



## *Judicial Discipline & Disability Commission*

**JUDGE THOMAS FOWLER**  
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**DAVID J. SACHAR**  
EXECUTIVE DIRECTOR

### **P R E S S   R E L E A S E**

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FOR IMMEDIATE RELEASE

September 29, 2022

The Judicial Discipline & Disability Commission today announced that a Recommendation of Suspension without Pay to the Arkansas Supreme Court has been issued to 13<sup>th</sup> Judicial Circuit Judge Robin Carroll in Commission cases #21-284 and #22-192. A copy of the Recommendation of Suspension against Judge Carroll follows this press release.

David J. Sachar, Executive Director



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**DAVID J. SACHAR**  
EXECUTIVE DIRECTOR

September 29, 2022

RE: JDDC Case #21-284, #22-192

### **LETTER OF SANCTION AND RECOMMENDATION OF SUSPENSION WITHOUT PAY TO THE ARKANSAS SUPREME COURT**

Dear Judge Carroll,

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 Circuit Court Judge in the 13<sup>th</sup> Judicial District, with your main office in Union County, Arkansas. You have served in that capacity since January 1, 2013.
2. JDDC Investigation Panel 1 authorized a full investigation of the allegations against you in the cases referenced in this letter. The staff of the JDDC obtained, analyzed, and presented the following to the Panel: court records and dockets, court transcripts and audio, witness statements, information from jail records, investigation information from law enforcement agencies, texts, and phone records. 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 behavior that undermined public confidence in the office of Circuit Court Judge.
4. You could have fully contested the allegations and availed yourself of all defenses during a formal disciplinary hearing. You chose to accept a recommended suspension without pay in lieu 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 deemed proven.

## **Judicial Misconduct**

Fact Pattern 1 – Dismissing Cases without Due Process; Actual Bias and Failure to Recuse

Prior to August 2021, a deputy sheriff appeared in court when Judge Carroll was presiding. Carroll told the Sheriff of that county to remove the deputy from the courtroom. After court, the Sheriff went back to chambers. Carroll advised the Sheriff that he had known the deputy sheriff years ago. He told the Sheriff that he needed to fire this deputy. Additional evidence showed that Carroll had spoken to others about his opinion of, and background with, the deputy.

On August 18, 2021, Carroll contacted a managing public defender by phone before court and let him know that he would dismiss cases involving the deputy sheriff that day if the public defender made the motions to dismiss in court.

At the courthouse, Carroll met in his chambers with the deputy prosecuting attorney, the public defender, and the managing public defender. He told the public defender to make motions to dismiss and that he would grant them. The deputy prosecutor told the judge that he would have to object. Carroll said, “No, you aren’t.” By his words and actions, Carroll attempted to coerce the parties to settlement. Despite his bias against the deputy sheriff, Carroll did not immediately recuse.

In open court and on the record, Carroll prompted the public defender to make the motions to dismiss. The deputy prosecutor objected. With other attorneys, litigants, law enforcement personnel, and members of the public in the courtroom, Judge said:

All right. Because these cases are based on the testimony and work of [deputy sheriff], who has zero credibility with myself or the prosecutor’s office, these – all these cases will be dismissed and any other private counsel who has cases that are based on the testimony of [deputy sheriff],

if he's the sole witness, those cases will also be dismissed... So cases dismissed. And if private counsel has other cases, let me know.

Two private attorneys then came forward, and Carroll dismissed those cases, as well.

Carroll's words went beyond the appearance of impropriety to actual impropriety and attempted to prevent the State of Arkansas, which had a legal interest in the cases, from proceeding with the prosecutions. He stepped into the role of defense counsel rather than allowing the defense to proceed with their own legal arguments in proper hearings and inappropriately claimed to speak on behalf of one of the parties. By failing to follow proper procedures, he did not ensure the proper administration of justice and failed to instill public confidence in the independence, integrity, and impartiality of the judiciary. Whether the parties filed motions to recuse in any of these cases is inconsequential to Carroll's duty to recuse when actual bias is present. He did not recuse from any of the cases involving the deputy sheriff until January 19, 2022.

