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JUDICIAL DISCIPLINE & DISABILITY COMMISSION

IN THE ARKANSAS JUDICIAL DISCIPLINE & DISABILITY COMMISSION

IN RE: DISTRICT COURT JUDGE O. JOSEPH BOECKMANN, JR.
AMENDED STATEMENT OF ALLEGATIONS
JDDC CASE No. 14-310, 312, 313, 314

Comes now, David J. Sachar, Executive Director of the Arkansas Judicial Discipline and Disability Commission, and for his Amended Statement of Allegations against O. Joseph Boeckmann, Jr., states and alleges as follows:

1. Pursuant to Arkansas Rules of Civil Procedure, Rule 15, this amendment relates back to, adopts and incorporates by reference all allegations of the original Statement of Allegations issued on November 17, 2015.

2. It is alleged that Judge O. Joseph Boeckmann, Jr. of the Cross County District Court, by the conduct indicated below, is subject to sanctions pursuant to Rule 9 of the Rules of Procedure of the Arkansas Judicial Discipline and Disability Commission, also codified at A.C.A.§16-10-410(b)(4)(5), for the commission of conduct that is prejudicial to the administration of justice and for willful violations of the Code of Judicial Conduct.

THE CODE OF JUDICIAL CONDUCT

PREAMBLE

[1] An independent, fair and impartial judiciary is indispensable to our system of justice. The United States legal system is based upon the principle that an independent, impartial and competent judiciary, composed of men and women of integrity, will interpret and apply the law that governs our society. Thus, the judiciary plays a central role in preserving the principles of justice and the rule of law. Inherent in all the Rules contained in this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to maintain and enhance confidence in the legal system.

[2] Judges should maintain the dignity of judicial office at all times, and avoid both impropriety and the appearance of impropriety in their professional and personal lives. They should aspire at all times to conduct that ensures the greatest possible public confidence in their independence, impartiality, integrity and competence.

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 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.

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 2.2: 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

(A) A judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice.

(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 2.4: External Influences on Judicial Conduct

(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.

(B) A judge shall cooperate with other judges and court officials in the administration of court business.

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.

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

(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.

CANON 3

A JUDGE SHALL CONDUCT THE JUDGE'S PERSONAL AND EXTRAJUDICIAL ACTIVITIES TO MINIMIZE THE RISK OF CONFLICT WITH THE OBLIGATIONS OF JUDICIAL OFFICE.

RULE 3.1: Extrajudicial Activities in General

A judge may engage in extrajudicial activities, except as prohibited by law or the 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 duties;

(B) participate in activities that will lead to frequent disqualification of the judge;

(C) participate in activities that would appear to a reasonable person to undermine the judge's independence, integrity or impartiality;

(D) engage in conduct that would appear to a reasonable person to be coercive;

(E) make use of court premises, staff, stationary, equipment, or other resources, except for incidental use for activities that concern the law, the legal system,

or the administration of justice, or unless such additional use is permitted by law.

RULE 3.5: Use of Nonpublic Information

A judge shall not intentionally disclose or use nonpublic information acquired in a judicial capacity for any purpose unrelated to the judge's judicial duties.

RULE 3.13: Acceptance and Reporting of Gifts, Loans, Bequests, Benefits, or Other Things of Value

(A) A judge shall not accept any gifts, loans, bequests, benefits, or other things of value, if acceptance is prohibited by law or would appear to a reasonable person to undermine the judge's independence, integrity or impartiality.

SUPPLEMENTAL FACTUAL ALLEGATIONS

1. **Executive Director Sachar incorporates by reference all factual allegations of the original Statement of Allegations as issued on November 17, 2015.**

Compliance with the Law, Canon 1, Rule 1.1 of the Code of Judicial Conduct

Promoting Confidence in the Judiciary, Canon 1, Rule 1.2 of the Code of Judicial Conduct

Upon information and belief, the supplemental factual allegations referenced below may violate one or more provisions of the Code of Judicial Conduct, and may violate one or more provisions of state and federal law. Brevity requires the facts be stated one time. Relevant Code citations may be repeated for reference.

