



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

**Circuit Court  
(Incumbent)**

Full Name: Joseph Derham Cole

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Spartanburg, South Carolina 29306

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

I enjoy the work that I do and still find it to be interesting, challenging, and rewarding. I believe the experience and knowledge I have gained over more than twenty-five years as a circuit court judge give me a unique opportunity to make a meaningful contribution to the betterment of the legal system and the administration of justice. I find that longevity in judicial service benefits the stability of the legal system by providing a desirable degree of consistency, continuity, and predictability that is beneficial to those who use the court system on a regular basis.

2. Do you plan to serve your full term if re-elected? I plan to serve for as long as current state law will allow for me to serve.

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

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 licensed as a lawyer for at least 8 years; and have been a resident of South Carolina for more than 5 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 *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 matters or issues regarding the merits of a case, and so long as I am satisfied that no party would gain an advantage thereby and so long as all parties know about or 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 with their consent to aid in mediating or settling 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 pursuant to S. C. Code 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 am my 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?

I give great deference to a party having a reasonable basis and honest belief that I could not be fair and impartial in a matter before me.

Would you grant such a motion?

I believe that lawyers and litigants should have confidence in the impartiality of a judge and the fairness of the outcome and therefore would recuse myself, even if my impartiality is not actually impaired by any perceived 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 scheduled 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?

Where financial involvement is concerned I would always recuse. Where social involvement is concerned, I would recuse if I believed my impartiality might actually or reasonably be 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 lawyers such as those provided by the South Carolina Bar Association at the annual meeting; the South Carolina Association for Justice at their annual summer conference; The South Carolina Defense Trial Attorneys Association at their annual winter meeting; the South Carolina Solicitors Association at their annual conference; 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 lawyers in conjunction with a bar related function and similar hospitality attendant to and in conjunction with the South Carolina Association of Circuit Judges annual meeting held in various venues around the State.

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?

Where I have personal knowledge or receive information indicating a substantial likelihood that a judge or 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. Have you engaged in any fund-raising activities with any social, community, or religious organizations? Please describe.

I have not "engaged in" any fund-raising activities but I have purchased tickets and attended 501(c)(3) charitable organization fundraisers and contributed items, unrelated to my employment as a judge, for auction to benefit the charitable organization.

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

13. How do you handle the drafting of orders?

Generally there are three methods I employ for the drafting of rulings and orders: (1) I draft the order myself or have my law clerk prepare a draft proposed order for my consideration and editing, (2) I decide the issue(s) and have the prevailing party prepare a draft proposed order for my consideration and sign or edit the proposed order as submitted, and (3) If the matter requires further research or study, I may request each counsel for each of the parties to submit a draft of a proposed order for my consideration and select one as a proposed or select one and make modifications as appropriate.

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 taken under advisement or are awaiting additional submittals or supplemental memoranda before a final decision may be made and is instructed to routinely and regularly keep me apprised as to the status of such matters to ensure a timely disposition of all pending matters for which a trial or other hearing has been held.

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. In the event a judge wishes to set or promote public policy it would be prudent and appropriate for the judge to resign or retire from the position and seek public office in a legislative body tasked with the duty of developing and setting public policy.

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 plan but whenever I have the opportunity or 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?

Judicial service may 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. These decisions, even when correct and appropriate under the circumstances of the matter, may be harshly criticized or questioned privately and publicly by friends, colleagues, strangers, and the media affecting relationships of other family members and their connections with others. I have not found judicial service to be any more stressful than practicing law or engaging in public service as an elected official. I simply endeavor to understand the nature of the position and keep the duties and obligations of the office in a proper perspective and accept the fact that decisions having a substantial and sometimes detrimental impact upon individuals will often impact relationships and opinions of others with and about oneself. I encourage my family to be grateful if my service is complimented and to ignore any unwarranted or unfair criticism.

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: Generally speaking such offenders, having already hopefully been afforded reasonable opportunities to alter anti-social behavior by participation in programs designed to address their psychological and financial issues and needs, will require more harsh treatment by way of sentence imposed, perhaps on the upper end of the sentencing range, than first-

time offenders depending upon the nature of the offense and other usual sentencing considerations as applied to the situation, with the paramount goal of the sentencing decision being to administer an appropriate measure of punishment and rehabilitative opportunities for the individual defendant with the a of positively influencing future behavior and decision making as well as to protect the interests 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 offender and the sentencing alternatives available that are designed to address the correctional need of a particular offender as well as the rehabilitative goals for youthful offenders so as to ensure that they can become productive societal members rather than career offenders. Where more serious and/or violent offenses are involved, due consideration should be given to the correctional needs and rehabilitative goals for the youthful offender with a paramount consideration being given to appropriate treatment that will ensure maximum protection of the public and potential victims.
- c. White collar criminals: Generally treated the same a "blue collar" offenders except that there are occasions where a harsher treatment is warranted due to the fact that such offenses are; often more deliberately planned; the criminal intent exists for a greater period of time, giving the perpetrator sense of awareness as to the wrongfulness of the conduct; the harm resulting from such offenses is often more financially and emotionally severe to the victim as well as to the public interest, and; the offense is perpetrated by those more "intelligent" and/or educated than the average "blue collar" criminal and is committed often due to a relationship of trust existing between the offender and the victim. In such crimes where there is a substantially harmful financial loss to the victim, the court must fairly balance the need for punishment by incarceration, as well as the need to make the victim financially whole where it is shown that the offender is in a position to make financial restitution to the victim through reasonable efforts in a reasonable period of time.
- d. Defendants with a socially and/or economically disadvantaged background: Depending upon the objective seriousness of the offense, due consideration should be given to a person's life circumstances which have impeded or prevented his or her

ethical and moral development which results in an offender committing a crime (1) out of perceived necessity or (2) out of lack of proper understanding of his or her obligations to his or her fellowman based upon established societal standards or (3) out of selfishness, jealousy, or actual evil motive and intentional disregard for the rights of others. Under any circumstances there is still a need for the court to balance the need for appropriate punishment and needed corrective treatment for the offender with the need for protecting the interests and safety of the general public.

- e. Elderly defendants or those with some infirmity: Depending upon the objective seriousness of the offense, in determining the appropriate sentence for an offender who suffers from old age or infirmity, the court must balance the need for punishment and appropriate corrective treatment with the expense to the public where such an offender is to be confined for any significant period of time with due consideration being given to reasonable alternatives to active incarceration in a correctional institution. When the offense is one of a serious and/or violent nature, paramount consideration must be given to the need to protect the interests 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?

Not 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 would be substantially affected by the outcome of the proceeding or I otherwise believed that my impartiality could be reasonably questioned. Under such circumstances I would recuse myself.

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.

Not of which I am presently aware.

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

Yes.

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

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 as well as any other public or private setting so as to promote confidence and trust in the judiciary and legal system generally and a judge 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 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 not a virtue nor is it conducive to a successful conflict resolution. A judge should never display "anger" towards a criminal defendant, a lawyer, a pro se litigant, or any other member of the public, nor may a judge allow any degree of anger to affect or influence a judge's decision in any matter. A judge should be permitted to be stern and objectively judgmental in dealing with those enumerated above when the circumstances necessitate such behavior in order to emphasize an appropriate point when the message being conveyed appears to be lost or the person being addressed is being deliberately obtuse or in the effort to maintain proper order and decorum in any proceeding before the judge.

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 \_\_\_\_ day of \_\_\_\_\_, 2018.

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



\_\_\_\_\_  
(Print Name)  
Notary Public for South Carolina  
My commission expires: \_\_\_\_\_