



Judicial Discipline & Disability Commission

PRESS RELEASE

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FOR IMMEDIATE RELEASE

August 1, 2022

The Judicial Discipline & Disability Commission today announced that a Letter of Censure and Recommendation of Suspension without Pay to the Arkansas Supreme Court has been issued to Pope County District Judge Don Bourne in Commission cases #21-125, #21-182, #21-184, #21-253, #21-257, #21-320, #21-323, #21-326, and #21-332. A copy of the Letter of Censure and Recommendation of Suspension against Judge Bourne follows this press release.

David J. Sachar, Executive Director



Judicial Discipline & Disability Commission

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DAVID J. SACHAR
EXECUTIVE DIRECTOR

August 1, 2022

RE: JDDC Case #21-125, #21-182, #21-184, #21-253, #21-257, #21-320, #21-323, #21-326,
#21-332

LETTER OF CENSURE AND RECOMMENDATION OF SUSPENSION WITHOUT PAY TO THE ARKANSAS SUPREME COURT

Dear Judge Bourne,

You were alleged to have committed violations of the Code of Judicial Conduct in the above-referenced cases. The following facts comprise the violations the 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 District Court Judge in Pope County, Arkansas. You have served in that capacity since January 1, 2001.

2. JDDC Investigation Panel 1 authorized a full investigation of the allegations against you in February 2021. As more complaints came in, they were directed to the same Panel for investigation. The Panel obtained and reviewed documents, video, court records, news reports, and witness statements. You retained counsel to file responses and negotiate on your behalf.

3. The totality of your conduct referenced in the counts listed below exhibited a disregard for legal procedures, failure to uphold the integrity of the judiciary, and personal behavior that undermined public confidence in the office of District Court 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 instead of contesting the allegations. This agreement is proof of your acceptance of responsibility for your actions. The actions described below are examples of the behavior that violated the Code of Judicial Conduct - they are now no longer allegations but are deemed proven.

Judicial Misconduct

Count 1 – Demeanor on the bench. Promoting confidence in the judiciary. [Rule 1.1, 1.2, 2.3, and 2.8]

Judge Bourne had a pattern of injudicious conduct toward defendants. His comments often regarding factors that were not relevant to the proceedings and had no purpose in determining guilt, sentence, or administrative matters. Complainants reported rash statements from Judge Bourne aimed at the appearance, background, residency, and ethnicity of the people who appeared in his court.

Some of these interactions were caught on video and others were reported by complainants and witnesses who appeared in Bourne's court. Examples include, but are not limited to:

- Commenting to Spanish-speaking defendants that they need to learn English if they are going to be in this country/county/city.
- Upon asking about the employment status of a defendant responded, "[i]f you were a good employee, you wouldn't have been laid off. Go get a job and get that crap out of your eyebrows."
- Making comments on the appearance of litigants – particularly haircuts and hairstyles.
- Multiple negative comments about defendants who are not from Pope County, Arkansas:
 - o "You should have stayed in south Arkansas."
 - o "I wish you would stay in California."
 - o "I wish you would have stayed in Illinois."
 - o "I get a lot of troublemakers from California."
 - o "You should have stayed in Chicago."
 - o "You should have stayed in California."

Also, general allegations of bullying, angry demeanor, and impolite behavior have been cited in these complaints as well as prior complaints. Taken as a whole, it amounts to serious, cumulative misconduct on the bench. Citizens who were not even the subject of the injudicious behavior reported to the JDDC that they observed the judge being verbally abusive while they were in open court.

Count 2 – Failure to follow the law concerning appointing counsel, conducting proper indigency determinations, and retaining official records. [Rule 1.1 and 2.5(a)]

Judge Bourne has been the subject of complaints about improper conduct in indigency determinations. Affidavits of indigency were submitted by defendants for years and rarely was one approved. The affidavits were not kept as a public record and were destroyed before the filing of a complaint on this matter. (Note: the judge has indicated that he was wrong not to preserve these records and has told JDDC that the policy has been changed.)

The decision to appoint counsel is a legal determination made by the court. It is governed by rules and case law that judges must follow. They are capable of being incorrect and not running afoul of the Code of Judicial Conduct. Judge Bourne's pattern of failing to appoint counsel and his disregard for following the proper procedure and considering the legal standard is what pushes his legal error into the realm of judicial misconduct.

It should also be noted that many of the alleged denials of appointment of counsel are on cases that were only in District Court for a prompt first appearance. Those cases would be sent to Circuit Court and that judge could determine if counsel should be appointed. Circuit Court has public defenders in court regularly. These cases are not accurately delineated in the numbers and statistics received concerning the appointment of counsel. Felony cases headed to Circuit Court were not the ones that were problematic for the Investigation Panel.

As to misdemeanor cases with potential jail time that were in front of Judge Bourne – he often discouraged defendants from seeking appointments telling them they would "probably not" qualify before even reviewing all of the factors and the affidavit. He would frequently just respond with, "I am not going to appoint a lawyer for you. Get a job.", instead of conducting a proper review.