JDDC #14-310 et al., and the subsequent Panel investigation refers to the allegations, based on recorded statements of in-court proceedings and documents and, out of court relationships and documents, wherein the judge is alleged to have improperly acted with undignified and discourteous temperament toward litigants, acted with bias and prejudice toward litigants, and acted in a personal, extrajudicial capacity with litigants before him which would interfere with the proper performance of his judicial duties and should have led to frequent disqualification, as a result of the nature of the relationships he maintains with criminal and traffic defendants before

Cross County District Court. These supplemental allegations incorporate by reference, relate back to and otherwise fully adopt all factual allegations of the original Statement, as specified on pages five (5) through fourteen (14) and filed of record on November 17, 2015.

A. In relation to paragraph nine (9) of the original Statement, additional examples are included below:

1) Victim No. 4, (R.M.) appeared before Boeckmann at Cross County District Court, Parkin Division, on November 6, 2014 for an expired tags traffic ticket he received on July 28, 2014 while driving through Wynne heading to Memphis, TN. R.M. was one of two younger males asked to stay after court to talk to Boeckmann about "community service." Boeckmann relayed to R.M. that he could bring two (2) bags of cans for a charity, which Boeckmann did not name. Boeckmann handed R.M. a piece of paper that had a telephone number hand written on the paper. When R.M. had retrieved the required number of bags of can, he contacted the number on the paper given to him by Boeckmann. The male on the phone gave R.M. an address and R.M. brought the cans to the address provided. The address was Boeckmann's home and as R.M. proceeded to park Boeckmann himself came out from inside the residence. Boeckmann greeted R.M. and asked him to set the bags of cans down near the back door. Boeckmann invited R.M. into his residence. R.M. noticed what appeared to be a bottle of alcohol, specifically either scotch or whiskey open and on the counter. R.M. recalls that Boeckmann was more relaxed than the time of his encounter with him in court. R.M. recalls Boeckmann having approximately three (3) drinks while R.M. was inside Boeckmann's home. R.M. recalls Boeckmann specifically making reference to the fact that R.M. did not have to "pay that $500 for court." R.M. specifically recalls Boeckmann stating he needed to "get a picture" of him before he left, outside if possible. Boeckmann required R.M. to pick up the bags of cans and proceed with him to the backyard area. R.M. reports that Boeckmann photographed him holding the bags of cans and then Boeckmann asked him to take a can from a bag and bend to act like he was picking it up.

At this point, R.M. reports Boeckmann was behind him photographing his backside as R.M. was bending and reaching to pick up the can Boeckmann had asked him to take out. R.M. recalls Boeckmann asking him to "spread my legs further and further apart" as he reached to pick up the can. Boeckmann again says to R.M. something like "are you not glad you did not have to pay that $500." R.M. says he was there for approximately 45 minutes and after the backyard encounter, Boeckmann began to ask him questions about politics, beliefs and his relationships. R.M. believes the conversation shifted to more personal in nature after the pictures were taken. Boeckmann offered R.M. drinks multiple times during this incident and each time R.M. refused. Boeckmann asked at one point inside the home if he could photograph R.M. and R.M. refused the photograph. Boeckmann offered R.M. $300.00 if he would allow Boeckmann to photograph him posing as Michelangelo's Statute of David. R.M. declined each request Boeckmann made to photograph him except for the backyard photo where R.M. was picking up cans he believed he was retrieving for community service toward his fines at Cross County District Court. Boeckmann offered for R.M. to contact him again on his personal cell phone and invited R.M. to stop by at any time. R.M felt uncomfortable and as if he were in danger during the time he remained at Boeckmann's home.

2) Victim No. 5, (A.S.) appeared before Boeckmann at Cross County District Court in 2009, 2010, 2011 and in 2012. Trials were ordered by Boeckmann to be conducted on some cases A.S. had before Cross County District Court. Charges were also dismissed on criminal cases against A.S. by Boeckmann with no reason for the dismissal. The electronic court docket reflects Boeckmann ordered A.S. to remain on a "Time Pay Contract" for certain charges where A.S. was ordered to pay, for example, $50.00 per month until his fine amounts were paid in full. Records reflect, the same "Time Pay Contract" was extended periodically for A.S. at the following times, 12/18/12, 6/20/13, 7/26/13, 8/26/13, 10/09/13, 11/27/13, and 4/28/14. During the last

