

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

Circuit Court
(New Candidate)

Full Name: James Donald Willingham, II

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

I have always wanted to be a circuit court judge. Starting in middle school, my grandfather would take me to court to watch the proceedings. I knew then that I wanted to make a difference in the world through the legal system. As a prosecutor for thirteen years, I believe I had some role in helping other people and making our community a safer place to live. When I was contacted about becoming a magistrate, I realized that this was an opportunity to help members of my community in a different role while gaining the civil experience I would need to be considered qualified as a circuit court judge. For the past nine years, I have tried to help people resolve their differences by providing them with a fair trial and an opportunity to be heard. My whole legal career has been devoted to helping other people. I want to continue to help other people and make a difference in my community as a circuit court judge.

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

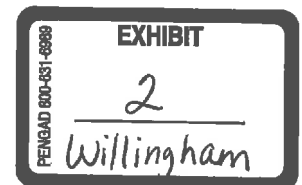
Yes.

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 should be avoided and I work hard to prevent them from occurring. If it should occur, I believe the judge should recuse himself from the consideration of the matter. The only time I could envision *ex parte* communications being tolerated is when authorized by rule or statute.

6. What is your philosophy on recusal, especially in situations in which lawyer-legislators, former associates, or law partners are to appear before you?

When I left the solicitor's office to become a magistrate, I had a couple requests to recuse myself in criminal cases. While I thought I could be fair and impartial, I wanted to avoid the appearance of impropriety so the case was reassigned to another magistrate. Enough time has passed so I do not believe this would be a continuing issue.

As to lawyer-legislators, every judge in the state has been elected or confirmed by members of the legislature. If the rule was automatic recusal if a lawyer-legislator appears, either no cases would be disposed of or lawyer-legislators could not practice law. Neither result is realistic. If a person asking for recusal can give a valid, good faith basis for recusal, I would grant the motion. However, if it is based solely on the fact that the lawyer-legislator voted for or against you as a judge, that reason alone would be insufficient to warrant recusal.

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 believe the court should always uphold the integrity of the judiciary. As such, judges should avoid even the appearance of impropriety. Even if you believe you can be impartial, you will never be able to convince the person who requested the recusal. As such, I would grant the motion so long as it is made in good faith. However, if it is made as a delaying tactic, the motion would likely be denied.

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

I would disclose any potential conflict to the litigants and if the appearance of impropriety would cause concern to a reasonable person, I would recuse myself from the matter.

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

I do not accept gifts or other hospitality from lawyers. I have many good friends who are lawyers but would never accept any type of gift from them.

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

The rules of ethics require the reporting of misconduct of the lawyer or judge to the appropriate disciplinary committee. I would follow this requirement.

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

No.

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

No.

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

I currently draft most of my own orders. I do occasionally request a proposed order from one of the attorneys involved in a litigated matter. If such a request is made, I ask for it in an electronic format so that I may modify it as necessary. I also require that any proposed order also be submitted to the opposing party.

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

I try to rule on cases and issues orders promptly. I keep a current list of all cases I have under advisement or awaiting orders. My staff also keeps such a list as a reminder that the case needs to be disposed of

promptly.

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

I do not believe a judge should be involved in judicial activism. The judge's role is to apply the law as passed by the legislature. Whether a judge agrees or disagrees with that particular law is irrelevant. That is the whole purpose behind the separation of powers among the three branches of our government. Public policy is set by the legislature, not the judiciary.

16. 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 currently teach as an adjunct professor at Spartanburg Methodist College in the areas of ethics, forensics and substantive criminal law. I also teach criminal trial practice and civil trial practice at the Magistrate's Orientation School. I would hope to continue those activities if elected to the Circuit Court.

17. 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 do not believe that the pressure of being a circuit court judge would place a strain on any personal relationships. This is not currently a problem as a magistrate and I do not envision it becoming a problem in the future.

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:

For most crimes, the legislature has provided the judge with a range of sentencing options. With repeat offenders and career criminals that have demonstrated their inability to live peaceably among us, then the more severe punishment should be reserved for them.

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

Certainly the court should consider any mitigating factor prior to

sentencing. Age is one of those mitigating factors. The legislature has provided additional sentencing options for juveniles such as a youthful offender sentence or shock incarceration. These options should certainly be considered for a juvenile offender if it is an appropriate sentence to match the offense committed.

c. White collar criminals:

The nature of these crimes typically involve some significant financial loss to the victim. The court should try to structure a sentence that punishes a defendant for their crime while at the same time attempting to make the victim whole through restitution.

d. Defendants with a socially and/or economically disadvantaged background:

Again, the background of a defendant is certainly something the court should consider in mitigation when determining a sentence. The court should be cognizant of the fact that such a defendant may not be able to repay the victim financially for the crime. If some sentence other than incarceration is deemed appropriate for the defendant, then the court should explain to the victim why restitution may not be ordered but instead why the court may impose community service in its place.

e. Elderly defendants or those with some infirmity:

Again, age is a mitigating factor to be considered by the court. However the punishment should always fit the crime. If the age or infirmity would likely prevent the defendant from reoffending, then a less severe punishment may be appropriate. However, if the defendant is likely to reoffend, he should be treated like any other defendant.

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?

I would disclose such interest to the parties and carefully consider any subsequent motion to recuse myself.

21. Do you belong to any organizations that discriminate based on race, religion, or gender?

No.

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?

I believe a judge should treat others like they would want to be treated. You should always treat others fairly. You should be patient and respectful at all times.


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

These rules would apply at all times.

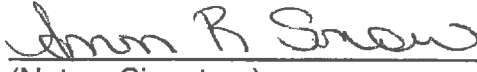
25. Do you feel that it is ever appropriate to be angry with a member of the public, especially with a criminal defendant? Is anger ever appropriate in dealing with attorneys or pro se litigants?

I do not believe anger in the courtroom would be appropriate. The court is charged with maintaining the dignity and decorum of the courtroom so being firm may be required but not in anger. Patience with attorneys and pro se litigants goes a long way in preventing anger from being introduced into the situation.

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


(Candidate Signature)

Sworn to before me this 11 day of July, 2016.


(Notary Signature)

Ann R Snow
(Print name)

Notary Public for South Carolina
My Commission Expires: 6-13 2017