



Judicial Discipline & Disability Commission

JUDGE KIRK JOHNSON
CHAIRMAN

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DAVID J. SACHAR
EXECUTIVE DIRECTOR

PRESS RELEASE

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FOR IMMEDIATE RELEASE

November 16, 2018

Today the Judicial Discipline & Disability Commission issued agreed public sanctions against two Arkansas judges. The letters of sanction follow this press release and resolve two (2) case files that were pending before the Commission.

Judge Jim O'Hern, Fort Smith Division, Sebastian County District Court, has been issued an agreed Letter of Admonishment in Commission case 16-375.

Judge David Carruth, Holly Grove-Clarendon Division, Monroe County District Court, has been issued an agreed Letter of Admonishment in Commission case 17-170.

A copy of the formal disciplinary letters against Judge O'Hern and Judge Carruth follow this press release.



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DAVID J. SACHAR
EXECUTIVE DIRECTOR

November 16, 2018

District Judge David Carruth
P.O. Box 91
Clarendon, Arkansas 72029

RE: JDDC Case # 17-170

LETTER OF ADMONISHMENT

Dear Judge Carruth:

You were alleged to have committed a violation of the Code of Judicial Conduct in the above referenced case. The following facts comprise basis upon which these allegations were made:

UNDISPUTED FACTS:

1. Judge David Carruth (*hereinafter referred to as "Carruth"*) is the elected part-time District Court Judge in Monroe County, Clarendon Division in 2012. Prior to being elected you had never served in a judicial capacity of any kind.
2. From January 1, 2013 you have served as a part-time judge while also maintaining a private law practice in Clarendon. Clarendon has a population of just over 1,600 persons. Monroe County has a population of less than 8,000.
3. In smaller towns, it is not uncommon for District Judges to be approached by persons who are litigants, witnesses or related to parties in cases pending before their court. As such District Judges are required to be vigilant to avoid undue contact and *ex parte* communication.
4. From late 2013 to early 2017, you had contact with a small number of litigants and/or witnesses with cases pending in your court. This conduct took place outside of the courtroom and at times when court was not in session. Witnesses recount that the substance of the contact regarded the merits of their cases. You have disputed this, claiming you always advised litigants/witnesses that you could not discuss their case outside of court. You assert that you did not discuss cases during these contacts.

5. Even assuming the truth of your assertion, the number, times and circumstances of your contacts created an appearance of impropriety.
6. You stated that in most cases you eventually disclosed the contact and/or recused from the cases, you did not do so immediately or at the next available opportunity after the contact.
7. You did not take corrective action regarding this contact until you were made aware of the issue upon receiving the complaint in this matter. Since then you have taken appropriate steps to delineate your personal and judicial address and phone contacts. You have ended contact outside of the courtroom with litigants, witnesses and others regarding pending cases. You have communicated with the Executive Director of the JDDC your efforts to enforce the safeguards that you have put in place.
8. Your efforts in correcting these matters have been noted by the Panel. You agree that your behavior prior to the corrections violated Rules 1.1, 1.2 and 3.1 of the Code of Judicial Conduct by creating an appearance of impropriety that would appear to a reasonable person to undermine the independence, integrity or impartiality of the judiciary.

The judge is formally admonished for this conduct.

RELEVANT AUTHORITY:

The Judicial Discipline and Disability Commission (*hereinafter referred to as the "JDDC"*) determined, and you agree, that the above described behavior violates the following sections of the Code of Judicial Conduct (*hereinafter referred to as the "Code"*):

Relevant Canons of the Code of Judicial Conduct:

CANON 1

A JUDGE SHALL UPHOLD AND PROMOTE THE INDEPENDENCE, INTEGRITY, AND IMPARTIALITY OF THE JUDICIARY, AND SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY.

RULE 1.1 Compliance with the Law

A judge shall comply with the law, including the Arkansas Code of Judicial Conduct.

RULE 1.2 Promoting Confidence in the Judiciary

A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.

CANON 3

A JUDGE SHALL CONDUCT THE JUDGE'S PERSONAL AND EXTRAJUDICIAL ACTIVITIES TO MINIMIZE THE RISK OF CONFLICT WITH THE OBLIGATIONS OF JUDICIAL OFFICE.

RULE 3.1 Extrajudicial Activities in General

A judge may engage in extrajudicial activities, except as prohibited by law or this Code. However, when engaging in extrajudicial activities, a judge shall not:

- (A) participate in activities that will interfere with the proper performance of the judge's judicial duties;*
- (B) participate in activities that will lead to frequent disqualification of the judge;*
- (C) participate in activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality;*
- (D) engage in conduct that would appear to a reasonable person to be coercive;*
or
- (E) make use of court premises, staff, stationary, equipment, or other resources, except for incidental use for activities that concern the law, the legal system, or the administration of justice, or unless such additional use is permitted by law.*

DISCUSSION:

Separation between the bench and litigants is vital to Due Process. Judicial proceedings must be heard by, in fact and in appearance, a neutral and detached magistrate. By their nature, District Courts have a more local feel and can be somewhat less formal than Circuit or Appellate Courts. However, maintaining the proper buffer between the public members who are parties and witnesses in the

Court is a hallmark characteristic of a good judge. The assumption of judicial office casts upon judges duties in respect to personal conduct. Preventing *ex parte* communication and the appearance that comes with it make a judge's role in his or her community one that differs from the average citizen.

