



Judicial Discipline & Disability Commission

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FOR IMMEDIATE RELEASE

December 17, 2008

The Arkansas Judicial Discipline & Disability Commission today announced that Formal Disciplinary Hearings will be held in cases filed against one circuit court judge and one special circuit court judge. Hearings are to be held against Judge L. T. Simes, Circuit Court Judge of the First Judicial District; and Special Circuit Judge Donald Warren of the Eleventh Judicial Circuit West.

JUDGE L. T. SIMES

A copy of the Formal Statement of Charges against Judge Simes is attached.

SPECIAL JUDGE DONALD WARREN

A copy of the Formal Statement of Charges against Special Judge Warren is attached.

IN THE ARKANSAS JUDICIAL DISCIPLINE & DISABILITY COMMISSION

IN RE: JUDGE L. T. SIMES, CIRCUIT COURT JUDGE, FIRST JUDICIAL CIRCUIT,
ARKANSAS

JDDC Case #05112, 05123

FORMAL STATEMENT OF CHARGES

David A. Stewart, Executive Director of the Arkansas Judicial Discipline & Disability Commission, upon finding of probable cause by the Commission, in accordance with Rule 9 E (3) of the Rules of Procedure of the Arkansas Judicial Discipline & Disability Commission, hereby recites the following Formal Statement of Charges.

The Director contends that Circuit Court Judge Simes is subject to discipline for the violations set out below pursuant to the Arkansas Code fo Judicial Conduct and ACA § 16-10-410 (b)(5).

FACTS:

1. Complaints, filed by the mayor and the deputy prosecuting attorney representing him, state the mayor fired the local chief of police. The civil service commission affirmed the termination and the chief appealed to circuit court. The case was assigned to another judge in the circuit.
2. The mayor met with Judge Simes one day when he was in town. At the judge's invitation, the mayor sat with him in his car. Judge Simes said he did not like the termination of the chief and asked if there was anything the mayor could do to help the chief. The mayor felt respondent was using his judicial position to control the decision regarding the chief.
3. Several new city council members sued the mayor stating the civil service commission was abolished. The police chief was reinstated. The case against the mayor was assigned to Judge Simes, who signed an order reinstating the chief, abolishing the civil service commission and restraining the mayor from interfering in the operations of the police department. The mayor did not receive notice of the matter nor was a hearing held. The judge was aware the related case was assigned to another judge in the circuit.
4. A new city council abolished the civil service commission and reinstated the chief of police. A video from a council meeting shows an alderman calling Judge Simes from the meeting when the temporary restraining order was discussed.
5. Judge Simes became visibly upset at a hearing and instructed a local reporter not to print anything regarding the hearing. At a hearing the following day Judge Simes ordered the mayor out of the courtroom where he was held in a locked room.
6. The deputy prosecuting attorney states he represented the mayor in his part-time law practice. He was in Judge Simes court for the case where city

council members sued the mayor. Throughout the hearing and matters surrounding it Judge Simes, in part:

- a. Improperly removed the hearing to another venue
 - b. Gave untimely or insufficient notice of the hearing
 - c. Some or all hearings were improperly closed to the public and/or sealed
 - d. Secluded (possibly in a locked room) the mayor from the courtroom
 - e. Called the mayor to testify and inquired into matters protected by attorney-client privilege
 - f. Intimidated and exhibited bias against the mayor and the attorney, through demeanor, tone of voice, interrogations and interruptions
 - g. Refused to allow proffers or objections to counsel's questions
 - h. Prejudiced the mayor and deprived him of a fair trial.
7. In the case in front of Judge Simes, one or more of the plaintiffs (city council members) had a business agreement with a local radio station. That station is co-owned by Judge Simes.
8. The judge acted upset and interrupted complainant when he was questioning the mayor on the witness stand. He objected to questions, raised his voice, made hostile eye contact and facial expressions and exhibited rude, impatient, intimidating, undignified and injudicious temperament. Judge Simes refused to dissolve the temporary restraining order and accused the lawyer of "derailing" the proceedings by filing a motion to recuse.
9. The opposing attorney states this complaint is a result of attorney conduct and must be read in the light of the local political situation. The allegations are baseless and no legal basis existed for the recusal motion.
10. Another attorney present in the courtroom states the judge was very hostile towards the mayor and the lawyer. It was clear the judge was attempting to intimidate the attorney into withdrawing his recusal motion. Judge Simes also instructed a local reporter not to print anything about the proceedings.
11. Judge Simes denies a conflict with plaintiffs. Through counsel the judge states the order from the case states complainant testified that the judge did not verbally express dissatisfaction with the decision to terminate the chief, but it was more his "body language and expression." The attorney also testified that the judge did not ask him to rehire the chief. No litigation was pending at the time of the alleged ex-parte making that allegation without merit.
- Judge Simes' order sanctions the attorney and the mayor with payment of attorney's fees in the hearings for not making a reasonable inquiry before filing a motion seeking the judge's recusal and for making baseless allegations.

THE CODE OF JUDICIAL CONDUCT

CANON 3

A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY AND DILIGENTLY

E. Disqualification.

- (1) A judge shall disqualify himself or herself in a proceeding in which the judge's

impartiality might reasonably be questioned, including but not limited to instances where:

(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding.

B. Adjudicative Responsibilities.

(7) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding except that:

(a) Where circumstances require, ex parte communication for scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits are authorized provided:

(i) the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication, and

(ii) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication and allows an opportunity to respond.

(b) A judge may obtain the advice of a disinterested expert on the law applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond.

(c) A judge may consult with court personnel whose function is to aid the judge in carrying out the judge's adjudicative responsibilities or with other judges.

(d) A judge may initiate or consider any ex parte communications when expressly authorized by law to do so.