data entry record of 4/28/14, A.S. was granted an extension to pay through 5/30/14 and there are no records for A.S. beyond that point. A.S. alleges he entered into a personal employment and sexual relationship with Boeckmann in 2013 while the outstanding fines remained due and payable to Cross County District Court. Boeckmann specifically photographed A.S. as he engaged in nude poses, in front of Boeckmann. Boeckmann engaged in sexual contact with A.S. by touching his buttocks area while coercing A.S. to pose nude for photographs. Boeckmann paid A.S. for these photographs. In addition, Boeckmann paid A.S. to handle maintenance jobs for Boeckmann's rental property in and around Wynne. Banking Records from Cross County Bank reflect multiple checks written by Boeckmann from Boeckmann owned accounts to A.S., as well as checks written to state agencies to pay A.S.' child support obligations.

3) Victim No. 5, (A.R.) is a legal minor of driving age and was given a traffic citation by Arkansas State Police where he appeared before Cross County District Court and Boeckmann on June 2, 2014 where his Driving Without a Driver's License charge was dismissed. After A.R. appeared in court, he and his grandmother were met in the parking lot of the District Court by Boeckmann where Boeckmann conveyed a telephone number to the grandmother. A.R. was taken by a friend several days later to Boeckmann's office. Boeckmann took A.R. in his red or maroon Ford F-150 truck and travelled to a cemetery in or near Wynne. A.R. alleges Boeckmann informed him he would "document his community service" by the use of photographs. A.R. alleges Boeckmann instructed him on how to pose as he bent over to pick up cans. At times, A.R. alleges Boeckmann photographed him from behind as he picked up items at the cemetery. After A.R. finished picking up the items, Boeckmann transported him back to his office. During this ride, Boeckmann asked A.R. if he had ever been paddled by his football coach. At some point prior to the end of the encounter, A.R. alleges Boeckmann told

him not to speak of the "brief community service" because it would or could get the judge into trouble.

4) While Boeckmann was serving as a special judge, Victim No. 6 (W.M.) appeared before Boeckmann at St. Francis County District Court in April, 2014 for a misdemeanor charge as a result of a traffic stop on March 25, 2015 while travelling through Forrest City for vacation. Dockets indicate Boeckmann was the judge of record, hearing W.M.'s case, in the absence of the regular district court judge. Boeckmann reduced the charge against W.M. to a lesser included offense and ordered him to pay $250.00 and pick up three (3) bags of cans. Before W.M. left the courtroom, Boeckmann handed to him a piece of paper with his name "Joe Boeckmann" and a telephone number of "870-238-7977" which telephone records indicate is the number to Boeckmann's law firm at 104 Wilson St. N., Wynne, AR 72396. W.M. completed the alleged community service by picking up bags of cans and calling the number provided to him by Boeckmann. Boeckmann directed W.M. to bring the cans to his home in Wynne to which W.M. complied. W.M. brought his mother with him to the residence and when they arrived Boeckmann came outside and greeted them. Prior to their arrival Boeckmann asked W.M. on one telephone call why he was bringing his mother. Boeckmann was dissatisfied with W.M. for bringing his mother along. When W.M. and his mother arrived, Boeckmann explained to the woman that she needed to wait outside while he and W.M. went into Boeckmann's home. W.M. complied and tossed the bags of cans he brought with him over a fence near the backyard. When W.M entered the residence, he immediately noticed what appeared to be a bottle of brown alcohol on the countertop. Boeckmann offered W.M. a "drink" but W.M. declined. Boeckmann then drank the remaining contents of the brown liquid inside the bottle and informed W.M. that he needed to follow him outside into the backyard. Boeckmann informed W.M. that he needed W.M. to pull 2 cans from the bags and bend over as if he were picking up the cans. Boeckmann explained to W.M. that he needed to

