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PROCEEDINGS

December 13, 2018

Judicial Merit Selection Commission, 2018

REPORTER: Jennifer Nottle

1 STATE OF SOUTH CAROLINA)

2 COUNTY OF RICHLAND)

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5 JUDICIAL MERIT SELECTION COMMISSION

6 TRANSCRIPT OF PUBLIC HEARINGS

7 * * * * *

8 BEFORE: SENATOR LUKE A. RANKIN, CHAIRMAN

9 REPRESENTATIVE G. MURRELL SMITH, JR.

10 SENATOR RONNIE A. SABB

11 SENATOR TOM YOUNG, JR.

12 MS. MARGARET M. BLUESTEIN

13 REPRESENTATIVE CHRIS MURPHY

14 MR. MICHAEL HITCHCOCK

15 MS. LUCY GREY MCIVER

16 MR. ANDREW N. SAFRAN

17 ANDY FIFFICK, ADVICE COUNSEL

18

19 * * * * *

20 DATE: December 13, 2018

21 TIME: 3:30 p.m.

22 LOCATION: Gressette Building

23 1101 Pendleton Street

24 Columbia, South Carolina 29201

25 REPORTED BY: JENNIFER NOTTLE, COURT REPORTER

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1 CHAIRMAN RANKIN: Senator Sabb makes a motion that we
2 go into executive session, seconded by Senator
3 Young.

4 (Executive Session)

5 CONTINUATION OF HONORABLE MONÉT PINCUS:

6 CHAIRMAN RANKIN: All right, thank you, ladies and
7 gentlemen. The Judicial Merit Selection
8 Commission is now back on the record. And I want
9 to state that while in executive session no
10 decisions were made and no votes were taken. We
11 will now proceed to the continuation of the
12 screening of Judge Pincus. Johanna.

13 REPRESENTATIVE SMITH: I'd like to make a motion,
14 please, sir.

15 CHAIRMAN RANKIN: All right.

16 REPRESENTATIVE SMITH: Mr. Chairman, I would move to
17 mark the affidavits of the complainant, both of
18 those from Mr. Ginter and Mr. Younginer, as
19 exhibits to this record.

20 CHAIRMAN RANKIN: All right. Without objection.

21 (Exhibit Number 1 was marked for identification
22 purposes - (4 pages) Affidavit.)

23 (Exhibit Number 2 was marked for identification
24 purposes - (7 pages) Affidavit.)

25 REPRESENTATIVE SMITH: All right. Mr. Chairman, I

1 have another motion. And I would like to make a
2 motion that it has come to my attention that the
3 file related to Mr. Ginter's complaint may have
4 been sealed. It's my understanding from the
5 clerk that it was. Therefore, I move to instruct
6 the staff to redact any references to the file
7 made in the transcript or exhibits. All redacted
8 information should be securely destroyed by the
9 staff also.

10 CHAIRMAN RANKIN: All right, so noted. Any objection
11 to that? All in favor say aye.

12 (Ayes are heard.)

13 CHAIRMAN RANKIN: All right, so noted. All right.
14 Judge Pincus, come on back up, if you will. I
15 want to remind you that you're under oath.

16 JUDGE PINCUS: Yes, sir.

17 CHAIRMAN RANKIN: Very well, okay.

18 JUDGE PINCUS - EXAMINATION BY MS. VALENZUELA

19 MS. VALENZUELA: Thank you, Mr. Chairman. The
20 commission staff attempted to work through the
21 parties' attorneys in Mr. Younginer's case to try
22 and get the complainant file opened by mutual
23 consent. The two parties to the litigation were
24 not able to reach an agreement on unsealing that
25 family court file. Therefore, there is nothing

1 before the commission. At this point we would --
2 I would move to the housekeeping questions for
3 the candidate.

4 Q. Judge Pincus, since submitting your letter of
5 intent, have you contacted any members of the
6 commission about your candidacy?

7 A. No.

8 Q. Are you familiar with Section 2-19-70, including
9 the limitations on contacting members of the
10 general assembly regarding your screening?

11 A. Yes, ma'am.

12 Q. Since submitting your letter of intent, have you
13 sought or received the pledge of any legislator,
14 either prior to this date or pending the outcome
15 of your screening?

16 A. No, ma'am.

17 Q. Judge Pincus, the next housekeeping question is
18 going to be whether you've asked any third
19 parties to contact members of the general
20 assembly on your behalf or if you've asked anyone
21 to intervene in this process on your behalf.
22 This is a potential violation of South Carolina
23 Code Section 2-19-70, and that code provides that
24 violations of that section are a misdemeanor and
25 upon conviction the violator must be fined not

1 more than \$1,000 or imprisoned to not more than
2 90 days. Because of the criminal nature of a
3 violation under the statute referenced above, do
4 you understand that you have right against self-
5 incrimination?

6 A. Yes, ma'am.

7 Q. And that you have a right to an attorney?

8 A. Yes, ma'am.

9 Q. And do you freely and voluntarily waive your
10 right against self incrimination?

11 A. Yes, ma'am.

12 Q. And do you freely and voluntarily waive your
13 right to counsel?

14 A. Yes, ma'am.

15 Q. Judge Pincus, have you asked any third parties to
16 contact members of the general assembly on your
17 behalf?

18 A. No, ma'am.

19 Q. Have you asked anyone to intervene in this
20 process on your behalf?

21 A. No, ma'am.

22 Q. Have you reviewed and do you understand the
23 commission's guidelines on pledging and South
24 Carolina Code § 2-19-70(E)?