IN THE ARKANSAS JUDICIAL DISCIPLINE & DISABILITY COMMISSION

IN RE: DONALD WARREN, SR., SPECIAL JUDGE, JEFFERSON COUNTY,
ARKANSAS

JDDC Case #08240

FORMAL STATEMENT OF CHARGES

David A. Stewart, Executive Director of the Arkansas Judicial Discipline & Disability Commission, upon finding of probable cause by the Commission, in accordance with Rule 9 E (3) of the Rules of Procedure of the Arkansas Judicial Discipline & Disability Commission, hereby recites the following Formal Statement of Charges.

Judge Donald Warren, Sr. served as a special judge on July 16, 2008 in Judicial District 11 West, Circuit Court Jefferson County, Arkansas.

The Director contends that Special Judge Warren is subject to discipline for the violations set out below pursuant to the Arkansas Code of Judicial Conduct and ACA § 16-10-410 (b)(5):

FACTS:

1. The prosecuting attorney of Arkansas Judicial District 11 West alleges that on July 16, 2008 Donald Warren, Sr., a licensed attorney in Jefferson County sat as a Special Judge for the First Division Circuit Court of Judicial District 11 West.
2. In his official capacity as Special Judge, Donald Warren issued an Order, on his own motion, to Release Property in which the Special Judge has an interest. The Order commanded the Jefferson County Sheriff to assist in the release of a mowing deck that Donald Warren believed belonged to him.
3. Said Order was filed with the Circuit Court Clerk of Judicial District 11 West and presented to the Jefferson County Sheriff for service.
4. Warren is also a city court judge in Altheimer, Arkansas.
5. Warren has stated that the item was his "undeniably" and that state law regards the "owner of property to have superior claim."
6. Warren was arrested and charged with second-degree forgery, a Class C felony, Abuse of office, a Class B misdemeanor, and Criminal attempt theft of property valued at \$500 or less, also a Class B misdemeanor, following an investigation by the Arkansas State Police.

CODE OF JUDICIAL CONDUCT:

CANON 1

A JUDGE SHALL UPHOLD THE INTEGRITY AND INDEPENDENCE OF THE JUDICIARY

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved. The provisions of this Code are to be construed and applied to further that objective.

CANON 2

A JUDGE SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL OF THE JUDGE'S ACTIVITIES

- A. A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.
- B. A judge shall not allow family, social, political or other relationships to influence the judge's judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge. A judge shall not testify voluntarily as a character witness.

CANON 3

A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY AND DILIGENTLY

- A. **Judicial Duties in General.** The judicial duties of a judge take precedence over all the judge's other activities. The judge's judicial duties include all the duties of the judge's office prescribed by law. In the performance of these duties, the following standards apply.
- B. **Adjudicative Responsibilities.**
 - (1) A judge shall hear and decide matters assigned to the judge except those in which disqualification is required.
 - (2) A judge shall be faithful to the law and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor or fear of criticism.
 - (5) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, or national origin, and shall not permit staff, court officials and others subject to the judge's direction and control to do so.
 - (11) A judge shall not disclose or use, for any purpose unrelated to judicial duties, non public information acquired in a judicial capacity.

CANON 4

A JUDGE SHALL SO CONDUCT THE JUDGE'S EXTRA-JUDICIAL ACTIVITIES AS TO MINIMIZE THE RISK OF CONFLICT WITH JUDICIAL OBLIGATIONS

- A. Extra-judicial Activities in General.** A judge shall conduct all of the judge's extra-judicial activities so that they do not:
- (1) cast reasonable doubt on the judge's capacity to act impartially as a judge;**
 - (2) demean the judicial office; or**
 - (3) interfere with the proper performance of judicial duties.** Expressions of bias or prejudice by a judge, even outside the judge's judicial activities, may cast reasonable doubt on the judge's capacity to act impartially as a judge.
- (3) A judge may serve as an officer, director, trustee or non-legal advisor of an organization or governmental agency devoted to the improvement of the law, the legal system or the administration of justice or of an educational, religious, charitable, fraternal or civic organization not conducted for profit, subject to the following limitations and the other requirements of this Code.**
- (a) A judge shall not serve as an officer, director, trustee or non-legal advisor if it is likely that the organization**
 - (i) will be engaged in proceedings that could ordinarily come before the judge, or**
 - (ii) will be engaged frequently in adversary proceedings in the court of which the judge is a member or in any court subject to the appellate jurisdiction of the court or which the judge is a member.**
 - (b) A judge as an officer, director, trustee or non-legal advisor, or as a member or otherwise:**
 - (i) may assist such an organization in planning fund-raising and may participate in the management and investment of the organization's funds, but shall not personally participate in the solicitation of funds or other fund-raising activities, except that a judge may solicit funds from other judges over whom the judge does not exercise supervisory or appellate authority;**
 - (ii) may make recommendations to public and private fund-granting organizations on projects and programs concerning the law, the legal system or the administration of justice;**
 - (iii) shall not personally participate in membership solicitation if the solicitation might reasonably be perceived as coercive or, except as permitted in Section 4C(3)(b)(I), if the membership solicitation is essentially a fund-raising mechanism;**
 - (iv) shall not use or permit the use of the prestige of judicial office for fund-raising or membership solicitation.**
- D. Financial Activities.**
- (1) A judge shall not engage in financial and business dealings that:**
 - (a) may reasonably be perceived to exploit the judge's judicial position, or**
 - (b) involve the judge in frequent transactions or continuing business relationships with those lawyers or other persons likely to come before the court on which the judge serves.**

(2) A judge may, subject to the requirements of the Code, hold and manage investments of the judge and members of the judge's family, including real estate, and engage in other remunerative activity.

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