



Judicial Discipline & Disability Commission

P R E S S R E L E A S E

POINT OF CONTACT: DAVID SACHAR

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FOR IMMEDIATE RELEASE

May 17, 2013

The Arkansas Judicial Discipline and Disability Commission today announced that an agreed Letter of Reprimand and an agreed Letter of Censure have been issued to 19th Judicial District East Circuit Court Judge Gerald Kent Crow of Carroll County in Commission cases #12-156 and #12-160. A copy of the formal reprimand and a copy of the formal censure against Judge Crow follows this press release.

The Arkansas Judicial Discipline and Disability Commission also announced today that an agreed Letter of Reprimand has been issued to Jacksonville District Court Judge Robert Batton in Commission case #12-303. A copy of the formal reprimand against Judge Batton follows this press release.



Judicial Discipline & Disability Commission

May 17, 2013

Honorable G. Kent Crow
Circuit Judge, 19th Judicial District
124 N. Main St.
Berryville, AR 72616

**Re: Letter of Censure in Case #12-156
Letter of Reprimand in Case #12-160**

Dear Judge Crow:

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 by stipulation:

Undisputed Facts:

- 1) Judge Crow is the full-time Circuit Court Judge for Carroll County, Arkansas.
- 2) Cody Mayes was a defendant in the Circuit Court of Carroll County. The Mayes case began with a traffic stop for alleged traffic violations. Officers arrived and a drug dog alerted on the vehicle. Controlled substances were found during a search.
- 3) The public defender, Robert "Beau" Allen, moved for suppression of the evidence, stating that the officers were there beyond the 15 minute time limit (A.R.Cr.P. 3.1) before they developed reasonable suspicion. The argument was

that the officers didn't have reasonable suspicion until background checks revealed that Mayes and the other occupants had drug crime histories. Allen relied on dispatch logs that showed the background checks didn't come back for 24 minutes. Allen had relied on the dispatch logs several times during his seven years as a PD. The dispatch log had been accepted into evidence in previous local court proceedings.

- 4) After evidence had been presented by the State and the Defense, the judge recessed the suppression hearing. Crow then decided that all the facts had not been presented. He directed that a subpoena *duces tecum* would be drafted and served on a witness who was to provide a dispatch audio tape recording of the traffic stop and documentation.
- 5) The address on the subpoena for production of the documents and audio tapes was the judge's office address. The judge admits that a subpoena was issued at his direction, by his staff. The judge admits that he decided to reopen the testimony and subpoena the missing radio tape. There was no motion by either party to reopen the hearing. The judge admits the case was reopened because he had "substantial concerns" about the testimony and the evidence at the close of testimony on March 13, 2012.
- 6) The subpoenaed transcript and tape were delivered to the judge's office prior to the subsequent suppression hearing on March 22, 2012, by the keeper of the records for the Carroll County Sheriff's Office. Immediately upon the start of the hearing, Judge Crow informed all counsel that he had reviewed the additional evidence in chambers without counsel for either side present. Without taking any additional testimony, the judge made findings based on the information he reviewed in chambers. He stated on the record, "What the Court has found in review of the evidence is that, in fact, the dispatch log is in error; that the officers were, in fact, correct with regard to the sequence of events and the actions that they took."
- 7) During this subsequent hearing, the judge called the responding witness over the objections of both the State and the Defense. The judge displayed aggravation and was confrontational with the attorneys.
- 8) The judge now admits that his actions could be perceived as an independent investigation rather than a permissible action taken based on the court's concern for the discrepancies in the testimony. He admits that a better

procedure would have been to direct the prosecuting attorney to obtain the audio tapes and call the witnesses.

- 9) Robert "Beau" Allen filed a JDDC complaint (#12-160) against Judge Crow on March 29, 2012 alleging, inter alia, the facts in paragraphs 1-7 above. Thirteen days after Judge Crow was notified of that JDDC complaint, the judge sent a letter to inquire about whether the proper paperwork was submitted to allow Allen to hold a concurrent job in Green Forest. The judge states he did not receive all the information that he expected so he further inquired with an FOI request to the Public Defender Commission. The Public Defender Commission responded and stated that Mr. Allen's contract period had ended. He had been operating due to "permission for occasional representation in the Green Forest City Court" and "oral consent for temporary [employment] in Green Forest". Mr. Allen was unable to keep his concurrent job in Green Forest at that time. Allen had been the public defender in Green Forest for over two years.
- 10) Judge Crow was aware that Mr. Allen held the positions concurrently. The Judge had been aware of his dual employment for most, if not all, of Mr. Allen's tenure in Green Forest.
- 11) The judge filed a complaint against Beau Allen with the Supreme Court Committee on Professional Conduct on April 19, 2012, for "misleading the court" in the Mayes matter and attached the testimony and documents that were presented to the Court. Mr. Allen pointed out to the court that he is not required to prove anything or clear up any matter as he represents the defendant. The judge stated on the record that he was considering turning Mr. Allen over to the CPC but did not do so until after he was aware of Mr. Allen's complaint against Judge Crow, filed in the JDDC. The matter is still pending with the Committee on Professional Conduct.
- 12) The judge now admits that his actions could be viewed as retaliatory when taken in the context of the timing of his requests for information and the filing of a JDDC complaint by Mr. Allen.
- 13) In 2009, Clint Blackstone was charged with DWI 4th Offense. DPA David Phillips was prepared to plea Blackstone to DWI 3rd Offense based on the assertion of counsel that one of the prior convictions might not have been taken with counsel present or otherwise with evidence of proper waiver of counsel. Judge Crow stated that he was going to refuse the plea.