25 A. Yes, ma'am.

1 MS. VALENZUELA: Mr. Chairman, I have no further
2 questions.

3 CHAIRMAN RANKIN: All right. Any questions of any
4 member of the commission? All right, Ms. Lucy
5 McIver.

6 JUDGE PINCUS - EXAMINATION BY MS. MCIVER:

7 Q. Thank you, Mr. Chairman. Judge Pincus, this is
8 going back to what we talked about last time you
9 were here. And it goes back to the issue of
10 parental alienation and how that is addressed or
11 dealt with. And I'm curious how that type of
12 therapy is reconciled with the statute addressing
13 the best interests of the child, and specifically
14 I'm talking about South Carolina Code § 63-15-30,
15 which provides: "In determining the best
16 interests of the child, the court must consider
17 the child's reasonable preference for custody.
18 The court shall place weight upon the preference
19 based on the child's age, experience, maturity,
20 judgment, and ability to express a preference."
21 Generally if you are considering a case where
22 there may be an issue of parental alienation, how
23 would you reconcile that with the particular
24 statute?

25 A. I'll try to address the major components of the

1 statute as I can recall them. I might need you
2 to refresh my memory on the list. As far as
3 preference of the children, whenever that is
4 brought to the court's attention, it's -- it is
5 looked at, but it also depends on the age of the
6 children and whether there is a guardian to speak
7 on their behalf or not. So we do consider the
8 preference of the children. Generally I do, and
9 -- and -- because of the statute, but it doesn't
10 necessarily mean I always hear the preference.
11 Now if I do hear the preference through testimony
12 or evidence that comes in, I weigh it based on
13 the circumstances of the case and the age of the
14 children --

15 **Q. Yes.**

16 A. -- which is what I would have done in this case -
17 -

18 **Q. Or in any case?**

19 A. -- involving parental alienation, yes, ma'am.

20 **Q. Sure. Is there an age where the children's**
21 **preference is weighed more heavily?**

22 A. There is. I believe our law's still currently at
23 16 you can give greater weight to the preference,
24 and there are cases that vary from very young or
25 -- or 11 year olds, 12 year olds, teens.

1 Q. Thank you, Judge Pincus.

2 A. Yes, ma'am.

3 CHAIRMAN RANKIN: All right. Any other questions.

4 All right. Thank you, Judge Pincus.

5 JUDGE PINCUS: Thank you, sir.

6 CHAIRMAN RANKIN: All right. There being nothing

7 further before us, now we'll proceed to a vote on
8 Monét S. Picus.

9 MR. YOUNGINER: Mr. Chairman, could I give rebuttal
10 testimony for three minutes --

11 CHAIRMAN RANKIN: No, sir.

12 MR. YOUNGINER: -- in order to refute direct testimony
13 given?

14 CHAIRMAN RANKIN: No, sir.

15 MR. YOUNGINER: Well, you asked for some files, and I
16 legally have them now, and I think the Commission
17 needs to see them. Because with all due respect,
18 sir, you had a public official give false
19 testimony in front of you.

20 CHAIRMAN RANKIN: Thank you, Mr. Younginer. This
21 record is closed --

22 MR. YOUNGINER: Okay. All right, thank you.

23 CHAIRMAN RANKIN: -- to any additional testimony or
24 affidavits or documents.

25 MR. YOUNGINER: Okay. Thank you, Senator.

1 VOTE

2 CHAIRMAN RANKIN: Yes, sir. All right. Those finding
3 Judge Pincus qualified and nominated, let's show
4 a raise of hands. All in favor say aye.

5 (Ayes are heard.)

6 CHAIRMAN RANKIN: Any proxies?

7 REPRESENTATIVE SMITH: Mr. Chairman, on behalf of
8 Representative Rutherford, I vote -- he has
9 requested I vote as his proxy, and that's as
10 nominated and qualified.

11 CHAIRMAN RANKIN: All right. There being nothing
12 further before this commission, we are adjourned.
13 Thank you, ladies and gentlemen.

14 (There being nothing further, the proceeding concluded at
15 5:25 p.m.)

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CERTIFICATE OF REPORTER

I, JENNIFER NOTTLE, COURT REPORTER AND NOTARY PUBLIC
IN AND FOR THE STATE OF SOUTH CAROLINA AT LARGE, HEREBY
CERTIFY THAT I REPORTED THIS PROCEEDING, ON THURSDAY, THE
13TH DAY OF DECEMBER, 2018, AND THAT THE FOREGOING 11 PAGES
CONSTITUTE A TRUE AND CORRECT TRANSCRIPTION OF MY STENOMASK
REPORT OF SAID PROCEEDING.

I FURTHER CERTIFY THAT I AM NEITHER ATTORNEY NOR
COUNSEL FOR, NOR RELATED TO OR EMPLOYED BY ANY OF THE
PARTIES CONNECTED WITH THIS ACTION, NOR AM I FINANCIALLY
INTERESTED IN SAID CAUSE.

IN WITNESS WHEREOF, I HAVE SET MY HAND AND SEAL THIS
18TH DAY OF DECEMBER, 2018.



JENNIFER NOTTLE, COURT REPORTER

MY COMMISSION EXPIRES JULY 11, 2023

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