



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

**Circuit Court**  
**(New Candidate)**

Full Name: Donna Earls Elder  
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1. Why do you want to serve as a Circuit Court judge?

I have respected the law and have had a passion to learn as much as I could about it even prior to my being admitted to the bar over 25 years ago. My love and respect for the law has shaped and molded my career as a lawyer. It has taken me from an associate, to a sole practitioner, to a prosecutor, to a drafter of law. There is nothing more challenging in the legal profession than litigation. The position of Circuit Court Judge requires that they immerse themselves in the study of the relevant case law in order to determine the right and most fair resolution in each case before them. The position of a Circuit Court Judge allows them the freedom to focus on the law in its purest form without the worry of the administration of a law office. A Circuit Court Judge is intellectually challenged every time they enter a courtroom; each case brings a new subject area or nuance. I am confident that I have reached a point in my experience and education that has prepared me for these challenges. I am aware of the tradition that the judicial branch adheres to in maintaining the integrity of the judiciary and the judicial process; and I am prepared to carry on that tradition and the sacrifice that comes along with that honorable mission.

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 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?

Ex parte communications are generally prohibited and I believe that they should be avoided. They undermine the confidence of all parties that a fair and judicious procedure is being conducted. There are certain narrow circumstances where these communications are permitted. See e.g. Canon 3, CJC, Rule 501, SCACR; Rule 65(b), SCRCP (restraining orders); Rule 241, SCACR (writ of supersedeas); and, S.C. Code Ann. 16-3-26 (2015), (determination of fees and expenses capital defendants). If any inappropriate ex parte communication occurs, all parties should be immediately notified that such has occurred, the nature and content of the communication, and given an opportunity to respond.

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 recuse myself when my impartiality could be reasonably challenged and when required to do so, Canon 3, CJC, Rule 501, SCACR. I do not believe any of the above situations require automatic recusal. All circuit court judges are elected in the same fashion, by the legislature, I believe all lawyers know that process. If we were required to recuse ourselves any time a lawyer-legislator appeared before us, no one would remain to hear their cases. I do not have any former law partners so that situation would never arise. A judge should recuse themselves if they have a financial or economic connection to the parties/attorneys or issues raised in the case before them. If they were previously involved as an attorney or have some other conflict requiring recusal. A judge should always be aware of not just actual conflicts causing impropriety but those situations where there may be an appearance of impropriety.

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 recognize the appearance of impropriety is of equal importance to that of an actual impropriety, I would certainly be sensitive to the party raising that issue. However, the court should make every attempt to differentiate between a party raising this issue because there is a reasonable basis for the appearance of impropriety versus using it as a means to “judge-shop”, delay justice or for some other tactical purpose. I would grant the motion if there is a reasonable basis for it and the appearance of impropriety alleged would undermine the confidence in the judicial procedure before me.

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

These situations should be avoided as it gives rise to the appearance of impropriety and undermines the credibility of the process.

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

I would strictly adhere to the rules governing this conduct (Canon 4, CJC, Rule 501, SCACR) and not accept gifts or social hospitality from anyone who might appear before me. I would not want to ever place myself in a position where an actual or potential litigant/party/attorney believed I was obligated to them.

10. 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?

I would report it as required under the Rules of Professional Conduct, or Code of Judicial Conduct.

11. 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

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

I have been involved in fundraising activities of various community based organizations by volunteering time working or assisting with the organization of fundraising events. I have also participated as a donor at events for these organizations. I have not participated in any of these activities since becoming a judicial candidate.

13. Do you have any business activities that you would envision remaining involved with if elected to the bench?

No

14. If elected, how would you handle the drafting of orders?

I would prefer to draft my own orders; however I recognize that a large case load may, at times, preclude it. In such case I would ask the prevailing party to draft an order, pursuant to written instructions, delivered to all attorneys or litigants if pro se, to be returned to my office and opposing counsel or pro se litigant within a specified period of time. I would then ask my law clerk to review the order for accuracy and then I would review the document and sign if no changes are needed.

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

I worked in the solicitor's office when our case management system came in to existence and quickly learned that timeliness was an integral part of an effective judicial system. I would avail myself to a computer program that would track all matters under advisement, all orders for which I am waiting receipt of and any other matters presently pending before the court.

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

Simply, a judge should apply the law, not make it. A judge should interpret a law based on its written word and intent. The term "judicial activism" to me is a term referring to the usurpation of another branches authority and is never permissible. Setting or promoting public policy is within the purview of the people through the legislative process not the judicial process.

