

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



Family Court
(Incumbent)

Full Name: The Honorable Joseph C. Smithdeal

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1. Why do you want to serve another term as a Family Court Judge? I want to serve another term as Family Court Judge because I am well qualified and I enjoy the challenge. I also have a deep respect for all people and am able to help some of those who come in front of me.
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 no plans to return to private practice.
4. Have you met the statutory 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? My philosophy is that except in limited circumstances such as administrative matters, scheduling, true emergencies or when expressly authorized by law, *ex parte* communications should not take place or be considered by a judge. At the very minimum, this type of contact undermines public confidence in the judge and the justice system. *Ex parte* contacts are covered by Section 3B(7) of the Code of Judicial Conduct.
6. What is your philosophy on recusal, especially in situations in which lawyer-legislators, former associates, or law partners are to appear

before you? The Code of Judicial Conduct provides that a judge shall disqualify himself when, "(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer...." Section 3E(1)(a). I would not generally have such a bias or prejudice for or against any attorney, and no attorney who is a friend of mine would expect me to act in a biased manner. Recusal, however, may still be required by the general language of Section 3E(1) if impartiality is reasonably questioned. After disclosing on the record any information that I think might be relevant to disqualification, I would consider the nature and length of the relationship as well as the urgency of the matter and the availability of another judge as indicated in the commentary to Section 3E. I would not hesitate to disqualify myself if a party has a reasonable question as to my ability to conduct a fair trial.

Regarding lawyer-legislators, they have to earn a living too. Unless I have a close personal relationship with the lawyer-legislator and that relationship fell within the Code of Judicial Conduct such as Section 3E(1), I would not feel a reasonable question of impartiality would be raised. I do however, believe that a judge should be on guard against the perception of bias or prejudice and would therefore always seek to maintain the confidence of the public.

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? Section 3E of the Code of Judicial Conduct states, "A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned...." Generally the provision mandates recusal based upon the reasonable appearance of a question. If the disclosure, in fact, had the appearance of bias, I believe recusal would be required. I have offered the parties the opportunity to confer with their attorneys in private on several occasions.
8. How do you handle the appearance of impropriety because of the financial or social involvement of your spouse or a close relative? The involvement financially or socially of my spouse or close relative in a matter before me would raise a reasonable question as to my ability to be impartial. Appearances, in this case, would trump a subjective assessment of my impartiality. I would recuse myself.
9. What standards have you set for yourself regarding the acceptance of gifts or social hospitality? Pursuant to Cannon 4 of the Code of Judicial Conduct, I would respectfully decline gifts or social hospitality

without an underlying friendship outside of any judicial relationship. Only gifts or invitations consistent with the occasion and non-judicial relationship are appropriate.

10. How do you handle a situation in which you became aware of misconduct or appearance of infirmity of a lawyer or of a fellow judge? Section 3D of the Code of Judicial Conduct provides, "(1) A judge who receives information indicating a substantial likelihood that another judge has committed a violation of this Code should take appropriate action. A judge having knowledge that another judge has committed a violation of this Code that raises a substantial question as to the other judge's fitness for office shall inform the appropriate authority. (2) A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct contained in Rule 407 SCACR, should take appropriate action. A judge having knowledge that a lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects shall inform the appropriate authority."

Assuming that I had received information indicating a substantial likelihood of a violation on the part of a judge or a lawyer, I would address the information directly with the person and investigate in private to avoid scandal and protect the integrity of the judicial system. If I then had knowledge of a particular misdeed, I would urge the person to self-report and if he did not, I would be duty bound to report it myself.

11. Have you engaged in any fund-raising activities with any social, community, or religious organizations? Please describe. No.
12. Do you have any business activities that you have remained involved with since your election to the bench? My old law partner and I own a building in Greenwood. I am not an active partner and his law firm is the only occupant of the building.
13. Since Family Court judges do not have law clerks, how do you handle the drafting of orders? Family Court judges generally ask either the prevailing or moving party's attorney to draft a proposed order. I think this works well. The attorneys are the people most familiar with the

facts of the case. Family Court judges also have form orders for various case types, and I utilize form orders when appropriate. Where circumstances such as time or pro se parties are an issue, I draft the orders myself. I enjoy writing.

14. What methods do you use to ensure that you and your staff meet deadlines? As in the practice of law, deadlines are important for judges. I keep a computerized and a paper system of hearings which reminds me about which orders are still outstanding. I denote that an oral ruling has been issued and when. My assistant and I monitor the computer system daily to ensure that all work is being done in a timely manner.
15. What specific actions or steps do you take to ensure that the guidelines of the guardian ad litem statutes are followed during the pendency of a case? I only appoint guardians ad litem who are qualified. I avoid using the same guardian too often so as to avoid complacency. I am clear with my expectations of the GAL regarding such things as timely submission of reports to the Court.
16. What is your philosophy on "judicial activism," and what effect should judges have in setting or promoting public policy? Judges have no role in making or promoting what they believe to be public policy. The judge's responsibility is to interpret the law as established by the Legislature and the Appellate Courts.
17. 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 and will continue to teach or participate in seminars on the law.
18. 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? No. I think being a judge has helped me to become a better husband and father. My wife is also a member of the Bar and was a law clerk for a Circuit Court judge. She is supportive of my decision to seek re-election.

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? Canon 3 of the Code of Judicial Conduct does not require disqualification unless the interest is more than *de minimis*. However, I believe that the appearance of bias should be avoided and I would certainly entertain any motion for recusal and give serious consideration to any party's concerns.
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? No. If so, please identify the entity and explain if this organization practices invidious discrimination on any basis.
22. Have you met the mandatory minimum hours requirement for continuing legal education courses for the past 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 punctual, courteous, open-minded and respectful of all witnesses, parties and attorneys. He should be decisive and clear in making rulings and must be patient. A judge should try to be all of these things at all times.
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 appropriate in dealing with defendants, attorneys or pro se litigants. A judge presides in a dispassionate manner according to the law and equities of a given case. Anger has no place on the bench because anger, even if warranted, could lead a reasonable person to question the judge's impartiality.

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 _____, 2018.

(Signature)

(Print name)
Notary Public for South Carolina
My commission expires: _____