Judge Carroll admitted to questioning the credibility of the deputy. He said that he had a professional relationship with the deputy when he was the elected prosecutor.

#### Fact Pattern 2 – Attempting to Exert Improper Influence over Arkansas Game & Fish Commission cases in other courts

On April 10, 2021, an officer of the Arkansas Game and Fish Commission (AGFC) cited an individual for a violation of a regulation concerning hunting turkeys over

bait. The citation was assigned to a district court, and the local District Court Judge was the presiding judge over the case.

At some point during the months that followed, Judge Carroll spoke with the District Court Judge. During a phone call, Carroll discussed the AGFC's case in detail. The District Court Judge appropriately recused, and another District Court Judge was assigned to the case, along with a Special Prosecuting Attorney.

During the month of January 2022, Judge Carroll telephonically (by text message and phone call) contacted the Colonel of the Arkansas Game and Fish Commission's Enforcement Division. Carroll referenced two, separate cases and said: "One more ticket that needs to go away before trial." Carroll claimed that the case would be embarrassing for the agency and vouched for the defendant. The Colonel documented the contact and appropriately reported it to Arkansas Game & Fish Commission personnel.

During the week before one of the cases went to trial before the newly assigned district court judge, Carroll contacted the former Director of the Arkansas Game & Fish Commission, the Colonel of Enforcement, the Special Prosecuting Attorney, the defense counsel, and the defendant. He provided the attorneys with an appeals court case citation that he believed pertained to the legality of the Arkansas Game & Fish Commission's authority to search. During the trial, the defense made arguments related to the AGFC's authority to conduct the search in question. At the end of the trial, the assigned District Court Judge entered an acquittal.

### Fact Pattern 3 – Competence and Diligence

Judge Carroll does not routinely make clear docket entries. During the course of certain months, he failed to call his full docket on the record and cancelled court numerous times without appropriate, prior notice to litigants, attorneys, witnesses, or law enforcement employees who had prepared for and travelled to court. Because some of the litigants were criminal defendants who were incarcerated in other counties, Sheriffs' Offices were responsible for transporting those inmates from other counties to ensure their appearance in court. At times, the local jails had to house the inmates while they waited for court. Carroll did not always call their cases in court, and at times, Carroll would cancel court after the Sheriffs' Offices had transported the inmates for court, were in route to get them, or were on the way to court with them. The individual counties finance the transport and housing of these inmates. Additionally, deputy prosecutors or public defenders would at times have to request that Carroll's trial court assistant(s) mail notices to defendants with the new court dates because official orders to appear were not always provided to defendants in court or on the record.

**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 1.3 - Avoiding Abuse of The Prestige of 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 2.2 - Impartiality and Fairness**

*A. A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially.*

*B. A judge may make reasonable accommodations, consistent with the law and court rules, to facilitate the ability of all litigants to be fairly heard.*

**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**

*(A) A judge shall not be swayed by public clamor or fear of criticism.*



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

*(C) A judge shall not convey or permit others to convey the impression that any person or organization is in a position to influence the judge.*

**Rule 2.5 - Competence, Diligence, And Cooperation**

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

...

**Rule 2.6 - Ensuring the Right to Be Heard**

*(A) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law.*

*(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 2.9 - Ex Parte Communications**

*(A) A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties or their lawyers, concerning a pending or impending matter, except as follows:*

...

*(C) A judge shall not investigate facts in a matter independently, and shall consider only the evidence presented and any facts that may properly be judicially noticed.*

### **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, including but not limited to the following circumstances:*

*(1) The judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of facts that are in dispute in the proceeding.*

### **Discussion:**

#### **Dismissal of Cases and Failure to Recuse**

The right to trial in front of a fair and neutral judge is a cornerstone of American jurisprudence. Summarily dismissing cases due to your personal feelings about a witness is a major breach of your duty to the public and undercuts the proper administration of justice. With the robe comes enormous power: you should always strive to set a tone of impartial justice.