photograph him to "prove" he completed his community service. As W.M. was bending to pick up the cans he had already placed inside bags, Boeckmann began to instruct him on how to pose and to spread his legs farther apart. W.M. realized Boeckmann was taking photographs of him bending over and became very uncomfortable. W.M. alleges Boeckmann took approximately eight (8) to ten (10) photographs of him during this encounter; approximately half of the photographs were of W.M. bending over with Boeckmann positioned behind him photographing him from behind, and approximately half of the photographs were forward facing with W.M. holding the bags of cans. W.M. grew increasingly uncomfortable as the encounter continued. When Boeckmann finished, he asked W.M. to reinter his home with him. Boeckmann then asked W.M. to write him a "thank you" letter. Specifically W.M. recalls Boeckmann asking him to indicate how the situation made him feel. W.M. alleges that Boeckmann informed him he could contact him at any time if he ever desired to. To date, W.M. never wrote the "thank you" letter Boeckmann requested. St. Francis County District Court records indicate Boeckmann noted W.M.'s records as "community service completed on May 27, 2015." W.M. maintained a photograph of himself from the trip to Wynne and the photograph is dated May 27, 2015. The disposition signature of the court records for W.M. from St. Francis County District Court bear what appears to be Boeckmann's signature. The comment line of W.M.'s St. Francis County District Court record reads: "CS completed."

5) Witnesses indicate seeing criminal defendants leave Cross County District Court and get into a vehicle with Boeckmann, immediately after appearing before Boeckmann at Cross County District Court. One particular defendant was a legal minor and had just appeared in Cross County District Court for misdemeanor/traffic citations.

6) JDDC received, through valid legal process, multiple photographs of men, approximate ages ranging between 18-40 years of age, who appear to be

holding bags of cans and/or bending over to pick up cans in a residential setting that resembles Boeckmann's residence. Many of the photographs are of the buttocks of what appear to be men. Most photographs are in close proximity of the male subjects, within an estimated six (6) to eight (8) feet from each male. Some photographs are forward facing and some photographs are rear facing and most photographs rear facing display the men as they are bending over or just their buttocks.

7) The above examples and those of the original Statement issued November 17, 2015 exhibit a pattern where Boeckmann enters into inappropriate relationships with defendants from his court. Generally, he appears to act as employer, financer and, on occasion, intimate partner of some defendants appearing before him in the court in which he serves.

B. The original factual allegations of pages five (5) through fourteen (14) of the original Statement issued on November 17, 2015, in addition to the above referenced supplemental allegations, may exhibit violations of the following:

1) **Arkansas Code Annotated §5-52-101, Abuse of Public Trust**

(a) A person commits the offense of abuse of public trust if the person:

(3) Solicits, accepts or agrees to accept any benefit as compensation or consideration for having as a public servant given a decision, opinion, recommendation, or vote favorable to another or for having otherwise exercised his or her discretion in favor of another;

(b) It is not a defense to the prosecution under this section that the decision, opinion, recommendation, vote or use of discretion, except for the benefit was otherwise proper.

(c) Abuse of Public Trust is a Class D Felony.

2) **Arkansas Code Annotated §5-13-208, Coercion**

(a) A person commits coercion if he or she compels or induces another person to engage in conduct from which the other person has a legal right to abstain, or to abstain from engaging in conduct in which the other

person has a legal right to engage, by purposeful conduct designed to instill in the other person a fear that, if a demand is not complied with, the actor or other person will:

(3) Subject any person to physical confinement;

(4) Accuse any person of an offense or cause criminal proceedings to be instituted against any person; or

(b) Coercion is a Class A misdemeanor.

3) **Arkansas Code Annotated §5-14-126, Sexual Assault in the Third Degree**

(a) A person commits sexual assault in the third degree if the person:

(1) Engages in sexual intercourse or deviate sexual activity with another person who is not the actor's spouse, and the actor is:

(C) a mandated reporter under §12-18-402(b) or a member of the clergy and is in a position of trust or authority over the victim and uses the position of trust or authority to engage in sexual intercourse or deviate sexual activity; or

(c) Sexual assault in the third degree is a Class C felony.

Mandated Reporter under Arkansas Code Annotated §12-18-402 (b) (12) is defined as a judge.

4) **18 U.S.C. §1589: United States Code – Section 1589, Forced Labor**

(a) Whoever knowingly provides or obtains the labor or services of a person by any one of, or any combination of, the following means –

(3) by means of the abuse or threatened abuse of law or legal process.....shall be punished as provided under subsection (d).

(b) Whoever knowingly benefits, financially, or by receiving anything of value, from participation in a venture which has engaged in the providing or obtaining labor or services by any of the means described in subsection (a), knowing or in reckless disregard of the fact that the venture has engaged in the providing or obtaining of labor or services by any of such means, shall be punished as provided in subsection (d).

