



Judicial Discipline & Disability Commission

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DAVID J. SACHAR
EXECUTIVE DIRECTOR

PRESS RELEASE

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FOR IMMEDIATE RELEASE

July 13, 2018

The Arkansas Judicial Discipline and Disability Commission today announced an agreed public Censure against Judge Mary Spencer McGowan, 9th Division Circuit Court, Sixth Judicial District. The letter of sanction follows this press release and resolves a total of four (4) case files that were pending before the Commission: 17-143, 17-148, 17-161, and 17-197.



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July 13, 2018

Honorable Mary Spencer McGowan
Sixth Judicial District, Ninth Division
401 West Markham, Room 240
Little Rock, AR 72201

RE: JDDC Case No. 17-143, 17-148, 17-161, 17-197 (#17-143 et al.)

LETTER OF CENSURE

Dear Judge McGowan:

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) Judge Mary Spencer McGowan (*hereinafter referred to as "McGowan"*) is the Sixth Judicial District Circuit Court Judge for the Ninth Division in Arkansas and has served in this capacity since January 1, 1991.
- 2) JDDC #17-143 was a complaint filed by former court staff employee N'Ell Jones, (*hereinafter referred to as "Jones"*).
- 3) JDDC #17-148 was a complaint filed by Deputy Public Defender Mac Carder, (*hereinafter referred to as "Carder"*), who throughout the course of calendar

years 2016 and 2017 had random criminal cases assigned to McGowan's court. As reflected in audio recordings, during the hearing in Pulaski County Case No. 60CR-15-3634 on November 7, 2016, McGowan ended the hearing and told her court reporter "that's all for the record." Also, McGowan instructed Carder's client to step away from him and proceed to probation officers while Carder was attempting to argue on her behalf. McGowan excused Carder from her court as he was attempting to make this same legal argument. McGowan's conduct in this hearing was impatient, discourteous and undignified for a judge.

- 4) JDDC #17-161 was a complaint filed by JDDC Executive Director, David J. Sachar (*hereinafter referred to as "Sachar"*), based on a hearing conducted in McGowan's court on February 28, 2017 in Pulaski County Case No. CR2013-2275 and a subsequent hearing conducted in Pulaski County Case No. CR2011-73 on that same date. Both of these cases were Drug Court cases. Both hearings involved Deputy Prosecuting Attorney Vicky Ewenike (*hereinafter referred to as "Ewenike"*). As reflected in the audio recording on February 28, 2017, McGowan was heard interrupting and eventually "excusing" or removing Ewenike from her courtroom in the middle of a hearing, where Ewenike was the Attorney for the State of Arkansas. McGowan proceeded with the hearing without a deputy prosecutor. Also on February 28, 2017, McGowan conducted a hearing in Pulaski County Case No. CR2011-73 after removing Ewenike from her courtroom and without a deputy prosecuting attorney available. McGowan's demeanor as reflected in the audio recordings was impatient and discourteous toward Ewenike, and undignified for a judge.
- 5) JDDC #17-197 was a complaint filed by litigant, John M. Miles (*hereinafter referred to as "Miles"*) based on Pulaski County Case No. 60CR-16-2800, a Drug Court case. A hearing was conducted before her on January 17, 2017. During this hearing, McGowan raised her voice and used a discourteous tone while talking to Miles as his case was being heard. McGowan's demeanor as reflected in the audio recordings, was impatient, discourteous and undignified for a judge.
- 6) McGowan has been impatient, discourteous and undignified to probation officers assigned to her court.

- 7) McGowan has behaved impatiently, discourteously and in an undignified manner with members of her court staff.
- 8) McGowan was reprimanded by the JDDC in Case No. 05-150 on November 21, 2008 for conduct involving injudicious temperament claims with litigants and lawyers practicing in her court. In the above referenced reprimand, the JDDC found that McGowan was not always patient or courteous to litigants and lawyers and others with whom she dealt in her official capacity.
- 9) McGowan was informally adjusted by the JDDC in Case No. 15-258 on November 18, 2016 for conduct involving a delayed ruling in Pulaski County Circuit Court Case No. 60CV2012-2715. In this Informal Adjustment, the JDDC considered McGowan's previous reprimand for seven (7) other instances of delay that were resolved by the sanction in paragraph 8, above.
- 10) McGowan's actions in paragraphs one (1) through six (6) violated Canons 1.1, 1.2, 2.2, 2.5, 2.6 and 2.8.

McGowan is formally censured 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"*):

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 2

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

RULE 2.2: Impartiality and Fairness

A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially.

RULE 2.5: Competence, Diligence, and Cooperation

- (A) A judge shall perform judicial and administrative duties, competently and diligently.*
- (B) A judge shall cooperate with other judges and court officials in the administration of court business.*

RULE 2.6: Ensuring the Right to be Heard

- (A) 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 the law.*
- (B) A judge may encourage parties to a proceeding and their lawyers to settle matters in dispute but shall not act in a manner that coerces any party into settlement.*

RULE 2.8: Decorum, Demeanor, and Communication with Jurors

- (A) A judge shall require order and decorum in proceedings before the court.*

(B) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, court staff, court officials and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, court staff, court officials and others subject to the judge's direction and control.

