otherwise be protected until a hearing is scheduled).

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

My philosophy is that a judge should always avoid any appearance of impropriety. That is, because a judge cannot be an advocate for either side and must be able to look at both sides of every case fairly and impartially, I believe a judge should always strive to make all litigants feel that they have a level playing field to resolve the issues brought before the Court. Therefore, I would recuse myself if I believed a litigant or attorney had a

valid concern about my ability to be fair and impartial to all litigants. Although I do not have any former associates or law partners, if I did have a former associate or law partner, I would not hear his or her cases for at least several years after I took the bench to avoid any potential conflicts of interest and appearance of impropriety. On the other hand, I would not automatically recuse myself in every case that a lawyer-legislator appeared before me because a judge is required to hear cases where a lawyer-legislator represents one of the litigants, but I would carefully consider a Motion if a litigant or attorney made such a Motion and stated a valid reason why he or she believed my impartiality might reasonably be questioned.

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?

If I disclosed something that had the appearance of bias that I did not believe would prejudice my impartiality, I would ask the litigants and the attorneys if they had any objection to me presiding over the case. If any party asked me to recuse myself, I would not take it personally, give due deference to the party requesting my recusal, and most likely grant such a Motion if I believed the information disclosed could cause my impartiality to be reasonably questioned.

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

If I knew my spouse or a close relative had financial or social involvement with any litigant, attorney, or witness, I would disclose it, ask the attorneys and litigants if they had any objection to me presiding over the case, and most likely recuse myself if any litigant, attorney, or I believed my impartiality could reasonably be questioned.

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

I would not accept, nor allow a member of my family to accept, a gift, bequest, or loan from anyone unless it was from a relative or friend for a special occasion (i.e. Christmas, birthday, etc.). However, I would never accept even a Christmas, birthday, or other special occasion gift from an attorney, law firm, or other person that appears before me. As to social hospitality, I would not attend a private function where I knew litigants, attorneys, or others involved in a case would be present unless all judges were invited and expected to attend. However, I would attend functions

related to the Bar, law-related associations, or the Judiciary where the purpose of the function was to advance the justice system and all judges were invited and treated the same.

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

A judge's judicial duties specifically include disciplinary responsibilities. Therefore, as required under Canon 3D(1) and 3D(2), I would report the misconduct of a lawyer or fellow judge to the appropriate disciplinary authorities.

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?

The only "business activity" that I am involved in other than the practice of law is rental properties I share with my mother. Although I do not believe it would be necessary for me to dispose of those properties, I do not have any interest in obtaining other real estate investments, and I would turn over the management of the properties I currently own to my mother, or an independent management company, if I am elected to the Family Court Bench.

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

If all parties were represented, I would ask one of the attorneys to prepare the Order, share it with the other attorneys of record and obtain their approval prior to submitting it to me, and forward it to me in an appropriate format so that I could make any changes necessary before signing it. I would also make sure the signed Order was forwarded to all attorneys of record in the same manner with strict instructions not to discuss the Order with their clients prior to it being filed in the Clerk of Court's Office. With respect to pro se litigants, I would consider a proposed Order prepared by an attorney, or a pro se litigant, if all parties had an opportunity to review it beforehand. However, if I took a matter under advisement involving a pro se litigant, I would ensure that the instructions for the Order were sent to all parties in the same manner and that the Order had been reviewed by all parties and approved prior to being submitted to me for my signature.

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

I would use a dual calendar system with me and my administrative assistant both keeping up with all deadlines. Specifically, because a Family Court Judge is required to sign an Order within thirty (30) days from the date of the hearing, I would ask the person preparing the Order to submit it to me within fifteen (15) or twenty (20) days depending on the complexity of the case. If I did not receive the Order in a timely manner, I would ensure that reminders were sent out with specific instructions for the Order to be prepared immediately and follow up as necessary.

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?

Because I have served as a guardian ad litem in hundreds of cases, I am very familiar with the requirements of the South Carolina Private Guardian ad Litem Reform Act (Act) and I would ensure that the guardians ad litem follow the requirements of those statutes. Specifically, although the Act allows the parties to consent to the appointment of a guardian ad litem who does not meet the training requirements set forth in the Act, I would not appoint a guardian ad litem who had not met the training requirements of the Act unless all parties consented to it and I personally believed the proposed guardian ad litem had sufficient training and experience to competently serve as the guardian ad litem. Finally, if it came to my attention that a guardian ad litem was not following the requirements of the Act, I would grant a Motion to relieve the guardian ad litem for good cause.

