



Judicial Discipline & Disability Commission

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DAVID J. SACHAR
EXECUTIVE DIRECTOR

PRESS RELEASE

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FOR IMMEDIATE RELEASE

February 22, 2019

The Arkansas Judicial Discipline and Disability Commission today announced an agreed public Reprimand and an agreement not to serve in the judiciary against Retired Circuit Court Judge Philip Smith, Third Judicial District. The letter of sanction and agreement follows this press release and resolves JDDC case #17-345 that was pending before the Commission.



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DAVID J. SACHAR
EXECUTIVE DIRECTOR

February 22, 2019

Judge Philip Smith
Retired Circuit Judge, 3rd Judicial District
Pocahontas, Arkansas

RE: JDDC Case #17-345

LETTER OF REPRIMAND AND AGREEMENT NOT TO SERVE IN THE JUDICIARY

Dear Judge Smith:

You were alleged to have committed violations of the Arkansas Code of Judicial Conduct in the above referenced case filed by the Executive Director of the Judicial Discipline and Disability Commission (*hereinafter referred to as the "JDDC"*). The following facts comprise the violations which you agree are no longer alleged but proven:

AGREED FACTS:

1. At all times relevant, you were an elected Circuit Court Judge in the Third Judicial District of Arkansas. You retired from the Circuit Court Bench on December 31, 2017.
2. Executive Director David J. Sachar filed a complaint on December 29, 2017, as a result of information obtained through pleadings and other sources.

3. The JDDC Investigation Panel 3 authorized a full investigation of these allegations and obtained documents, statements, and transcripts.
4. The Investigation Panel found and you agree that you made improper use of court premises, equipment, or other resources to engage in extrajudicial activities that did not concern the law, the legal system, or the administration of justice. You admitted, under oath, during divorce litigation in Randolph County Circuit Court (Case 61DR-17-191), that you improperly used court computer equipment after regular work hours at the office.
5. Your willingness to accept a sanction and render yourself permanently ineligible to serve in the judiciary was taken into consideration. You have also cited some personal health concerns and other personal matters as factors in your decision.

SANCTION

6. You do not contest the allegations in paragraphs one (1) through five (5).
7. The totality of your conduct referenced in the paragraphs above exhibited a disregard for the Code of Judicial Conduct, failure to promote confidence and uphold the integrity of the judiciary, and behavior that undermined the office of Circuit Judge.
8. You were issued disciplinary letters from the JDDC in the following cases:
 - a. In case #07-370 you were given a Letter of Admonishment for undue delay in deciding cases as well as failure to report those delays as required under Supreme Court Administrative Order #3.
 - b. In cases #13-173 and #13-204 you were given an Informal Adjustment for undue delay in deciding two cases.

9. By this agreement for a reprimand and to not serve in the judiciary in the future you waived any defenses you may have had at a formal disciplinary hearing. This agreement is acknowledged as an acceptance of responsibility for your actions. You have agreed your actions fit specific violations of the Arkansas Code of Judicial Conduct that could have been proven at the standard of proof set out in the Rules of Procedure of the JDDC.
10. A reprimand is a formal sanction of a judge for violating the Code of Judicial Conduct. It is a rebuke for one or more violations that does not require censure. A reprimand usually involves an isolated incident or behavior that can be corrected. It could involve misconduct that is more serious but the judge presented substantial mitigating factors.

RELEVANT AUTHORITY:

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 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 extrajudicial activities, a judge shall not:

- (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.

CONCLUSION:

You agree that a prior voluntary resignation, a letter of reprimand, and an agreement not to serve in the future are appropriate in JDDC case #17-345. The Preamble to the Code of Judicial Conduct is on point with the issues in this case when it states:

“Judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to maintain and enhance confidence in the legal system. 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.”

The robe magnifies the conduct and, in this case, the conduct has rendered you ineligible to hold public trust as a judge. Pursuant to your agreement, as of February 22, 2019, you agree to no longer serve in any capacity as a Judge. The effect of your agreement is the same as “removal” from office. Following the Arkansas Supreme Court’s determination of the meaning of “removal” from office (see *Proctor v. Daniels*, 2010 Ark. 206 (Ark. 2010)), your agreement renders you permanently ineligible to serve in a judicial capacity in the State of Arkansas, which includes temporary service by assignment or a temporary appointment. The JDDC will use all legal remedies to enforce your voluntary agreement to permanent removal from office. Should you seek any Federal office or other State public office, the JDDC may respond to a background check with information in our investigation file concerning the allegations you were facing upon acceptance of this negotiated agreement. This final action letter concludes JDDC Case #17-345.

This Commission action is public information.

Sincerely,

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

David J. Sachar
Executive Director