



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

Circuit Court
(Incumbent)

Full Name: Joseph Derham Cole, Jr.

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1. Why do you want to serve another term as a Circuit Court judge?

Much of my adult life has been dedicated to service to my community and my state. Service as a circuit court judge will allow me to continue to serve my community and state while incorporating my passion for the law. I enjoy the intellectual aspect of the law as well as the opportunity to work with members of the bar and those who serve the judicial system in other capacities.

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

3. Do you have any plans to return to private practice one day? No.

4. Have you met the Constitutional 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 would abide by the Code of Judicial Conduct and applicable substantive law and procedural rules with respect to *ex parte* communications. For example, *ex parte* communications may be appropriate for matters that pertain to administrative or scheduling matters, or emergencies that do not address substantive matters or the merits of a case. I would ensure that other appropriate or necessary parties were apprised of the communication and allow

them to respond, as warranted. I could also envision *ex parte* communications being tolerated where permitted by rule or statute, such as conferencing by consent of the parties to aid in settlement of a case; seeking advice from a legal scholar on a matter with notice to the parties; issuing temporary restraining orders pursuant to Rule 65(b), SCRPC; in determining fees and expenses for capital defendants; issuance of search warrants; and issuance of administrative inspection warrants.

6. 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 give deference to the party requesting recusal, but would analyze the request objectively and carefully to determine whether the situation was one in which a reasonable person having knowledge of the circumstances would consider me unable to be impartial. If so, I would grant the motion, taking into account efficient administration of justice and use of judicial resources.

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

Where financial involvement is concerned, I would recuse myself. Where social involvement is concerned, I would recuse myself if I believed my impartiality may be impaired, or if my participation would cause a reasonable person to believe that my ability to execute my duties with impartiality was compromised.

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

I plan to follow the standards set forth in Canon 4, Section D(5) of the Code of Judicial Conduct with respect to such matters.

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

If I received information indicating a substantial likelihood that a lawyer or another judge has committed a violation of the Code of Judicial Conduct or the Rules of Professional Conduct, I would be

obligated to report such misconduct or infirmity to the appropriate disciplinary authority or assistance program.

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

I am currently the Board Chair for Healthy Smiles of Spartanburg, Inc., which provides dental health services to qualifying children in the community. To fund our operations, we engage in annual fundraising events and appeals. I was also involved in a September 2023 fundraiser for the Charles Lea Center Foundation in Spartanburg, which serves individuals with disabilities in the community.

11. Do you have any business activities that you would envision remaining involved with if reelected to the bench? No.

12. How do you handle the drafting of orders?

I have not yet issued any orders, so I answer this question prospectively. I think this practice would vary depending on the circumstances, but I envision three methods of drafting orders: (1) Draft the order myself with the assistance of a law clerk; (2) outline my decisions on the material issues and have the prevailing party submit a proposed order for my consideration; or (3) request proposed orders from each party and compose a final order from the proposed orders.

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

Again, I answer this question prospectively, as I have not yet assumed my judicial duties. I would use a calendaring system and a list of all pending matters before me upon which I must take action. I would have my law clerk and any other support staff monitor and update this calendar as necessary.

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

A judge's role is to uphold the integrity and impartiality of the judiciary, and to apply the law as enacted by the General Assembly and to apply binding precedent from the appellate courts.

15. 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?

I would be willing to participate in seminars or organizations that aim to improve the law, the legal system, and administration of justice.

16. 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?

Responding prospectively, I do not believe it would strain my personal relationships. I am fortunate to have a strong and supportive network of family and friends who would respect the position I hold and understand its demands.

17. The following list contains five categories of offenders that would perhaps regularly appear in your court. Discuss your philosophy on sentencing for these classes of offenders.

a. Repeat offenders: Generally speaking, a repeat offender who has had the opportunity for rehabilitation and continues to violate the law would warrant a harsher sentence than a first-time offender. The sentencing decision should take into account further rehabilitative opportunities for the offender as well as the safety of the public.

b. Juveniles (that have been waived to the Circuit Court): I would consider the age of the juvenile and sentencing alternatives that may be applicable in a particular case to encourage a young offender to correct his or her behavior and become a positive contributor to society. All of these considerations are undergirded by the principle of promoting maximum safety of the general public, as well as victims of the offender's crime.

c. White collar criminals: I would take into account the specific crime committed, whether there was a fiduciary relationship involved, the harm to the victim, the harm to society, whether restitution can be achieved, and then make a sentencing decision based on those considerations.

d. Defendants with a socially and/or economically disadvantaged background: I would take into account a person's life

circumstances as part of a sentencing decision, but that consideration would be balanced with protecting the interests and safety of the general public.

e. Elderly defendants or those with some infirmity: A person's age or condition may be a factor in sentencing, but it would have to be weighed against the seriousness of the crime, the potential impact on victims, and whether the defendant is a repeat offender.

18. Are you involved in any active investments from which you derive additional income that might impair your appearance of impartiality? No.

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

I would disclose the interest to all parties and counsel, and if they consented to my hearing the case, and I reasonably believed the interest would not affect my impartiality, I would consider hearing the case.

20. 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.

I am a member of the Caroliniana Ball, whose membership is all-male. It holds a formal dinner/dance once a year at various locations in the State for its members and their wives or significant others. It does not practice invidious discrimination on any basis.

21. Have you met the mandatory minimum hours requirement for continuing legal education courses for the last reporting period? Yes.

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

A judge should be calm, patient and dignified at all times, and courteous to all those he encounters. He should listen carefully to the litigants before him and ensure they have a fair opportunity to present their positions in a matter. A judge should always seek to

promote confidence and trust in the judiciary, and should comport himself at all times in a matter that promotes such confidence and trust.

23. 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?

I do not. There may be instances where a judge has to be firm or stern, but anger is not conducive to a productive resolution of a legal matter.

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

Sworn to before me this ____ day of _____, 2024.

(Signature)

(Print Name)

Notary Public for South Carolina

My commission expires:_____