As part of an extensive news report, an investigative reporter from KARK (NBC affiliate in Little Rock, Arkansas) interviewed many citizens who stated they were denied appointed counsel on misdemeanor charges in Bourne's District Court. The head of the Public Defender Commission was interviewed on camera and agreed that affidavits from defendants in Judge Bourne's court showed that defendants were not appointed counsel when they qualified.

Prior Discipline:

In JDDC Case #14-152, you were given a Letter of Informal Adjustment. Specifically, you admitted that you made an improper campaign contribution in a state partisan political election.

Relevant Canons of the Code of Judicial Conduct:

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 2.3 - 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 2.5 - Competence, Diligence, And Cooperation

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

...

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.

Discussion:

Proper judicial demeanor is necessary for the administration of justice. A judge sets the tone for his or her courtroom as well as for the community. Judicial temperament helps to provide our citizens with confidence in our system of government and lends dignity to court proceedings. Your judicial demeanor, as described in the cases referenced above, has failed to meet the standard required of judges.

District Court is where the public meets the judiciary. Most people do not face felony charges or are involved in civil litigation in Circuit Court. But thousands of average citizens appear in Arkansas District Courts each year. For many, it will be their only experience with a judge and the justice system. Non-lawyer litigants are more vulnerable in the courtroom setting, and the disparity of power requires judges to treat litigants with courtesy and patience while maintaining order and the dignity of the proceedings.

Your actions in these complaints displayed a lack of dignity, courtesy, and patience as required of judges. You negatively affected those interested in the efficient operation of the criminal justice system. 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, the failure of a judge to follow the law and refrain from ill-tempered encounters with those who appear in court.

Patterns of judicial error can become judicial misconduct. Generally, the JDDC does not review issues that arise from the independent decision-making role of judges. (See Rule 6 of the Rules of Procedure of the JDDC). However, the factors that can make judicial decisions reviewable as misconduct were present in your handling of appointing the public defender. The JDDC has sanctioned judges for error as misconduct in the past (see *Arkansas Judicial Discipline and Disability Commission v. Honorable Willard Proctor*, 210 Ark. 38, pp. 31-37, January 25, 2010). For further reference on this subject of legal error as misconduct see, Gray, Cynthia (2004) "The Line Between Legal Error and Judicial Misconduct: Balancing Judicial Independence and Accountability," *Hofstra Law Review*: Vol. 32: Iss. 4, Article 11.

Once again, the power imbalance that a judge has over an unrepresented citizen is immense. Citizens are often nervous and without legal knowledge when they appear in court. They are facing jail time and monetary fines that can upend their life for months if not years. They are

unlikely to debate or confront a judge – the person who can send them to jail or other powerful responses. You did not attempt to make the District Court experience one that was fair to the powerless and vulnerable citizens who were facing criminal charges.

At times, you used your judicial power in a manner that lacked humility or compassion. You are required to hear cases courteously. This is not an option and is a behavioral trait you must improve if you wish to continue to serve on the bench. As an elected District Judge, you are in a position of power and people are more likely to be deferential to that power – and even afraid of it.

But the power does not belong to the judge personally. Judges must constantly reflect on the fact that they merely hold the power that is invested in them by the people. They should strive to be a good steward of that power – immense as it may be – and treat all fairly and equally under that law.

Sanction:

In *JDDC v. Thompson*, 341 Ark. 253, 16 S.W.3d 212 (2000), the court listed the following facts that are to be considered to determine the appropriate sanction in judicial conduct cases:

- (a) whether the misconduct is an isolated instance or evidenced a pattern of conduct;
- (b) the nature, extent, and frequency of occurrence of the acts of misconduct;
- (c) whether the misconduct occurred in or out of the courtroom;
- (d) whether the misconduct occurred in the judge's official capacity or in his private life;

- (e) whether the judge has acknowledged or recognized that the acts occurred;
- (f) whether the judge has evidenced an effort to change or modify his conduct;
- (g) the length of time of service on the bench;
- (h) whether there have been prior complaints about this judge;
- (i) the effect the misconduct has upon the integrity of and respect for the judiciary;
and
- (j) the extent to which the judge exploited his position to satisfy his personal desires.

Your actions were part of an extended pattern of conduct. Particularly when it comes to your injudicious temperament, your improper treatment of litigants in your court was quite frequent. Your misconduct occurred while you were on the bench, in the courtroom, or in your official capacity as a District Court Judge.

You did not appear to recognize your problematic activity even after several complaints against you had been filed. The efforts you have made to change or modify your conduct have occurred since you have been receiving wise counsel from your attorney. There have been many complaints compiled into this sanction. The subject matter of these complaints is similar to other complaints you have received over the past several years. You have been on the bench for more than 21 years. During that time, you received all the benefits of the position of public trust that you hold. You have had access to training, materials, and the advice of court administration professionals during that time.

