



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

**Family Court**  
**(Incumbent)**

Full Name: Timothy H. Pogue

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

I feel that I still have a lot to offer the State as a Family Court Judge. My prior experience as a DSS attorney, juvenile public defender, and private domestic attorney prepared me for my duties on the bench. I feel that over the last ten (10) years, I have put these experiences to good use on the bench. I enjoy my work and feel that I can continue to contribute effectively as a family court judge.

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

No. I will be 72 in 2023 and will have to retire December 31, 2023.

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

No. I may try to do some mediations.

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?

I feel strongly that there should be no *ex parte* communications between a judge and a lawyer, litigant, or anyone concerning a pending or impending case, except those allowable by our South Carolina Rules of Civil Procedure or under the

Canons of Judicial Ethics. If an attorney desires for me to entertain any type of ex parte order he or she shall do so only by a properly verified ex parte complaint, setting out the emergency nature of the action and why he or she feels an ex parte order is appropriate. If the emergency conditions warrant an ex parte order, I will make sure the matter is set for an emergency hearing allowing both parties to be present. Neither my administrative assistant nor I will talk with someone on the phone, or in person, nor offer legal advice of any kind about a pending or possibly future case. I make every effort to fully comply with Canon 3(B)(7)(a)(i)(ii) as it pertains to initiating, permitting, or considering ex parte communications.

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 not recuse myself for the sole reason that a lawyer-legislator is before me. If the relationship went beyond the lawyer-legislator relationship and fell into one of the areas of mandatory disqualification, I would recuse myself. If I believed I could be impartial, I would disclose the relationship and if requested by any party that I recuse myself, I would. I have no former associates or partners who practice law before me.

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 probably grant the motion for the reason that a judge should disqualify himself in a proceeding in which the judge's impartiality might reasonably be questioned. Also, I would probably grant the motion because a judge should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. I would avoid any hint of impropriety by granting the motion.

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

I would make full disclosure of the financial or social involvement to the parties and their attorneys. If either party appeared concerned or requested I recuse myself, I would do so. If after disclosing all of this on the record, the parties waived any conflict and desired for me to hear the case, I would put the waivers on the record and hear the same. Judges should hear all cases assigned to them

unless there is a mandatory ground for disqualification or if either party requests recusal after full disclosure.

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

I do not accept any gifts or social hospitality from anyone other than family or closest friends with which I currently have a social relationship, or those allowed under Canon 4.(D)(5)(a)-(i) including but not limited to, ordinary social hospitality and gifts that are commensurate with the occasion and the relationship.

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

Canon 3.D(1) of the Code of Judicial Conduct differentiates between "having knowledge" and receiving "information indicating a substantial likelihood" that another judge has committed a violation of the Code of Judicial Conduct. If a judge receives information indicating a substantial likelihood that another judge has committed a violation of the Code, then the judge should take appropriate action. If the judge has knowledge that another judge has committed a violation of the Code that raises a substantial question as to the other judge's fitness for office, then the judge with such knowledge shall inform the appropriate authority.

Canon 3.D(2) sets out the same action for a judge to take if he receives information indicating a strong likelihood that a lawyer has violated the Rule of Professional Conduct as opposed to a judge having knowledge that a lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to the lawyer's honesty, trustworthiness, or fitness as a lawyer. If a judge has knowledge of such he shall inform the appropriate authority.

Canon 3.G. deals with the appearance of infirmity of a lawyer or fellow judge. It states: "A judge having a reasonable belief that the performance of a lawyer or another judge is impaired by drugs or alcohol, or by a mental, emotional, or physical condition, shall take appropriate action, which may include a confidential referral to an appropriate lawyer or judicial assistance program."

11. Have you engaged in any fund-raising activities with any social, community, or religious organizations? Please describe.

No

12. Do you have any business activities that you have remained involved with since your election to the bench?

No

13. Since Family Court judges do not have law clerks, how do you handle the drafting of orders?

In most situations I ask both lawyers to take notes while I am issuing my oral order from the bench. I will then ask one of the lawyers to prepare the order and allow the other lawyer to review and make changes prior to submitting it to me for signature. If the lawyers cannot agree as to my ruling on a particular issue, I will review my notes and inform the attorneys in writing or by conference call how I have resolved the misunderstanding.

My court staff, under my direction, prepares all pro se orders. If I take a matter under advisement I will either issue a written memorandum to both attorneys, or schedule a hearing or conference call on the record as to my ruling, and then require one of them to prepare the order as previously outlined above.

14. What methods do you use to ensure that you and your staff meet deadlines?

Both my administrative assistant and I keep manual and computer generated ticklers and reminders so as to meet all deadlines including outstanding orders and matters under advisement.

