

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

**Circuit Court
(Incumbent)**

Full Name: Joseph Derham Cole
Business Address: Spartanburg County Courthouse
180 Magnolia Street
Spartanburg, South Carolina, 29306
Business Telephone: 864-596-2685

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

I enjoy the work that I do and find it to be interesting, challenging, and rewarding. I believe the experience and knowledge I have obtained over twenty years as a circuit court judge give me a unique opportunity to make a meaningful contribution to the improvement of the legal system and the administration of justice.

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?

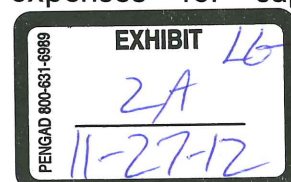
I have not formulated any specific plan to return to the private practice of law although I find the practice of law to be still both attractive and appealing and would not rule out making such a decision in the future.

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

Yes. I am more than 32 years of age; have been a licensed attorney for at least eight years; and have been a resident of South Carolina more than five years.

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

I do not initiate, permit, or consider any ex parte communication relating to a pending matter, except as to those that might be necessary for scheduling or administrative purposes, or emergencies that do not deal with any substantive matter or issues on the merits in a case, and so long as I am satisfied that no party would gain an advantage thereby and so long as all parties are notified of the fact of the communication and the substance of it, and except as to those that are permitted by rule or statute such as; conferencing separately with the parties by consent to aid in the mediating or settling of a case; seeking advice from a legal scholar on a matter with notice to the parties; issuing a temporary restraining order pursuant to Rule 65(b), SCRPC; in determining fees and expenses for capital



defendants pursuant to S. C. Code Ann. Section 16-3-26; the issuance of search warrants pursuant to S. C. Code Section 17-13-140; and the issuance of administrative inspection warrants pursuant to S. C. Code Sections 41-15-260, 44-53-500, and 44-53-1400.

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 recuse myself in any matter where I reasonably believe that I am unable to exercise my duties in a fair and impartial manner or where my impartiality can be reasonably 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?

It would depend upon the circumstances and how significant and reasonable the appearance of bias might be as well as what reasonable opportunity exists to transfer the matter to another judge without unduly interfering with the efficient disposition of the matter and without undue burden being imposed upon another judge. I believe that lawyers and litigants should have confidence in the impartiality of a judge and therefore would recuse, even if my impartiality is not actually impaired by any bias, when requested to do so, if such would not unduly burden another judge or unreasonably interfere with a prompt, fair, and efficient disposition of the matter.

8. 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 always recuse. Where social involvement is concerned, I would recuse if I believed my impartiality was actually impaired or if my participation in the matter would create in the mind of a reasonable person the perception that my ability to carry out my duties and responsibilities with integrity and impartiality was impaired.

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

I generally do not accept any gifts or favors from any person or entity that might be reasonably expected to come before me except those that might be described as ordinary social hospitality including those incidental and attendant to a particular bar related function or activity which is sponsored by an organization or an association or a group of attorneys such as those provided by the South Carolina Bar Association at the annual meeting; the South Carolina Association for Justice at their annual conference; the South Carolina Defense Trial Attorneys Association at their annual meeting; the South Carolina Solicitors Association at their annual convention; or the South Carolina

Public Defender Association at their annual conference. I have also accepted food, drink, and entertainment provided by a county bar association or a group of attorneys attendant to and in conjunction with the South Carolina Association of Circuit Judges annual meetings.

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

Where I have personal knowledge, or receive information indicating a substantial likelihood, that a judge or a lawyer has committed a violation of the applicable Code of Conduct that reasonably raises a substantial question as to the judge's fitness to continue in his or her office or reasonably raises a substantial question as to the lawyer's honesty, trustworthiness, or fitness as a lawyer, I have an obligation to report that conduct to the appropriate authority.

11. Are you affiliated with any political parties, boards or commissions that, if you were re-elected, would need to be re-evaluated?

Not of which I am presently aware.

12. Do you have any business activities that you would envision remaining involved with if reelected to the bench? No, I do not.

13. How do you handle the drafting of orders?

It depends upon the circumstances attendant to the particular matter, but generally there are three different methods. (1) I may draft the court order myself or have my law clerk prepare such a draft for my consideration; (2) I may, upon deciding the case, have the prevailing counsel draft an order for my consideration and; (3) If, after hearing or trial the matter requires additional research and contemplation by me that may take more than a short period of time, I may have opposing counsel each draw a proposed order for my consideration and select one as proposed or select one and modify it myself.

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

My law clerk maintains a current list of all matters which have been heard and taken under advisement or awaiting additional submittals before a decision is to be rendered and routinely informs me of the time that the matter has been under advisement, or otherwise pending, to ensure a prompt and efficient disposition of all judicial matters.

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

A judge should have respect for the law and act in a manner that promotes public confidence in the judiciary and the legal system and should not allow his or her personal views about public policy guide any decision that is to be made but should follow and apply the

law as it was enacted by the legislature and precedential case law as provided by the appellate courts. If a judge wishes to set or promote public policy it would be wise to resign or retire from the position and seek public office in a legislative body.

16. 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 have no specific or particular plans but whenever I am requested to participate in a law related educational activity designed to aid in providing guidance and/or education to those employed in the legal field or lay organizations I do my best to respond to the request for presentation or participation in the discussion.

17. 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?