The judiciary cannot exist without the trust and confidence of the people. The confidence is maintained when judges endeavor to follow the Code of Judicial Conduct while they remain faithful to the law. It is not incumbent on the average citizen to ensure communications are always within the letter and spirit of the Judicial Canons. This is true regardless of whether the intent is purely innocent or in an attempt to compromise a case.

CONCLUSION:

You agree that an admonishment is the appropriate sanction for your conduct in JDDC Case # 17-170.

An Admonishment is more corrective than an Informal Adjustment. This conduct also falls short of conduct that is cause for formal discipline. An admonishment is an expression of disapproval of a judge's conduct, and may contain a proscription to follow a corrective course of conduct, and may direct professional treatment, counseling, or assistance.

Your willingness to accept that your actions needed correction and your commitment to be cognizant of the issues listed above, have led the JDDC to refrain from recommending a more serious sanction or proceeding to a hearing on the merits. In any future proceeding, the JDDC may take into consideration

the fact that you were sanctioned in Case #17-170, in which allegations have been substantiated and agreed as Code violations.

In view of these circumstances, it is the judgment of the JDDC that you are hereby admonished for your behavior in Case #17-170. This public sanction constitutes adequate discipline and no further action is warranted.

This Commission action is public information.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Sachar', with a large, sweeping flourish at the end.

David J. Sachar
Executive Director



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DAVID J. SACHAR
EXECUTIVE DIRECTOR

November 16, 2018

Honorable Jim O'Hern
Sebastian County District Court-Fort Smith Division
Sebastian County Courts Building
901 South B Street
Fort Smith, AR 72901

RE: JDDC Case No. 16-375

LETTER OF ADMONISHMENT

Dear Judge O'Hern:

You were alleged to have committed violations of the Code of Judicial Conduct in the above referenced case. The following facts comprise the violations which you agree are no longer alleged but are proven:

UNDISPUTED FACTS:

1. You, Jim O'Hern (*hereinafter referred to as "O'Hern"*) are an elected District Court Judge for Sebastian County, serving the Fort Smith Division, State District Court and have served in this capacity since January 1, 2017. You were elected to this position as an unopposed candidate on the ballot during the preferential primary election in 2016. At the time of the incident in paragraph 7 (below) you were a judge-elect.

2. The Preamble to the Code of Judicial Conduct states: *"Judges should maintain the dignity of judicial office at all times, and avoid both impropriety and the appearance of impropriety in their professional and personal lives. They should aspire at all times to conduct that ensures the greatest possible public confidence in their independence, impartiality, integrity, and competence."*

3. The Code of Judicial Conduct defines *judge* as *"Anyone who is authorized to perform judicial functions, including an officer such as a magistrate, special master, referee, or member of the administrative law judiciary."*

4. The Code of Judicial Conduct defines *judicial candidate* as *"any person, including a sitting judge, who is seeking selection for or retention in judicial office by election or appointment. A person becomes a candidate for judicial office as soon as he or she makes a public announcement of candidacy, declares or files as a candidate with the election or appointment authority,*

authorizes or, where permitted, engages in solicitation or acceptance of contributions or support, or is nominated for election or appointment to office.”

5. Rule 4.1 of Canon 4, Comment [2] states: *“When a person becomes a judge, judicial candidate, or judge-elect, this Canon becomes applicable to his or her conduct. The language adding “judge-elect” to this and other sections of the Code of Judicial Conduct was effective on December 15, 2016 by per curium order of the Arkansas Supreme Court. (See, In re Arkansas Code of Judicial Conduct, 2016 Ark. 470, December 15, 2016.) In addition, Arkansas Rule of Professional Conduct 8.2(b) provides that a ‘lawyer who is a candidate for judicial office shall comply with the applicable provisions of the Code of Judicial Conduct.’”*

6. JDDC #16-375 is a complaint filed by Executive Director, David J. Sachar (*hereinafter referred to as “Sachar”*) based on Little Rock Police Department records and news reports of an incident involving you and a female companion (*hereinafter referred to as “Person A”*) on December 2, 2016.

7. On or about 12/2/2016, LRPD responded to a call at the Extended Stay America Suites on Kanis in West Little Rock during the mid-morning hours. Upon arrival, LRPD officers talked to hotel representatives and located a bag of what was later proven to be methamphetamine. The room where the illegal controlled substance was found was rented to Person A and had been utilized by O’Hern and his friend, Person A. Both O’Hern and Person A were

detained, placed in custody and transported to a LRPD substation for questioning. Person A was later charged with a felony information for possession of a controlled substance, methamphetamine. She pled guilty to that felony offense in Pulaski County Circuit Court and was sentenced to three years supervised probation and a \$500.00 fine plus court costs on September 11, 2017 but she is not a convicted felon. O'Hern was released and was never charged.

