



Judicial Discipline & Disability Commission

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PRESS RELEASE

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FOR IMMEDIATE RELEASE

June 8, 2018

The Arkansas Judicial Discipline and Disability Commission today announced the filing of formal charges against Pulaski County Circuit Judge Wendell Griffen. A Statement of Allegations containing the charges follows this press release.

Judge Griffen will be formally served with charges and given thirty (30) days to respond. The judge is entitled to a hearing before the Judicial Discipline and Disability Commission, wherein all allegations must be proven by clear and convincing evidence. All future pleadings in this case will be public information.

Contact information for Judge Griffen is as follows: Michael Laux, 400 W. Capitol Ave, Suite 1700, Little Rock, AR 72201, and Austin Porter, Jr., 323 Center Street, Suite 1035, Little Rock 72201, and Michael Matthews

Forley & Lardner, LLP, 100 North Tampa Street, Suite 2700, Tampa, FL
33602.

STATEMENT OF ALLEGATIONS

CASE # 17-172, 17-171 and 17-173

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DISABILITY COMMISSION

It is alleged that Circuit Judge Wendell Griffen, serving the Sixth Judicial District of Arkansas, by the conduct indicated below, is subject to sanctions pursuant to ACA § 16-10-410, for the commission of conduct that is prejudicial to the administration of justice.

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.

Relevant Canons

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 1.3 Avoiding Abuse of the Prestige of the Judicial Office

A judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge, or others, or allow others to do so.

Rule 2.1 Giving Precedence to the Duties of Judicial Office

The duties of judicial office, as prescribed by law, shall take precedence over all of a judge's personal and extrajudicial activities.

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 2.10 Judicial Statements on Pending and Impending Cases

(A) A judge shall not make any public statement that might reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court, or make any nonpublic statement that might substantially interfere with a fair trial or hearing.

(B) A judge shall not, in connection with cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.

Rule 2.11 Disqualification

(A) A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned,...

(5) The judge, while a judge or a judicial candidate, has made a public statement, other than in a court proceeding, judicial decision, or opinion, that commits or appears to commit the judge to reach a particular result or rule in a

particular way in the proceeding or controversy.

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 activities;
- (B) Participate in activities that will lead to frequent disqualification of the judge; or
- (C) Participate in activities that would appear to a reasonable person to undermine the judge's independence, integrity or impartiality.

Rule 2.16 Cooperation with Disciplinary Authorities

- (A) A judge shall cooperate and be candid and honest with judicial and lawyer disciplinary agencies.
- (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.

Factual Allegations

Most of the alleged facts, below, apply to more than one Canon violation. They are not duplicated for the purpose of brevity.

1. Judge Wendell Griffen presided over McKesson Medical-Surgical, Inc. v. State of Arkansas, et al., cause number 60CV-17-1921 (hereinafter "McKesson")
2. McKesson moved for a TRO on April 14, 2017, filing its motion at 4:22 p.m., which Judge Griffen granted and filed at 4:37 p.m. and emailed to the parties at 5:33 p.m., on the same day.
3. April 14, 2017, was Good Friday.
4. Judge Griffen attended an anti-death penalty rally at approximately 2:00 p.m., on April 14, 2017, and attended a Good Friday prayer vigil later in the day.
5. JDDC incorporates, herein, by reference, each and every fact and allegation(s) contained in enumerated paragraphs 1-4, above.
6. McKesson's underlying complaint in Cause Number 60CV-17-1921 was based on the company's sale of a drug to Arkansas Department of Corrections ("ADC"), with ADC's purchase of the drug for use in state executions.
7. McKesson's underlying complaint was filed April 14, 2017, and assigned to Judge Wendell Griffen.
8. ADC planned executions using McKesson's drug on April 17, 2017.
9. When Judge Griffen granted McKesson's motion for TRO, it had the effect of stays of execution in the executions scheduled for April 17, 2017, which Judge Griffen would not have otherwise had authority to enter.
10. Judge Griffen regularly posts remarks in opposition to the death penalty on his social and electronic media sites and appeared at publicized events in opposition to the death penalty while presiding over the McKesson case.
11. Judge Griffen described his actions on April 14, 2017 to the Commission as, his "...lay[ing] on a cot *in solidarity with Jesus*, the leader of our faith..." despite that none of the photographic representations or of the signs disavowing capital punishment presented to the JDDC in this investigation contain reasonably visible reference Jesus or His crucifixion and the placard on Judge Griffen's body did not refer to Jesus or His crucifixion.
12. Judge Griffen asserted to the Commission that he was exercising his right to religious expression on April 14, 2017. While the JDDC has no basis on which to evaluate Judge Griffen's motive or to question any good faith belief, the record fails to support any primary religious motive of anti-death penalty vigil, but the record does establish that Judge Griffen was dressed in what appears to be a traditional inmate jumpsuit or a reasonable facsimile thereof, and he was wearing a button or sign that compelled the State of Arkansas to "end the death penalty."
13. Judge Griffen holds a right to free speech, but once Judge Griffen asserted his free speech in unequivocal

opposition to the death penalty, he had an obligation to disqualify himself in every case effecting the death penalty.

The above allegations, if proven to be willful misconduct by clear and convincing evidence, would constitute conduct that is prejudicial to the administration of justice (ACA § 16-10-410 (b)(4)). The allegations are of a serious nature that, if proven, may result in public discipline up to and including removal from office. (see JDDC Rule 9J and ACA §16-10-410).

Prepared by Rachel W. Michel, Special Counsel, at the direction of Investigation Panel 1 of the JDDC (Lindsay, Terry, White)