

Judicial Discipline & Disability Commission

PRESS RELEASE

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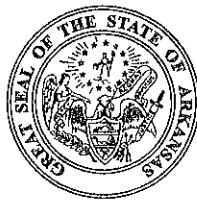
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FOR IMMEDIATE RELEASE

May 21, 2021

The Judicial Discipline & Disability Commission today announced that a Letter of Censure and Recommendation of Suspension to the Arkansas Supreme Court has been issued to Sixth Judicial Circuit Judge Barry Sims, of Pulaski and Perry Counties, in Commission cases #19-202 and #19-264. A copy of the Letter of Censure and Recommendation of Suspension against Judge Sims follows this press release.

David J. Sachar, Executive Director



Judicial Discipline & Disability Commission

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DAVID J. SACHAR
EXECUTIVE DIRECTOR

May 21, 2021

RE: JDDC Cases #19-202, #19-264

LETTER OF CENSURE AND RECOMMENDATION OF SUSPENSION TO THE ARKANSAS SUPREME COURT

Dear Judge Sims,

You were alleged to have committed violations of the Code of Judicial Conduct in the above referenced cases filed by attorneys. The following facts comprise the violations the Arkansas Judicial Discipline & Disability Commission (*hereinafter referred to as "JDDC"*) Investigation Panel was prepared to charge you with until you agreed to the sanctions set out in this letter.

Undisputed Facts

1. You are an elected circuit court judge for Pulaski and Perry Counties in the Sixth Judicial District of Arkansas and have served in that capacity since 2003. Previously, you served as a district court judge in North Little Rock, Arkansas.
2. JDDC Investigation Panel 1 authorized a full investigation of the allegations in the above referenced complaints. The Panel obtained and reviewed evidence that includes, but was not limited to, court records, transcripts and audio recordings of hearings, witness statements and the previous sanction imposed by the JDDC. You and your counsel filed responses on your behalf.

3. The totality of your conduct referenced in the paragraphs below exhibited a disregard for the law, failure to promote confidence and uphold the integrity of the judiciary, and personal behavior that undermined the integrity of the office of Circuit Judge.
4. You could have fully contested those allegations and availed yourself of all defenses during a formal disciplinary hearing. You chose to accept a censure and a recommended suspension without pay in lieu of contesting the allegations. This agreement is proof of your acceptance of responsibility for your actions. You have agreed your actions violated the Code of Judicial Conduct and could have been proven at the standard of proof set out in the Rules of Procedure of the Judicial Discipline & Disability Commission.

JDDC #19-202

During an Omnibus Hearing in your court on April 15, 2019, you were impatient, discourteous and rude to a public defender who represented Defendant A. The facts of the hearing involved a no-knock search warrant. At one point during the hearing, you left the bench while the public defender was asking a question of a witness. When she was attempting to respond to an objection, you would not let her make her record. Your tone of voice was curt. Your facial expressions, demeanor and actions alarmed other attorneys and members of the gallery. You have agreed that your behavior was inappropriate. Your actions and demeanor created an injudicious atmosphere in your court. You did not act in a way that promoted public confidence in the independence, integrity and impartiality of the judiciary. There was no evidence that your ultimate decision in the case was unfair. However, you agree there could have been an appearance that the case was somehow impacted.

During a criminal jury trial in your court on May 21, 2019, you called the attorneys to the bench during *voir dire*. You made statements related to the way in which a public defender was conducting *voir dire*. You asked if her client had a defense and indicated that you would still accept a guilty plea. The case ended in an acquittal. Your comments and demeanor were inappropriate, rose to the level of undignified treatment of attorneys in your court and gave the appearance, whether intentional or not, of an attempt to coerce a settlement.

19-264

During a hearing on October 21, 2019, you questioned a public defender about whether she was going to file another judicial complaint against you if you did not accept a plea negotiation. This was said on the record, in open court, and in front of the public defender's client. The public defender had not filed a complaint against you. Your words, tone and demeanor were intimidating and improper. The Panel found your conduct reflected adversely on your judicial temperament. The inquiry of someone you suspected had assisted or cooperated with the investigation could have caused others to believe that you were going to retaliate, directly or indirectly, against actual and potential complainants. A judge investigated by a disciplinary agency has a duty to cooperate in the investigative process, not to hinder it by confronting witnesses and complainants regardless of the judge's intent. See *Rule 2.16*.

Prior Discipline:

In JDDC Case No. 2009-325, you were given a Letter of Admonishment. Specifically, the Panel believed and you admitted that your actions gave the appearance that you abandoned your judicial role. The discipline indicated that a writ was used to facilitate the testimony of a witness, whose criminal case had been closed, to support the prosecution in a separate pending criminal case.