The totality of your conduct referenced in the paragraphs above exhibit an appearance of impropriety.

MITIGATION

Through counsel you have submitted information that mitigates your conduct. The following information was accepted by the Panel and mitigated your conduct.

8. In your initial response to the JDDC you sent in drug screen results from a reputable laboratory. These results showed no recent use of illicit drugs by you. You voluntarily submitted to the screening before the JDDC requested you to do the same. The negative result is paired with no information received in other forms by the JDDC about drug use that would contradict your own statement that you do not use illicit drugs. The Panel found your statement to be credible and backed by empirical evidence.
9. The issue of "judge-elect" could have been litigated by you. At the time of your incident the Code did not include the clear statement that a judge-elect

was covered. You were neither a “candidate” nor a “judge” pursuant to the definitions in the Code on December 2, 2016. The JDDC has stated that they have some authority to argue that the Code could not have reasonably been interpreted to apply to a candidate who wins election, then not apply to that judge-elect for several months of interregnum, then apply again when that judge-elect takes office. However, you have chosen to not litigate this issue. Your willingness to acknowledge that the situation you put yourself in on December 2, 2016 did not reflect well on the judiciary as a whole or your own upcoming tenure on the bench is a mitigating factor considered by the Panel.

10. The incident and actions on December 1-2, 2016 did not provide good optics. However, you stated you would not be in a relationship with someone who had a drug habit or was engaged in criminal activity. The Panel finds it difficult to invade the personal relationship decisions of a judge unless there is a specific reason. The Panel encourages you to adhere to the Code and its aspirations as you involve yourself in this and other relationships while you are a member of the judiciary but does not specifically prohibit your continued relationship with Person A.
11. The Panel knows of no other issues germane to the Code of Judicial Conduct that originated from behavior from the time you took the oath of office on January 1, 2017 until this letter.

Relevant Canons of the Code of Judicial Conduct:

RULE 1.1 Compliance with the Law

A judge shall comply with the law, including the Arkansas Code of Judicial Conduct.

RULE 1.2 Promoting Confidence in the Judiciary

A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.

RULE 3.1 Extrajudicial Activities in General

A judge shall engage in extrajudicial activities, except as prohibited by law or this Code. However, when engaging in extrajudicial activities, a judge shall not:

...

(B) Participate in activities that would appear to a reasonable person to undermine the judge's independence, integrity or impartiality.

DISCUSSION:

The robe magnifies words and actions and the judicial office imposes speech and conduct restrictions that would be burdensome to the ordinary citizen.

Based on your response and evidence that you provided this sanction is based on the "appearance of impropriety". While virtually every state in the union refer to this standard in their code of judicial conduct, it is unusual for a judge to be sanctioned solely for appearances without a companion substantive violation.

However, avoiding the appearance of impropriety is as important to developing confidence in the judiciary as avoiding impropriety itself. These kind of violations occur when the public becomes aware of behavior by a judicial officer that would cause a reasonable person to perceive an impairment in judicial integrity, impartiality or competence. When avoidable conduct has a negative effect on the public perception of the judge and/or the judiciary as a whole there is damage to judicial independence.

Whatever the subjective motive in this case may be, the public may fairly believe that the relationship as it pertains to the incident that occurred on December 2, 2016 is inappropriate for an elected judge. A judge should avoid being tethered to situations and people that can result in publicly embarrassing situations such as the one you were in on December 2, 2016.

CONCLUSION:

You agree that an *admonishment* is the appropriate sanction for your actions in JDDC Case #16-375. Your willingness to accept that your actions were in violation of the Code and your commitment to be more aware of these issues in the future, have led the JDDC to refrain from recommending a more serious sanction, public charges or a public disciplinary hearing in these cases. An admonishment is a more corrective sanction than an informal adjustment but falls short of conduct requiring formal discipline. It is an expression of disapproval of a judge's conduct, and may contain a proscription to follow a corrective course of conduct, and may direct professional treatment, counseling or assistance.

Public confidence in the judiciary is eroded by improper conduct committed by a judge whether the conduct is professional or personal in nature.

If you have additional alleged violations of the Code, the JDDC may initiate a new investigation under the Rules of Procedure of the Judicial Discipline & Disability Commission and this case may be considered.

In view of these circumstances, it is the judgment of the JDDC that you are hereby admonished, for your conduct at issue in #16-375. This public sanction terminates the disciplinary proceedings relating to this circumstance and constitutes adequate discipline for your conduct. No further action is warranted.

This Commission action is public information.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Sachar', with a long horizontal line extending to the right.

David J. Sachar
Executive Director