

Judicial Discipline & Disability Commission

JUDGE JOYCE WILLIAMS WARREN
CHAIRMAN

*323 Center Street • Suite 1060
Little Rock, AR 72201
(501) 682-1050 • Fax: (501) 682-1049
E-Mail: jddc@arkansas.gov*

DAVID J. SACHAR
EXECUTIVE DIRECTOR

PRESS RELEASE

PONT OF CONTACT: DAVID SACHAR

PHONE: 501-682-1050

FOR IMMEDIATE RELEASE

November 15, 2013

The Arkansas Judicial Discipline & Disability Commission today announced that agreed Letter of Informal Adjustment has been issued to Judge Phillip Smith of the Third Judicial Circuit Court, Second Division.

A copy of the Informal Adjustment against Judge Smith follows.



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DAVID J. SACHAR
EXECUTIVE DIRECTOR

Honorable Philip G. Smith
Position 2, Circuit Court, Third Judicial District
101 East Broadway
Pocahontas, AR 72455

RE: Cases #13-173 and #13-204

LETTER OF INFORMAL ADJUSTMENT

Dear Judge Smith:

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

UNDISPUTED FACTS:

- 1) Judge Philip G. Smith (*hereinafter referred to as "Smith"*) is a full time Circuit Court Judge for the Third Judicial District, including Jackson, Lawrence, Randolph and Sharp Counties in Arkansas.
- 2) In JDDC Case No. 13-173, Betty Hamby (*hereinafter referred to as "Hamby"*) was a litigant in the underlying action in Jackson County Circuit Court Case No. CV-2004-222 and CV-2009-034 two companion cases in Jackson County involving the same real property in dispute.
- 3) A final hearing on Jackson County CV-2004-222 was had in September of 2009 and the case was ripe for a ruling immediately thereafter.
- 4) A ruling did not occur in Jackson County CV-2004-222 until June 21, 2013 and an order reinstating CV-2009-034 did not occur until June 24, 2013, after complaints were filed by Hamby with the JDDC.
- 5) In JDDC Case No. 13-204, Peggy James (*hereinafter referred to as "James"*) was a litigant in the underlying action in Randolph County Circuit Court Case No. CV-2009-065.
- 6) A trial and final pleadings on Randolph County CV-2009-065 occurred in May of 2010 and the case was ripe for a ruling immediately thereafter.
- 7) A ruling did not occur in Randolph County CV-2009-065 until August 29, 2013, after a complaint was filed by James with the JDDC.
- 8) Smith admits to the undue delay in issuing rulings in both of the above referenced cases.
- 9) Smith offered no excuses for his conduct however, he did admit to taking steps within his office to guard against this type of problem in the future.
- 10) Smith's actions in paragraphs one (1) through seven (7) violated Canons 1.1, 1.2, 2.1, 2.5 and 2.7.
- 11) Smith is informally adjusted for this conduct.

RELEVANT AUTHORITY:

The Judicial Discipline and Disability Commission (“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 2.1 Giving Precedence to the Duties of Judicial Office

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

RULE 2.5 Competence, Diligence, and Cooperation

(A) A judge shall perform judicial and administrative duties, competently and diligently.

RULE 2.7 Responsibility to Decide

A judge shall hear and decide matters assigned to the judge, except when disqualification is required by Rule 2.11 or other law.

CONCLUSION:

You have agreed that an informal adjustment is the appropriate sanction for your actions in JDDC Case #13-173 and #13-204. Your willingness to accept your actions and acknowledge they 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 this case. Additionally, your commitment to resolve these cases immediately, to fully admit the allegations and cooperate with the investigation and, to refrain from this type of future action were considered mitigating circumstances. Therefore, the JDDC recommends an informal adjustment.

The Informal Adjustment for cases #13-173 and #13-204 include the following agreed conditions:

You shall review your docket every ninety (90) days in compliance with Administrative Order No. 3 and rule on all cases pending in accordance with your obligations under the Code.

You will endeavor to maintain organization of cases on your docket and avoid delayed rulings on all cases ripe for a resolution.

You shall attend a course study with the National Center for State Courts regarding organizational techniques and case management skills for circuit court judges within eighteen (18) months of this disposition.

You shall report this course completion to the JDDC within thirty (30) days of compliance.

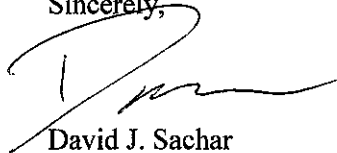
The Commission acknowledges similar actions in JDDC cases from 2007 (JDDC #07-370) and 2008 (JDDC #08-104) where you were formally reprimanded and cautioned regarding continued delay of rulings. Additionally, the Commission acknowledges the only reason you did not receive a more serious sanction here, was due to your willingness to quickly resolve the problem by ruling and, fully cooperating with the Commission investigation by taking full responsibility for the delay, once notified. The previous reprimand in 2008 required no conditions of improvement, therefore the JDDC desires to institute recommended steps to improve your skills as a judge. The JDDC respectfully reminds you, your role as a judge takes precedence over all other roles. Your willingness to make admissions, your immediate rulings, your willingness to receive formal case management instruction and, your promise to avoid such behavior in the future negated a likely recommendation of a more serious sanction.

If you violate the terms above or have additional violations of the Code, the JDDC may 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 have had Case #13-173 and #13-204, along with #07-370 and #08-104, in which allegations have been substantiated and agreed as Code violations.

In view of these circumstances, it is the judgment of the JDDC that your conduct is hereby informally adjusted with conditions, for Case #13-173 and Case #13-204. This public sanction constitutes adequate discipline and no further action, other than the remedial measures and conditions described above, is warranted. Further discipline may occur if the JDDC finds you committed additional violations of the Code, at any time in the future.

This Commission action is public information.

Sincerely,



David J. Sachar
Executive Director