It may often strain relationships with family simply because of the demand on one's time involved in carrying out the duties and obligations of the position, in being away from home and family activities due to travel associated with presiding over court outside of one's home circuit, as well as the stress associated with making important decisions in difficult matters substantially affecting the lives and relationships of people and making those decisions fairly, impartially, and in conformance with the law, even where one's decision, though correct and appropriate, may be harshly criticized publicly by friends, strangers, and the media. I simply endeavor to understand the nature of the position and keep the duties and obligations of the office in a proper perspective.

18. 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: more likely than not such offenders will need to be treated more harshly by way of sentence imposed, perhaps on the upper end of the sentencing range, than other offenders depending upon the nature of the offense and usual sentencing considerations as applied to the particular situation, with the paramount goal of the sentencing decision being to administer an appropriate measure of punishment for the individual defendant as well as protect the interest and safety of the public.

b. Juveniles (that have been waived to the circuit court): In the ordinary case due consideration should be given to the age of the defendant and the imposition of sentencing alternatives that are designed to address the correctional need of a particular individual as well as rehabilitative goals for youthful offenders so as to make them productive societal members rather than career criminals. Where more

serious and/or violent offenses are involved, due consideration should be given to the correctional needs and rehabilitative goals for a youthful offender but the paramount sentencing consideration must be treatment that will ensure maximum protection of the public as potential victims.

c. White collar criminals: generally treated the same as "blue collar" criminals except that there are occasions where a harsher treatment is warranted due to the fact that such offenses are; often more deliberately and methodically planned; the criminal intent exists for a greater period of time, giving the perpetrator greater awareness of the wrongful conduct; the harm resulting from such offenses is often more financially and emotionally severe to the victim as well as to the public and; perpetrated by those more "intelligent" and/or educated than the average "blue collar" criminal. In such crimes where there is a substantially harmful financial loss to the victim, the court must fairly balance the need for punishment, through treatment by active incarceration, as well the need to make the victim financially whole where the defendant, through reasonable efforts and in a reasonable period of time, can make restitution to the victim.

d. Defendants with a socially and/or economically disadvantaged background: Depending upon the objective seriousness of the crime, due consideration should be given to a person's life circumstances which have impeded or prevented his or her ethical and moral development resulting in a person committing a crime (1) out of perceived necessity or; (2) out of a lack of proper understanding of his or her obligations to his or her fellow man based upon established societal standards or; (3) out of selfishness and jealousy. Under any circumstances there is still a need for the court to balance the need for appropriate punishment and treatment for the offender with the need for protection for the general public.

e. Elderly defendants or those with some infirmity: again, depending upon the objective seriousness of the crime, in determining the appropriate sentence for an offender who suffers from old age or some other infirmity, the court must balance the need for punishment with the expense to the public where such an offender is to be confined for any significant period of time and with giving due consideration to sentencing alternatives to active incarceration in a penal institution. When the offense is one of a serious and/or violent nature paramount consideration should be given to the need to protect the interest and safety of the public.

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

None of which I am presently aware.

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

Yes, unless I felt that the interest would influence my judgment in the case or the interest could be substantially affected by the proceeding or I otherwise believed that my impartiality could be reasonably questioned, then under such circumstances I would recuse myself.

21. Do you belong to any organizations that discriminate based on race, religion, or gender? None of which I am presently aware.

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

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

A judge should be patient, dignified, and courteous to all litigants, lawyers, jurors, witnesses, court personnel and any others with whom the judge comes into contact with in his or her official capacity and should never by words or conduct manifest any bias or prejudice towards anyone on the basis of race, sex, religion, national origin, disability, or age.

24. Do the rules that you expressed in your previous answer apply only while you are on the bench or in chambers, or do these rules apply seven days a week, twenty-four hours a day?

The rules of conduct expressed in the previous answer should be applicable to a judge in his or her official capacity as well as applicable in any other public or private setting with the exception that a judge should be allowed to "let off a little steam" or express "a little displeasure" occasionally in the privacy of his or her home assuming the judge has a spouse who is willing to serve in such a listening capacity.

25. 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?

A judge should never display "anger" towards a criminal defendant, a lawyer, a *pro se* litigant, or any other member of the public nor allow anger to affect a judge's decision in any matter although a judge should be permitted to be stern and objectively judgmental in dealing with those enumerated above when the circumstances necessitate such behavior and in order to maintain proper order and decorum in any proceeding before the judge.

26. How much money have you spent on your campaign? If it is over \$100, has that amount been reported to the House and Senate Ethics Committees? None

27. While campaigning for this office, have you used judicial letterhead or the services of your staff for your campaign? No.

28. Have you sought or received the pledge of any legislator prior to this date?

Yes, in my three previous elections to the circuit court I have sought and obtained pledges from legislators but in compliance with S.C. Code Ann. Section 2-19-70(c) and any other rule of the Judicial Merit Selection Commission applicable to such elections. None have been sought or received for this particular upcoming election.

29. Have you sought or been offered a conditional pledge of support by any legislator pending the outcome of your screening? No.

30. 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 I have not, except for the five letters of recommendation that the Commission requires to be submitted with the application for filing when seeking election to the circuit court.

31. Have you contacted any members of the Judicial Merit Selection Commission? No.

32. 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.

Joseph Derham Cole

Sworn to before me this 8 day of August, 2012.

Notary Public for South Carolina

My commission expires: 07/18/15