Relevant Canons of the Code of Judicial Conduct Violated:

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 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 2.3 - Bias, Prejudice, And Harassment

A judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice.

(A) A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in harassment, and shall not permit court staff, court officials, or others subject to the judge's direction and control to do so.

...

Rule 2.4 - External Influences on Judicial Conduct

...

(B) A judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge's judicial conduct or judgment.

Rule 2.6 - Ensuring the Right to Be Heard

...

(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

...

(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.

Rule 2.16 - Cooperation with Disciplinary Authorities

...

(B) A judge shall not retaliate, directly or indirectly, against a person known or suspected to have assisted or cooperated with an investigation of a judge or a lawyer.

Discussion:

Your actions in these complaints not only displayed a lack of dignity, courtesy, and patience required of judges, but it also negatively affected those acutely interested in the efficient operation of the criminal justice system, namely criminal defendants and public defenders. The

robe magnifies your conduct and causes you to undergo scrutiny that would be burdensome if applied to others. Confidence in the judiciary is eroded if your decisions are perceived to be susceptible to outside influences of any kind, including investigations by the JDDC or your opinions of particular types of cases. Judges are expected to accept the restrictions of the Code and avoid impropriety or the appearance of impropriety. (See *Rule 1.2, Comment and Rule 2.4, Comment*).

Conclusion:

You agree that a Censure is the proper sanction for JDDC #19-202. A censure is a “[f]ormal 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 justice or judge violates a rule of judicial conduct, detrimentally affects the integrity of the judiciary, and undermines public confidence in the administration of justice. It could involve misconduct that is more serious, but the judge presented substantial mitigating factors. A censure may include a requirement that the judge follow a specified corrective course of action. A censure also serves as a public warning to other judges. Your Censure includes your adherence to the remedial measure below.

You agree that a Suspension without Pay is the proper sanction for JDDC #19-264. Suspension Without Pay must be reviewed by the Arkansas Supreme Court. JDDC Investigation Panel 1, as approved by the regular members of the JDDC, recommend a suspension without pay for ninety (90) days with sixty (60) of those days held in abeyance for one year. Those days are held in abeyance on condition that you adhere to the remedial measures below. If you fail to fulfill the requirements in this agreement, the JDDC will petition the Supreme Court to impose the additional suspension and/or file new complaints and seek a more serious sanction. The Supreme Court determines if they concur with the JDDC’s sanction and length of suspension. Pursuant to Rule 12 D both parties will submit the requisite pleadings to present this agreement to the Supreme Court for their final judgment. A Suspension Without Pay is [a decision by the commission that must be reviewed and affirmed by the Supreme Court.

Recommendation by the commission to suspend a judge, with or without pay, is based on serious misconduct that merits more than a censure but less than removal. This sanction is flexible, and there are no restrictions on the length of a suspension. It can be imposed for egregious or repetitive conduct. It could involve misconduct that is more serious, but the judge presented substantial mitigating factors. A suspension may require that the justice or judge follow a specified corrective course of action before being reinstated.

If the Court affirms a suspension without pay, they will determine the dates and duration. That mandate will be sent to the Auditor of the State for proper execution of pay and benefits as a result of the suspension.

Remedial Measures

The measures listed below are part of the agreement made between you and the JDDC. If during a year from this letter you violate any of the terms below, the Executive Director may file a new complaint based on, inter alia, Rule 2.16. If during a year from this letter you violate any of the terms below, the JDDC can upon due consideration petition the Court to impose the remaining suspension. The Executive Director may open a new complaint and seek additional and more severe sanctions. Remedial measures are as follows:

- Attend a class on mindfulness, patience, or civility through the National Judicial College, National Center for State Courts or other reputable judicial training organization. Proof of attendance must be provided by December 31, 2021.
- At your own expense, hire a counselor or life coach to help consult with you about how you treat professionals appearing in your court. You or your representative must provide information the JDDC about your cooperation and progress. No personal details need to be submitted.
- Have no more complaints that result in public charges or agreed discipline.
- Be on notice that future complaints concerning intimidation, bullying, retaliation or harassment will be investigated. Your failure to learn and change from the remedial measures in this agreement will be included as evidence of intent and lack of mistake by you.

Other allegations and complaints were not litigated as you agreed to the sanctions and remedial measures in this final action letter. Should you make inaccurate comments on the subject matter or the procedure in this case, the Executive Director reserves the right to correct those inaccuracies through statements to the press or release of documents. This final action letter concludes JDDC Cases #19-202 and #19-264. JDDC cases #19-231, #19-252, #19-253, and #19-254 were dismissed pursuant to this agreement.

This Commission action is public information.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Sachar', written over the word 'Sincerely,'.

David J. Sachar
Executive Director