- 14) Crow directed his trial court assistant to obtain the District Court docket so that he could determine whether or not the defendant had been represented. The court docket that was obtained by the judge reflected that Mr. Blackstone had been represented by an attorney from Harrison, Arkansas. Crow's trial court assistant called the defense attorney's assistant and advised her of the existence of the record. The next Monday the attorney entered the courthouse and the judge was in the hallway. The judge told the attorney that he had "better get ready for trial". The judge said, "I found the prior conviction, and it's not like you [described] it" in court the week before. The attorney stated that he had no duty to prove anything and he thought it was inappropriate that the judge confronted him. The attorney told the judge that he had relied on his client's statement about the prior conviction and was not obligated to help the State prove the elements of the charge of DWI 4th Offense.
- 15) The judge admits that he is "very familiar with Boone County Judges [where the prior conviction was taken]." Based on his personal knowledge, he had his case coordinator contact the Boone County District Court to inquire about the prior conviction and the proof of representation. The judge characterizes his involvement in the investigation of the prior conviction as "[N]ot an investigation into the elements of the criminal offense. This was an attempt to verify a statement made by counsel which appeared to me to be outside the bounds of any experience I have had with [the Boone County District Court Judge]".
- 16) He describes it as trying to avoid a "complete miscarriage of justice". The judge did not turn the attorneys over to the CPC but claims to have "certainly considered" doing so.
- 17) Other allegations were considered but were explained by the judge, mitigated or dismissed as part of this agreed sanction.
- 18) The judge's actions in paragraphs 1 through 7 violated Canon 1.1, 1.2, 2.8 B and 2.9 C. The judge is reprimanded for this conduct.
- 19) The judge's actions in paragraphs 9 through 11 violated Canon 1.1, 1.2, 2.3 B and 2.16 B. The judge is censured for this conduct.
- 20) The judge's actions in paragraphs 13 through 16 violated Canon 1.1, 1.2, 2.8 B and 2.9 C. The judge is reprimanded 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 2.3 Bias, Prejudice, and Harassment

B) 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 2.8 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.

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.

RULE 2.16 Cooperation with Disciplinary Authorities

(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.

Conclusion:

You have agreed that a reprimand is the appropriate sanction for case #12-160 (the allegations from the Mayes and Blackstone cases) and a censure is the appropriate sanction for case #12-156, for retaliation against an attorney who filed a JDDC complaint against you. Your willingness to accept that your actions

were in violation of the Code and your commitment to be more aware of the issues listed above in the future, have led the JDDC to refrain from recommending a more serious sanction, public charges or a public disciplinary hearing in these two cases.

Retaliating against complainants and witnesses is not appropriate judicial behavior and it affects the public's confidence in the judiciary. Your willingness to make admissions and your promise to avoid such behavior in the future negated a likely recommendation of suspension.

If you violate the terms below 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. The JDDC may take into consideration the fact that you have had these two cases in which the allegations have been substantiated and agreed as Code violations.

The Reprimand for case #12-160 includes the following agreed conditions:

You shall review your docket for any possible conflicts and follow Rule 2.11 as far as notification and disqualification, if necessary.

You shall refrain from issuing orders in cases in which your employees, or their immediate family, are parties.

You shall not entertain *ex parte* communications and will strive to maintain the appearance of separation from law enforcement agencies.

You shall not interfere in cases, step outside the proper judicial role or otherwise engage in conduct that interferes with the orderly administration of justice.

You will endeavor to cooperate with other prosecuting attorneys and defense attorneys to the extent that you can, while maintaining decorum and dignity in your courtroom.

The Censure for case #12-156 includes the following agreed conditions:

You will not, by word, action or implication, give the appearance of retaliatory action against a complainant in a JDDC case.

You will refrain from threatening lawyers with "turning them into the CPC" without clear grounds. You are encouraged to consult with an ethics expert before filing a CPC complaint in the future. Filing complaints against those who complain against you should be done with the greatest of caution.

In view of these circumstances, it is the judgment of the JDDC that you are hereby reprimanded, for case #12-160, and censured, for case #12-156. These public sanctions constitute 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,

A handwritten signature in black ink, appearing to read "David J. Sachar", with a long, sweeping horizontal stroke extending to the right.