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

I personally do not believe a judge should serve as an “activist” because it is the judge’s duty and responsibility to follow the case law, statutory law, and court rules even if the judge does not necessarily agree with the law or rule.

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 be willing to “speak, write, lecture, teach and participate in other extra-judicial activities concerning the law, the legal system, [and] the administration of justice” as permitted under Canon 4. Specifically, I would

welcome an opportunity to speak at a Continuing Legal Education seminar, or other law-related program, concerning the law, the legal system, and the administration of justice. However, I would be very careful not to engage in extra-judicial activities that could cause my impartiality as a judge to be reasonably questioned.

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, my wife is totally supportive of my desire to be elected to the Family Court Bench, and she fully understands the duties and responsibilities I am seeking to undertake.

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

Because the law requires a judge to hold a *pro se* litigant to the same standard as a licensed attorney, I do not believe it is appropriate to give special consideration to a *pro se* litigant. For example, if a *pro se* litigant did not have proper service of process or proper notice of the hearing, I would continue the hearing because it would be denial of due process to the other party, who is often times *pro se* also, to not require strict compliance with the Court's rules. However, if a *pro se* litigant failed to ask a necessary question that would not substantially impact the outcome of the case (i.e. residency or venue), I may ask the question for the record because I would most likely ask a similar question if an attorney forgot to ask it for the purposes of judicial economy.

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

I receive additional income from limited rental properties that I own with my mother. Those investments could only cause an appearance of impartiality if one of our tenants or their family members appeared before me, and I would recuse myself if that unlikely event ever occurred.

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

"De minimis denotes an insignificant interest that could not raise reasonable question as to a judge's impartiality" under the Code of Judicial Conduct. However, if I knew an immediate family member or I had even a *de minimis* financial interest in a party involved, I would disclose it to all litigants and

attorneys, ask if they had any objections to me presiding over the case, and carefully consider a Motion for my recusal if I believed it could cause my impartiality to be reasonably questioned. If I did believe it was necessary for me to recuse myself, I would ask another judge to hear the case, if another judge was available, to avoid any undue delay in resolving 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.

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: 32%
- b. Child custody: 32%
- c. Adoption: 4%
- d. Abuse and neglect: 31%
- e. Juvenile cases: <1%

I have served as a guardian ad litem for a juvenile on a few occasions. Because my mother was the victim of a crime where one of the co-defendants was a juvenile, I have first-hand knowledge of how the DJJ system impacts the victim. In addition, I have represented adults in criminal cases in the past, and I believe I have sufficient knowledge of criminal law and procedure. In any event, if I am elected, I will spend as much time as possible viewing DJJ hearings before I take the Bench; I will pay careful attention to this area of the law in Judge's School; and I will ask to sit with a Family Court Judge hearing DJJ cases during my training.

25. What do you feel is the appropriate demeanor for a judge?

A judge should conduct all of his judicial and extra-judicial activities in a manner that promotes the upmost respect for the law, legal system, and judicial system. A judge's demeanor should always be fair, just, impartial, and kind to not only the litigants and the attorneys involved in a case, but also to staff, court personnel, and the general public. A judge should never do anything that would cast any doubt on his or her ability to be impartial, nor should a judge do anything to demean his or her judicial office or the judicial system. In short, our justice system is based on the long-standing principle that judges are fair, impartial, and competent to interpret and apply the law, and a judge has a duty and responsibility to uphold that principle at all times.

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 should apply the "rules" set forth above seven days a week, twenty-four hours a day.

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?

No. I do not believe it would ever be appropriate for a judge to display anger toward an attorney, litigant, staff member, court personnel, or the general public, including a criminal defendant.

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

M. Todd Shigpen
(Candidate Signature)

Sworn to before me this 28th day of July, 2016.

Pamela R. Thigpen
(Notary Signature)

PAMELA R. THIGPEN
(Print name)

Notary Public for South Carolina
My Commission Expires: 01/09/2018