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

I plan to engage in speaking activities through the CLE programs. As a lawyer some of the most beneficial programs were those conducted by the bench. I also believe in community outreach by participating in programs that educate young students on the court system. At some point, I would like to be involved in some advisory committees, similar to those in the past which were aimed at improving professionalism, operations and docketing.

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 address this?

I believe anyone engaged in the practice of law endures unique pressures. And sometimes it is difficult for lawyers to effectively deal with these pressures. I worked for an elected official for a significant period of my career. During that time I realized that I was governed by a different set of daily "rules" placed on me by the general public because of my position. For that reason, I limited my access to certain

social relationships and have now grown closer to family and long-time friends. I have no children, a very small extended family and a close group of friends, they are all aware of my work ethic and know when I work I work, but when I am with them whether a quick phone call or a visit, I put the work down and focus on them.

19. 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:

I believe you must look at the nature of the crime charged with repeat offenders. With the exception of violent offenses I believe that most minor repeat offenders should have the benefit of graduated sentencing. They should be offered diversion, alternate sentencing, probation and brief incarceration before long term incarceration is imposed. The long term effect of this type of model reduces incarceration costs and gives individuals the ability to become a positive and productive part of their community again. I also however believe that the public must be protected and those likely, based upon their history, to reoffend in a manner that would pose a significant threat to the public should be incarcerated more readily and have more of a lengthy sentence.

- b. Juveniles (that have been waived to the Circuit Court):

The legislature has provided unique sentencing opportunities for youthful offenders such as YOA, shock and public service. There are also numerous alternate programs available for this age group. In addition the U.S. Supreme Court has ruled that juveniles are constitutionally different from adults because of their diminished culpability and greater opportunity for reform. I would like to give a young offender an opportunity to change their behavior and give them the skills to move forward in a positive manner. I recognize however that often times these young people are committing the most violent of offenses such as murder or display such violent tendencies that the only choice for a court is to impose incarceration.

- c. White collar criminals:

I do not think these types of offenders should be in a separate category than other offenders. In general when someone refers to an offender as a "white collar criminal" I think of someone that has employed a great deal of energy to develop a complex scheme of theft or embezzlement. Someone that has had the opportunities of education or employment where their employer has placed a great deal of trust in them. Often times these white collar crimes have a significant and profound effect on their victims.

- d. Defendants with a socially and/or economically disadvantaged

background:

I think all defendants should be treated equally when appearing in court, that one should not get favor because they are more advantaged or disadvantaged economically and/or socially. I think a judge should always strive to avoid any appearance of different treatment for defendants appearing before them. However in sentencing I do believe that a judge should be mindful that certain defendants would benefit from education, job or vocational training in addition to drug therapy and to put them in a position for those types of programs to be of assistance and available.

e. Elderly defendants or those with some infirmity:

Because of increasing medical costs of elderly and severely infirmed defendants, the court must be mindful of these issues in sentencing this population. A judge should take into consideration the medical needs and availability of services that can reasonably be provided to severely infirmed defendants. Depending on the infirmity, which should be documented and agreed to by the parties, a consideration must also be given to the risk of exposure to others if placed in a prison population. Consideration when possible should be given to address these issues through alternative sentencing.

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

No

21. 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 follow the guidelines in Canon 3, CJC, Rule 501, SCACR. This allows a judge to hear a matter under this scenario, however I would inform the parties of interest in the matter and give each party an opportunity to request recusal. If a motion was made I would then decide if there was a reasonable appearance of impropriety that would warrant my recusal.

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 for the past reporting period?

Yes

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

A judge should always be respectful of those appearing before the Court regardless of their circumstances. A judge should be patient, compassionate and diligent. The Court should always allow a party to fully express their positions within reason. They must be firm but never address someone in their courtroom in anger or in a demeaning fashion. A judge should always appreciate the office and display the respect for that office both inside and out of the courtroom. They should balance this with an appropriate sense of humor and while taking their responsibilities serious, not taking themselves too serious.

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 pro se litigants?

Anger is an emotion that is never appropriate for a judge. A judge should be firm and have control of the courtroom and require decorum and respect for all of the litigants, defendants and victims appearing in it.

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

S/Donna Elder

Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

Notary Public for South Carolina

My Commission Expires: \_\_\_\_\_