David J. Sachar
Executive Director



Judicial Discipline & Disability Commission

May 17, 2013

Honorable Robert Batton
Pulaski County District Court
Jacksonville Division
1414 West Main
Jacksonville, AR 72076

RE: JDDC Case No. 12-303

LETTER OF REPRIMAND

Dear Judge Batton:

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

UNDISPUTED FACTS:

- 1) Judge Batton is the full time District Court Judge for the Jacksonville Division of the Pulaski County District Court.
- 2) Glen Thomas is a resident of Jacksonville, Arkansas. On August 29, 2012, Thomas was the Defendant in a traffic court case before Batton for a charge of driving on a suspended driver's license. This was not the first time Thomas had been in Jacksonville District Court, either as a victim or as a defendant.
- 3) Glen Thomas and his counsel entered into a verbal disagreement at the podium regarding the State's need for a continuance of his case. Thomas grew increasingly louder as the conversation continued between him and his attorney, to the point that he could be heard by all persons inside the courtroom.
- 4) Thomas' attorney asked him to stop talking and Thomas refused; only growing louder as he spoke. Thomas made reference to those around him considering him an idiot and the fact that his attorney told him to "shut up", a statement which is not supported by the recording of the attorney's statements.
- 5) Batton responds to Thomas' statements by indicating that Thomas was acting like an idiot at the present time and commented that Thomas is always argumentative.
- 6) Thomas goes on to say things like "this always happens to minorities."
- 7) Batton responds by stating to Thomas "You're a racist and I'll let the world know it too." As the argument accelerated, reference is made to previous complaints to the JDDC. Batton's response was, "Did they throw that out?"
- 8) Thomas asks Batton to recuse, to which Batton begins to advise the parties to "keep a record of this."
- 9) Batton refers to Thomas' actions as a "tirade," and resets Thomas' case for September 12, 2013.

- 10) Batton says he thinks Thomas is a racist too and that he is prejudice against white people. He then comments for Thomas to "write another letter and take me to Federal Court." Batton also tells Thomas that he is "waiting to deal with" him and adds reference to Thomas' personal life.
- 11) Batton finishes by telling Thomas to "put that in your report."
- 12) As Thomas leaves the courtroom, Batton comments to the audience, "there goes another angry black man."
- 13) Batton admits that he told Thomas he considered him a racist. Batton also admits that he stated "there goes an angry black man."
- 14) Recordings were submitted to the JDDC office and the recordings indicate the language to be "there goes *another* angry black man." Batton admits that his statements may not be "right or proper," but states that Thomas provokes frustration when he comes into Jacksonville District Court. Batton also expressed a desire to vindicate to those in the court that he is not prejudiced against blacks. The recordings, submitted by both Batton and Thomas, clarify any discrepancies represented by either Batton or Thomas, as they occurred in open court.
- 15) All factual allegations of this conversation occurred with a galley full of citizens and or court staff and inflicted damage on the public confidence in the judiciary.
- 16) The judge's actions in paragraphs one (1) through fifteen (15) violated Canons 1.1, 1.2, 2.2, 2.3, and 2.8.
- 17) The judge is reprimanded 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 2.2 Impartiality and Fairness

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

RULE 2.3 Bias, Prejudice, and Harassment

- (B) 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 2.8 Decorum, Demeanor, and Communication with Jurors

- (A) A judge shall require order and decorum in proceedings before the court.
(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.

CONCLUSION:

You have agreed that a reprimand is the appropriate sanction for statements you made in the factual allegations of JDDC Case # 12-303. Your willingness to accept that your actions were in violation of the code and your commitment to be more aware of the issues listed above 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.

Even in the face of provocative, disrespectful comments by a litigant, a judge is required to be an exemplar of decorum and dignity in the courtroom and not allow the proceedings to devolve into an undignified exchange of insults and obscenities. The more offensive a litigant's behavior, the more important it becomes for the judge to act with dignity and restraint.

The robe magnifies words and actions and the judicial office imposes speech and conduct restrictions that would be burdensome to the average ordinary citizen. As with most district courts in Arkansas, the dockets are crowded and may present repetitive litigants before the bench. Judges face people who do not always understand the legal processes, even if represented by counsel. Those litigants may not behave with the same decorum shown by counsel. Even in the face of a litigant who shows outright disrespect for the process and the judge himself, it is the judge's responsibility to control his or her courtroom and to continually treat the litigants and counsel with dignity and respect.

Your willingness to make admissions and your promise to avoid such behavior in the future negated a likely recommendation of a more serious sanction.

If you violate the terms below 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 #12-303, in which allegations have been substantiated and agreed as Code violations.

The reprimand for Case #12-303 includes the following agreed conditions:

- You shall refrain from making racially insensitive comments to any persons in your courtroom at any time.
- You shall maintain restraint in dealings with litigants and/or their counsel before you at all times.

- o You shall disqualify yourself in any and all cases where you feel unable to maintain restraint in dealings with litigants and/or their counsel, before you.

The JDDC will monitor your compliance by sending random observers to your courtroom over the next eighteen (18) months. The observers will report back to the JDDC concerning your demeanor and treatment of litigants in your court. The JDDC may file new allegations against you if your behavior is not in compliance with the Code.

In view of these circumstances, it is the judgment of the JDDC that you are hereby reprimanded, for Case #12-303. 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