There is no evidence that you benefitted monetarily or otherwise from your rude and improper treatment of citizens in your court. However, your actions have harmed the integrity of and

respect for the judiciary. The behavior for which you are being sanctioned is the antithesis of what citizens should expect from a judge. There is an expectation that judges will participate in establishing and maintaining high standards of conduct and should personally observe those standards so that the integrity and independence of the judiciary will be preserved.

Mitigation and Correction:

You have corrected the issues above by now requiring that all affidavits related to requests for appointment of a public defender be maintained as required under the Arkansas Rules. You have now committed to more closely reviewing each affidavit, and to the best of your ability, following the law as set out in the case law regarding appointments of counsel to ensure that the rights of all indigent defendants, appearing in his court, have counsel appointed.

The Panel considered the mitigating information that you presented. You have acknowledged - and continue to acknowledge - that in the past, statements you made on the bench were inappropriate. You have committed to the commission, as well as to the public, that in the future, your statements and demeanor in the courtroom will comply with the highest standards for a judicial officer.

As to the mitigation factors, the Commission considered that you have a long history of public service. Before becoming a judge, you served six (6) years as Chief Deputy Prosecutor in Pope County. You spent fourteen (14) years as the elected Russellville City Attorney and over twenty (20) years as District Court Judge. You served in the military in the United States Army from 1980 to 1983.

The significant caseload that you carry was also considered. You have five (5) Courts over which you regularly preside, which include the City Division of District Court for Russellville, the

County Division of District Court for Pope County, the Pottsville District Court, the Atkins District Court, the London District Court, and the Dover District Court. In addition to that, you handle first appearances for inmates that have been arrested on felony charges as well as misdemeanors that are being held in the Pope County Detention Center. On Mondays, Wednesdays, and Fridays, of each week, you make probable cause and bond decisions for these individuals. While you agreed with the Panel that a suspension was appropriate, the Panel also noted that a longer suspension would burden the other judges and curtail access to hearings for defendants in Pope County.

In addition to your caseload, I am cognizant that you are a single parent of a severely disabled adult child. You take this responsibility seriously, and, by all accounts, you are an excellent father who does everything he can to make sure that his daughter is well cared for.

Conclusion:

You agree that a Suspension Without Pay is the proper sanction for the complaints in Count 1. Suspension Without Pay must be reviewed by the Arkansas Supreme Court. JDDC Investigation Panel 1, as approved by the regular members of the JDDC, recommends a suspension without pay for ninety (90) days with seventy-five (75) of those days held in abeyance for one year. Those days are held in abeyance on the condition that you adhere to the remedial measure 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 the length of the 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 more serious misconduct, 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 the proper execution of pay and benefits.

You agree that a Censure is the proper sanction for Count 2.

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 more serious misconduct, but the judge presented substantial mitigating factors. A censure may include a requirement that the judge follows a specified corrective course of action. A censure also serves as a public warning to other judges." In those cases, you violated Rules 1.1, 1.2, 2.3, 2.5, and 2.8. Your Censure includes your adherence to the remedial measure below.

Remedial Measures

The measures listed below are part of the agreement made between the judge and the JDDC. As to the Censure, if during the remainder of your time on the bench the judge violates 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 the judge violates any of the terms below, the JDDC can, upon due consideration, petition the Supreme 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:

- Judge Bourne agrees not to run for judicial office again or accept an appointment from the Governor, Arkansas Supreme Court, or via the Administrative Rules of the Arkansas Supreme Court after this term expires on December 31, 2024.
- Attend court sessions during his suspension. He will be required to spend four (4) sessions in different district courts selected by the JDDC Executive Director. He will be required to sit in the gallery and observe. Then he will write a short report on each time he attended court to highlight procedures or methods from that court that he could benefit from in his court. The report will be turned into the JDDC and placed in the Investigation File.
- Allow JDDC monitors full access to his courtroom for proceedings, to records kept in his official capacity, and to the staff as needed.
- Get funding or pay for a digital audio recording to be installed in all his courtrooms by the time he returns to the bench after suspension. Digital audio must be preserved according to Court Rules and be readily available to JDDC Investigators. District Court Automation Funds may be used to purchase and install.
- Attend an online class from the National Judicial College on judicial ethics. Classes that would fulfill this requirement will be sent to your counsel by the Executive Director. You need to attend and provide proof of attendance within 12 months of today.
- Comply with the guidelines and statutes on the appointment of the public defender to misdemeanor criminal defendants in his court. Complete all reporting requirements for the public defender commission and/or AOC to track appointments.
- Read and review bullying in the legal profession report. Bullying and Sexual Harassment in the Legal Profession | International Bar Association (ibanet.org)

- Review the online course: Us Too? Bullying and Sexual Harassment in the Legal Profession Training | International Bar Association (ibanet.org)

Other allegations were not litigated as you agreed to the sanctions and remedial measures in this final action letter. It is acknowledged that the allegations in other complaints were denied by Judge Bourne. His admissions are noted in this 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 concludes the JDDC cases referenced in the subject line of this letter.

This Commission action is public information.

Sincerely,

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

David J. Sachar

Executive Director