Furthermore, when the public sees a judge ignore Constitutional principles and fail to follow appropriate procedures, it creates a distrust of all judges. Fairness is due to both sides in cases. Issues pertaining to credibility of witnesses or the legality of searches conducted by law enforcement are routinely litigated around this state and throughout our nation by prosecutors and defense attorneys. As Justice Benjamin Cardozo stated, "Justice, though due the accused, is due the accuser also."

Any judge who harbors actual bias against a witness or party has a duty to recuse. No one should have to *ask* a judge to disqualify when the judge is unable to be fair. As stated by Justice Louis Brandeis in his dissent in the U.S. Supreme Court

case *Olmstead v. United States*, 277 U.S. 438 (1928), “Our government is the potent, the omnipresent teacher. For good or ill, it teaches the whole people by its example.” By your words and actions, you sent an incorrect message to the public that it is acceptable for a judge to hold actual bias against a witness and summarily rule instead of recusing. Hopefully, the message you resonated can be undone by the public being informed, through this sanction, that your actions were patently improper.

#### Improper Influence on AG&FC cases

The reasonable expectations of the public would certainly include the belief that a judicial officer will not make an overt, *ex parte* attempt to influence the outcome of any case to the detriment of any party. *In Re Joyce and Terrick*, 712 A. 2d. 834 (Pa. Ct. Jud. Disc. 1998). The process is corrupted when it affords politically connected, wealthy well-known members of the community, or those personally close to the judge, access to a different court system than others. This is antithesis to the goal of U.S. jurisprudence – that every person be afforded a fair and neutral magistrate and equal justice under the law. *See In re Stanford*, 53 Cal 4<sup>th</sup> CJP Supp. 1 (2012). The abuse of judicial office to benefit friends or “connected” individuals is one of the most egregious types of judicial misconduct. This is corruption at the core of our system of impartial equal justice and it is intolerable. *See In re Wasilenko*, 49 Cal. 4<sup>th</sup> CJP Supp. 26 (2005).

It is clear you were able to inject beneficial information into cases that were not assigned to you and that you had no business even discussing with the public officials involved. Had there been clear proof that your improper meddling had

affected the rulings in any case, you would have been in jeopardy of removal from office. As is, removal was discussed, and your cooperation, admission of guilt, mitigation, and acceptance of the remedial measures caused the Investigation Panel to recommend a suspension without pay.

Few things are more damaging to the judiciary than stories of special treatment for some and not others. The judiciary in the United States is the envy of the world because of the premise that a neutral judge will decide issues based on the facts and law alone. Your agreement to this sanction and admission that your actions were improper may help repair some public trust. Future, proper conduct will be important in proving that this situation was not a rule but rather an exception. It is vital that your admission and future conduct show you have humbly learned this lesson.

**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 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 came to your docket management. Your misconduct occurred while you were on the bench, in the courtroom (or when you should have been but were absent), or in your official capacity as a Circuit Court Judge.

You did not appear to recognize your problematic activity until several months into the investigation. Only then did you recuse from the cases involving the deputy sheriff against whom you were personally biased. The efforts you have made to change or modify your conduct have occurred since you have been receiving wise counsel from your attorney. You have been on the bench for many years and were previously a prosecuting attorney. During this time, you have received all the benefits of the position of public trust that you have held. You have had access to training, materials, and the advice of court administration professionals, including your judicial colleagues in your district.

There is no evidence that you benefitted monetarily or otherwise from your improper actions in court. However, your actions have had a negative effect on the integrity of, and the respect for, the judiciary. The behavior for which you are being sanctioned is the opposite of what people, whether they are laypeople, law enforcement personnel, or attorneys, 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 institutional legitimacy of the judiciary will be preserved.

