



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

**Family Court
(New Candidate)**

Full Name: David Michael Collins, Jr.

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1. Why do you want to serve as a Family Court Judge?

I have seen how important the fair, consistent and reasoned application of our laws is to the individuals and families that come through our family court system. I hope to put my knowledge and experience to use helping solve the problems spouses, parents, and children bring to our family courts.

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 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?

Ex parte communication is only acceptable in a very limited set of circumstance. There are emergency situations where *ex parte* communications and *ex parte* orders are appropriate to protect a party or children from harm for a short period of time until an evidentiary hearing can be held. There are also times when *ex parte* communications are necessary to protect the rights of a party who is dependent upon the state for their attorney and the funding of their litigation costs. Outside of those very limited circumstances, *ex parte* communications are not appropriate.

As a family court practitioner I make every effort to avoid anything that could be construed as *ex parte* communication. I intend continue that practice as a judge and to stop any communication by a lawyer or party that could be construed as inappropriate. If a questionable communication does occur, I intend to circulate a copy of the communication if was written or a summary if it was verbal to all lawyers and *pro se* parties then place the copy or summary in the court file for future reference.

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 believe judges should recuse themselves whenever there is the potential appearance of impropriety. It is common to find a lack of trust in the integrity of our system by litigants. Now, more than ever, our judges need to make every effort to eliminate even the appearance of impropriety. However, the need for recusal does have to be tempered by the parties' need for quick judicial intervention in some case and the need for their case to move efficiently through the system. In some counties recusals can cause difficulties when no other judge is available to hear cases. A judge has to be cognizant of the potential for causing more harm than he or she solves when balancing the request for a recusal and the potential effects of a delay.

I already have personal experience with situations involving judges and their former law partners. One of my former law partners is now a family court judge. After he took the bench there was a predefined period of time in which he and I made certain we were not in the same courtroom together. Once that period of time elapsed, I began appearing in front of him. Whenever he was assigned to preside over one of my case, he always announced our prior professional relationship on the record and allowed everyone the opportunity to request that he recuse himself from that hearing. Any time an objection was made, the case was moved to another judge's docket. I believe that was the appropriate way for us to handle those situations and I think that would be the appropriate way for me to handle similar situations in the future.

Lawyer legislators are a different story because any concerns of bias or impropriety would extend to the judiciary as a whole. In those situations, it is incumbent upon both the legislator and the judge to act in a professional manner and avoid any communication or other behavior that could give the appearance of a special relationship or bias. It is also imperative that the judge clearly explain the factual and legal reason for any decision to eliminate, as much as possible, any concerns that the decision was driven by bias or preferential treatment.

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 would give a great deal of deference to any party requesting a recusal based on the appearance of bias and would likely grant any such motion. The only exception would be when no other judge is available and there is a risk that a child or a party could suffer harm or prejudice from a delay. In those situations, if possible, I would probably put into place a limited, temporary order without prejudice to either party addressing the situation until the parties could appear in front of another judge. If a limited, temporary order will not address the problem then the actual need to prevent harm or prejudice has to take precedence over a perception of bias.

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

An appearance of impropriety because of a spouse or a close relative are no different from an appearance of impropriety because of the judge's financial or social involvement. As in other situations, I would give deference to a request for a recusal unless there is a risk of harm or prejudice to a child or party. If that risk is present I would address it on a temporary basis, if possible, until another judge could hear the case. If a temporary solution is not sufficient, the need to prevent harm or prejudice must take precedence over the perception of bias.

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

Judges have to be exceedingly cautious in accepting gifts or social hospitality from individuals or groups that would likely appear before them. I believe the citizens of South Carolina have become more and more distrustful of our court system over the last few years. As a result, there is an ever-increasing need for judges to appear above reproach and without any undue influence from parties or lawyers who appear in their courtrooms. As a result, I would have to avoid the acceptance of gifts and social hospitality from anyone who is likely appear in my courtroom. If they were to occur and questions were raised as a result, I would have to give deference to any request to recuse myself.

It is important to note the difference between social hospitality received from an individual or specific group as opposed to an open social setting. For example, it is perfectly acceptable for a judge to attend social functions given by the local bar association or other group with which they share a common interest provided they are not given special treatment or consideration because of their position as a member of the judiciary. A

judge does not have to withdraw from society and become a recluse, they just are not allowed to receive special treatment because of their position.

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?

The principals for dealing with misconduct or potential infirmity as a judge are very similar to dealing with those situations as a practicing lawyer. Our rules of professional conduct set standards for when those issues must be reported to disciplinary authorities and when those issues can be dealt with in other ways. The primary difference is the lack of privacy when the misconduct or infirmity affects an ongoing case where the judge is involved. A judge does not have the luxury of addressing those situations privately but must at least inform the lawyers and *pro se* litigants of any circumstances and actions that may effect them and any steps that are taken to address the problem.

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.

I am a member of the Catholic Church which does limit membership based on religion. The Catholic Church does not practice invidious discrimination.

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

In the past I participated in fundraising activities, such as food sales and an annual golf tournament, for the local masonic lodge. I have not actively participated in fundraising activities for any other political, social, community or religious organization in the past. I have made donations at times to religious, social and community organizations but have never actively engaged in their fundraising activities.

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

No.

14. Since family court judges do not have law clerks, how would you handle the drafting of orders?

It is common for family court judges to delegate the drafting of orders to an attorney involved in the proceedings. Often it is the prevailing attorney

that is called upon to put the judge's findings and ruling into a formal order. I elected I anticipate I will follow this practice. I intend to either give instructions orally in the courtroom or later in writing and ask one of the attorneys to prepare a formal order. Our rules then require the preparing attorney to circulate the proposed order be circulated for review and comment by the attorneys and unrepresented parties prior to submission to the court. I would expect attorneys to follow those procedures. Once the order is submitted to me, I will review the proposed order to ensure that it matches my intended ruling.