15. What specific actions or steps do you take to ensure that the guidelines of the guardian ad litem statutes are followed during the pendency of a case?

I make sure that in the order appointing the guardian ad litem, that both parties and the guardian sign off acknowledging that they are familiar and aware of Sections 63-3-810 through 63-3-820 and that the guardian meets the requirements outlined in the same. I make sure the order sets out all of the statutory requirements and duties of the guardian and further states that within twenty days after appointment, the guardian furnishes to the Court and the attorneys the affidavit as required by Section 63-3-820 (D) (1), (2), and (3). I also require the guardian to put in his or her affidavit that he or she is familiar with the responsibilities and duties under Section 63-3-830 and that he or she will comply with the same. Most of the guardians that appear before me do an outstanding job.

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

I do not believe judges should actively attempt to set or promote change to current public policy or law. The judge's responsibility is to know, interpret and apply the existing law as it pertains to the set of facts presented. Any advocated changes in public policy or law should be handled through the Family Court Judges Advisory Committee, which works in concert with the South Carolina Court Administration, and the General Assembly.

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

During the last ten (10) years I have been a presenter, speaker, panelist, or participant in over fifteen (15) different bar or privately sponsored seminars. I have served a secretary-treasurer, vice-president, and president of the South Carolina Conference of Family Court Judges and on the South Carolina Conference of Family Court Judge's Advisory Committee. I am currently serving a four (4) year term on the South Carolina Judicial Council. I am scheduled to participate in a program for the December 2018 Family Court Bench/Bar Seminar. I present or participate in the program for the Horry County Family Court Continuing Legal Education Seminar every year. I plan to continue to attend and participate in such seminars in the future. I have also participated in the Judicial Observation and Experience (JOE) Program for the last six (6) years or seven (7) years, and plan to continue participating in this most worth while program in the future. I also plan to continue to speak to various church and civic organizations about family law and the role of a family court judge.

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

No, I do not feel that the pressure of serving as a judge has strained my personal relationships, My wife, children, family and friends have supported me through my entire legal and judicial career. They are all well aware of the confidentiality of my legal relationships. My family and friends know I take my role as a family court judge very seriously and understand that I have considered all the facts of a case before issuing my ruling.

If anything, my being a judge has helped grow the bond and relationship I have with my two children. As previously stated elsewhere in my answer, my son is an assistant solicitor in Lexington County and my daughter is Circuit Court Judge

Larry Hyman's administrative assistant. They are well aware of the pressures and responsibilities my job places on me and they respond with much more patience and understanding toward me.

Therefore, I have not seen any strain on any of my personal relationships in the ten (10) years I have been on the bench, nor do I foresee any in the future.

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

No

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

The Code of Judicial Conduct defines a "de minimis" interest as an insignificant interest that could raise reasonable question as to a judge's impartiality. Therefore I would hear the case. I would disclose the de minimis interest, inform the parties that it would not affect my impartiality to hear the matter, and I would render my decision on the facts and law as presented and available to me. Should either of the parties request my recusal, I would have to consider the same.

21. Are you a member of any organization or association that, by policy or practice, prohibits or limits its membership on the basis of race, sex, religion, or national origin? If so, please identify the entity and explain if this organization practices invidious discrimination on any basis.

No

22. Have you met the mandatory minimum hours requirement for continuing legal education courses for the past reporting period?

Yes, and then some.

23. What do you feel is the appropriate demeanor for a judge and when do these rules apply?

Canon 3.(B) (3), (4) and (5) of the Code of Judicial Conduct and also the Judge's Oath taken by me provide the guidelines I feel are the appropriate demeanor for a judge to follow. Referring to those guidelines, I feel I need to be patient, courteous, dignified, non-biased or prejudicial and prompt. A judge should

require similar conduct of the lawyers who come before him and of his staff, court officials and others subject to the judge's direction and control. The judge should also require order and decorum in proceedings brought before him.

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

Anger is never appropriate with a member of the public, criminal defendants, attorneys, self-represented litigants, or anyone in the courtroom. My practice has always been to explain the proceedings at the beginning of a hearing and tell the litigants, lawyers and the others in attendance that this is a real courtroom, with real people, with real problems and not TV court where people can interrupt each other, roll their eyes, shake their heads, react to testimony, have outbursts, etc. I explain that this applies to the litigants and the members in the audience. I find that when this is calmly but firmly explained to all in attendance at the beginning of the hearing things normally run fairly well. If a litigant, witness or someone in the gallery continues to violate or abuse the expectations previously announced by the judge, then the judge has various other ways to deal with this conduct other than anger.

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

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Sworn to before me this 13<sup>th</sup> day of July 2018.

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(Signature)

Cindy R. Hardy

(Print name)

Notary Public for South Carolina

My commission expires: 10/13/15