DISCUSSION:

Judicial temperament that exhibits patience, courtesy and dignity is a hallmark characteristic of a good judge. The assumption of judicial office casts upon judges duties in respect to personal conduct. The robe magnifies words and actions and the judicial office imposes speech and conduct restrictions that would be burdensome to the ordinary citizen. The courts and local legal bar are bound together. An attack upon the courts is an attack upon the profession. Equally, when a judge behaves in a way that is disrespectful to lawyers, it can create public disrespect for the legal profession in general. (See former President of the United States and Supreme Court Chief Justice, W.H. Taft, *Ethics in Service*, 1915).

The judiciary cannot exist without the trust and confidence of the people. Judicial demeanor issues can lead to more than just an unpleasant courtroom experience. The chronic behavior of a judge may be such that Due Process is curtailed. As we have noted before, "[t]he Due Process Clause of the Fourteenth Amendment of the United States Constitution is not a technicality. It is, in fact, one of the cornerstone principles that sets our justice system apart from much of the rest of the world." *Martinez v. State*, 2014 Ark. App. 182 (Judge R. Gladwin, *concurring*).

The average citizen cannot be expected to brush off impatient or undignified temperament by a judge. The power imbalance is such that a litigant has no way to respond without risking a harsh or even vindictive counter response from a judge. Undignified judicial temperament may render litigants reluctant to fully present their case. Thus, fear of being unfairly chastised or mocked may affect the fundamental right to a fair hearing.

CONCLUSION:

You agree that a **Censure** is the appropriate sanction for your conduct in JDDC Case # 17-143 et al.

A **Censure** is a formal sanction for violating the Code of Judicial Conduct. It is a declaration that a judge is guilty of misconduct that does not require suspension or removal. A stern rebuke that finds the conduct of the judge violates a rule of judicial conduct, detrimentally affects the integrity of the judiciary, and undermines public confidence in the administration of justice. A censure also serves as a public warning to other judges. Your willingness to accept that your actions were in violation of the Code 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.

Ethics agencies must not merely theorize on proper or improper conduct, but must effect change and correct conduct if able. (See Aristotle, *Ethics*, 349 B.C.). Particular to these complaints, a simple written declaration of improper behavior will not suffice. Therefore, pursuant to this negotiated resolution the following conditions are imposed. If you violate the terms below or have additional violations of the Code, the JDDC will initiate a new investigation under the Rules of Procedure of the Judicial Discipline & Disability Commission. In any future proceeding, the JDDC may take into consideration the fact that you were sanctioned in Case #17-143 et al., in which allegations have been substantiated and agreed as Code violations.

The **Censure** for Case #17-143 et al., includes the following agreed conditions:

- You shall refrain from engaging in conduct similar to that described in the above referenced complaints.
- You shall be patient, courteous and dignified at all times during your term in office.
- You shall attend a course[s] at The National Judicial College or National Center for State Courts or any other similar educational institution, involving proper judicial demeanor (or related topics), within twelve (12) months from the date of this letter and provide proof to the Commission of its completion, provided that at least one of these educational institutions offers a judicial demeanor course within the referenced 12 month period.
- You shall coordinate and communicate with the administrative judge in your district regularly regarding management of your court.

- You shall allow JDDC staff or their assigned agent entry into your courtroom at any time as requested by the JDDC. The JDDC will send monitors (staff or special investigators) who will have identification with them. Failure to allow the JDDC monitor access to the courtroom or proceeding shall be considered a violation of the Code of Judicial Conduct and grounds for a new complaint. The JDDC monitors are bound by confidentiality in any closed proceeding just as they are in any judicial investigation involving information from juvenile court, certain drug courts, adoptions and other confidential litigation. As to cases that are not covered by specific confidentiality provisions, your court shall remain open to the public as is required by law.
- You shall provide the JDDC with audio recordings of any proceeding as requested. Transcripts may also be requested to accompany recordings. These recordings shall be provided promptly but no later than five (5) business days after inquiry.

The JDDC will monitor your compliance with this agreement over the remaining portion of your judicial career. The JDDC may file new allegations against you if your behavior is not in compliance with the Code of Judicial Conduct, violates the conditions of this negotiated resolution or if you fail to respond to the Commission's periodic requests for status reports.

In view of these circumstances, it is the judgment of the JDDC that you are hereby censured, for your behavior in Case #17-143 et al. This public sanction constitutes adequate discipline and no further action, other than the remedial measures and conditions described above, is warranted.

This Commission action is public information.

Sincerely,

A handwritten signature in black ink, appearing to read 'David J. Sachar', written over a horizontal line.

David J. Sachar
Executive Director