There are a few situations when I anticipate writing the order myself. In some situations form orders from the bench are sufficient. At other times a short, handwritten order from the bench is needed to protect a party or the children involved until a more detailed formal order can be prepared. Finally, there may be times when the litigation is so contentious or the issues so complex that it is necessary for the family court judge to draft their own order. These situations are not the norm, but they do arise, and family court judges must be prepared to make that extra effort if necessary.

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

I anticipate managing deadlines as judge in much the same way that I handle deadlines as a practicing attorney. I use a computer based calendar system now to ensure that deadlines are met. Relevant deadlines are placed on the calendar. Reminders are added at appropriate intervals before the actual deadline to insure any advance work necessary to meet the deadline is completed in time. At regular intervals the calendar is reviewed for upcoming deadlines so that the work can be completed on time. I anticipate that as a judge I would continue to use a similar system with my administrative assistant to insure that we meet the deadlines we are given.

16. If elected, what specific actions or steps would you take to ensure that the guidelines of the Guardian Ad Litem statutes are followed during the pendency of a case?

Our family court system does not provide a mechanism for direct oversight of a guardian ad litem throughout the course of the case. Systems where a judge is assigned to a case from beginning to end allow for direct oversight. In our system, judges only have an opportunity for oversight when lawyers bring those issues before the court. When potential problems are brought before the court, judges must take seriously concerns about improprieties and deficiencies in the guardian ad litem's work. To often those concerns are dismissed without any serious

consideration. Judges must know the rules and statutes governing the work of a guardian ad litem and they must insist that those standards are met. The five steps I would take to insure compliance with the guardian ad litem statute are: (1) only appoint a guardian ad litem when needed and not in every case, (2) insure the guardian ad litem has time to perform the necessary work, (3) insure the guardian ad litem is paid to perform the work, (4) actually listen to concerns about the guardian ad litem's behavior and make them answer those concerns and (5) be willing to remove or replace the guardian ad litem if they have acted inappropriately.

To often our judges look the other way when a guardian ad litem misbehaves. A good guardian ad litem will do a good job without the threat of adverse consequences. A bad guardian ad litem won't change or move on until they experience real consequences for their misdeeds.

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

I do not believe it is appropriate for a judge to promote or attempt to set public policy from the bench. The role of a judge is to hear specific disputes and resolve them by applying the law as enacted by our legislature and interpreted by prior judicial decisions. Judges resolve disagreements between parties they do not set public policy. In the family court a judge is both the finder of fact and the judge of the law. Being the finder of fact can be used as an excuse or a vehicle for promoting certain public policies but that is not an appropriate use of that role. It is impossible to remove the judge's personal opinions and preferences from that decision-making process. However, those personal opinions cannot be converted into their personal code of laws that applies only in their courtroom. If a judge for moral or personal reasons cannot follow the law as given to them in a particular situation, it is their duty to recuse themselves from that case. If they cannot follow the law as given to them in any situation then it is their duty to resign and promote their beliefs in a political forum or as an advocate in a courtroom but not from the bench.

18. Canon 4 allows a judge to engage in activities to improve the law, legal system, and administration of justice. What activities would you plan to undertake to further this improvement of the legal system?

I have spent much of my career dealing with situations where children have been abused or neglected. If given the opportunity, my activities would probably be focused on improving how our family court system deals with those children. We need to protect those children and do as little harm to them as possible while giving their parents the best chance we can of putting their family back together. We also need to recognize that there are some families where reunification is not going to happen and adoption needs to be a priority for those children. We must get better

at helping families that can improve and we need to get better at freeing children from families that cannot or will not improve so that they have the best chance in life possible.

19. 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 plan to address this?

I expect the transition from the practice of law to the judiciary would cause some additional stressors. I am already having conversations with my spouse and my children about those potential stressors, what the transition may look like and how we will need to help each other adjust. I do not anticipate the stressors to be greater during the transition or while serving as a judge than they are now, however I do expect them to be different. Over the last twenty years we have learned to handle the stressors that come with the practice of law and I expect that we will learn to handle the stressors that come with being a judge.

20. Would you give any special considerations to a *pro se* litigant in family court?

No. Our rules clearly prohibit judges from giving special consideration or assistance to *pro se* parties. There is no doubt that the increase in *pro se* litigants has presented challenges for the family law practitioner as well as for our judiciary. Those challenges do not allow judges to ignore or bend the rules. That may be difficult at times, but the need to protect integrity of our system allows for no other option.

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

No.

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

If at all possible, I would not hear a case where I or a member of my family had a *de minimus* financial interest in a party that's involved. Unlike other situations where there may be a range of options available, in this scenario I can only envision issuing an order to prevent an immediate a risk of harm to a child or a party until a *de novo* hearing can be held by another judge.

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 do these rules apply?

Judges need to be calm, rational and consistent. They should be respectful of the parties and the attorneys without being overly friendly. Their integrity and impartiality should be above reproach. Family court judges especially need to inspire confidence that they will listen to all sides, be fair to everyone and do what they believe to be in the best interest of the parties and especially the children.

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

Judges are going to get angry at times with lawyers and litigants. The anger is not the problem – sometimes it is completely appropriate. Problems only arise when the anger results in a decision which is unfair or excessive for the given situation. A judge always has to be able recognize the anger, account for it, and insure that their decisions are still just and fair and not excessive or unduly harsh.

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: _____