**Mitigation and Correction:**

The Panel considered the mitigation information you submitted to them. You have admitted mistakes, accepted sanctions and cooperated with the JDDC staff to reach the resolution of these complaints. You have had a difficult past year with the deaths of your father and an aunt who was like a grandmother to you. You have also had health issues. You have stated that this has been a stressful and humbling experience as you have never been the subject of an ethical sanction in 10 years as a private attorney, 6 years as prosecuting attorney, and almost 10 years as Circuit Court judge. You have pledged that in the future you will be more sensitive to situations that might require your recusal and that you will not intervene on behalf of a party in a case before another Judge. You will also concentrate on adopting better case management practices. In consultation with your fellow Judges in the 13th Judicial District, you voluntarily gave up one of your criminal dockets to avoid any future conflicts with the deputy sheriff who filed an ethics complaint against you, and in exchange, you picked up an additional 25% of

another civil docket. You have voluntarily resigned from your position as Chairman of the Legislative Committee of the Judicial Counsel to devote your full attention to your duties as a Trial Court Judge. You have voluntarily attended a JLAP class, and you have vowed to embrace the remedial measures the JDDC has required you to undertake. You have stated that you are committed to conducting yourself, on and off the bench, in a manner that promotes public confidence in the independence, integrity and impartiality of the judiciary. You have stated that it is your goal in the future to avoid even the appearance of impropriety.

**Conclusion:**

You agree that a Suspension Without Pay is the proper sanction for the violations described in this letter. 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 thirty (30) of those days held in abeyance for one year, having an initial impact of sixty (60) days of suspension without pay. The thirty (30) days are held in abeyance on 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 approved sanction and the length of suspension. Pursuant to Rule 12(D) the 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 the pay-and-benefits effect of the suspension.

### **Remedial Measures**

The measures listed below are part of the agreement made between Judge Carroll and the JDDC. As to the days held in abeyance and 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:

- Any allegations of direct or indirect retaliation or harassment by Judge Carroll towards any of the officials or other witnesses the JDDC interviewed in this case will be fully investigated and are grounds for the filing of a new



complaint and/or revocation of the suspension held in abeyance in this sanction.

- Any false or misleading comments in private or public forums about the basis for the agreement or the investigations would be a violation of this agreement.
- Allow JDDC monitors full access to courtrooms for proceedings, to records kept in his official capacity, and to the staff, as needed.
- Be subject to attendance checks at his office. This may include returning calls when asked or random visits by monitors to make sure he is working and is accessible to court personnel.
- Attend an online class presented by the National Judicial College on judicial ethics and docket management. Classes that would fulfill this requirement will be sent to his counsel by the Executive Director. He needs to attend and provide proof of attendance within 12-months of today.
- Refrain from habits that caused some of the issues mentioned in this letter, including being needlessly absent from his chambers, overuse of his signature stamp, and failing to call the whole docket on the record.

You agree that you committed acts in violation of the Code of Judicial Conduct and that your actions were unethical. You are prohibited from refuting those truths, criticizing this agreed settlement, or otherwise denigrating or disparaging the JDDC investigation, the witnesses or complainants, or the outcome of these cases. You are put on notice that such conduct could be interpreted as retaliatory. Should you make inaccurate comments on the subject matter or the procedures in this case, the Executive Director reserves the right to correct those

inaccuracies through statements to the press or release of documents that at this point are confidential. Confidentiality will be deemed to be waived. Pursuant to the remedial measures attached to this agreement, you will face further suspension and new charges. See Rule 2.16.

Other allegations were not litigated as you agreed to the sanctions and remedial measures in this final action letter. Your admissions are noted in this letter. This concludes the JDDC cases referenced in the subject line of this letter.

This Commission action is public information.

Sincerely,

A handwritten signature in blue ink, appearing to read 'David J. Sachar', written in a cursive style.

David J. Sachar  
Executive Director