(c) In this section: (1) The term "abuse or threatened abuse of law or legal process" means the use or threatened use of a law or legal process, whether administrative, civil, or criminal, in any manner or for any purpose for which the law was not designed, in order to exert pressure on another person to cause that person to take some action or refrain from taking some action.

(d) Whoever violates this section shall be fined under this title, imprisoned not more than 20 years or both.

C. Upon information and belief, Boeckmann is alleged to have admitted in a public setting at the Cross County Courthouse on November 17, 2015 to paying legal fees to a particular attorney, for that attorney's representation of a particular criminal defendant/victim/witness (D.J.) who was also an employee of Boeckmann since approximately 2014 and who has, at times, been sentenced by Boeckmann for misdemeanor and traffic citations at Cross County District Court, while D.J. was employed by Boeckmann. D.J. remains in the custody of the Cross County Jail, charged with felony level offenses. Additionally, further search of Boeckmann's banking records reveal he paid different attorneys in and around Wynne several thousand dollars. One particular attorney regularly represented employees of Boeckmann and persons Boeckmann had a personal relationship with via Cross County District Court records. Other attorneys, who appear to receive checks from Boeckmann, appeared before Boeckmann on a recurrent basis. Upon information and belief, Boeckmann wrote checks to one attorney allegedly to benefit a ward of that same attorney. This same attorney appears regularly before Boeckmann. This same attorney also received additional checks from Boeckmann for unspecified reasons. Upon information and belief another attorney received checks from Boeckmann for the benefit of a malpractice case the attorney was managing. These allegations are not all inclusive but are examples of the transfer of funds between Boeckmann as a judge in Cross County and attorneys who appear before him regularly. One or more of these allegations may also violate the Arkansas Model Rules of Professional Conduct. Boeckmann admits in his response dated December 15, 2015, that he paid

preset fine amounts for friends and acquaintances, determining in his own mind there to be no conflict of interest.

D. Further examination of the banking records from First National Bank of Wynne and Cross County Bank, indicate multiple checks written on accounts owned by Boeckmann to Cross County District Court and other contiguous district courts for "employees" of Boeckmann, who had also been sentenced by Boeckmann at various times since January 1, 2009. Additionally, bank records reveal Boeckmann regularly gave money to persons appearing before him at Cross County District Court, either as misdemeanor/traffic defendants or as felons bound over to Cross County Circuit Court. By way of example only, a cross section comparison of six random defendants who were alleged employees of Boeckmann while appearing before him at Cross County District Court, reveal those same defendants received in excess of $30,000.00 from accounts owned by Boeckmann.

E. Multiple docket entries received from the Cross County District Court, list "Joseph Boeckmann" as the employer for some litigants he served as judge over in that court.

F. Upon information and belief and by way of example only, in excess of ten (10) defendants are shown to have had appearances in Cross County District Court in front of Boeckmann and after appearing, or close in time to their appearance before Boeckmann, they began receiving checks from one of Boeckmann's bank accounts. These checks, numbering in excess of one hundred (100), vary in amounts ranging from $50.00 to $1000.00 and were issued to these individuals while their charges were either pending before Cross County District Court or their sentences were pending before Cross County District Court. It is further alleged that Boeckmann paid child support obligations for some of these same defendants who appeared before him.

G. Verizon and AT&T records indicate Boeckmann engaged in multiple telephone communications with witnesses being interview by Commission staff, including but not limited to the following example: Victim/Witness, M.P., was interviewed via telephone by investigators on September 16, 2015. This same witness either initiated or received fourteen (14) calls from a cellular phone owned and operated by

Boeckmann through Verizon wireless between the morning of September 15, 2015 and the evening of September 16, 2015. Between the original telephone statement with Commission staff on September 16, 2015 and October 27, 2015, Boeckmann had in excess of twenty (20) telephone calls as reflected in the Verizon records, with this same witness. This same witness appeared before Boeckmann at Cross County District Court, in 2010, for 2009 misdemeanor charges, represented by an attorney in Wynne who has received several thousand dollars from Boeckmann, written in checks owned by Boeckmann on accounts at First National Bank of Wynne. This same Victim/Witness has received multiple checks from Boeckmann since his first appearance before Boeckmann as Cross County District Court Judge.

2. All conduct references above are examples of behavior that may constitute violations of the Code of Judicial Conduct, Arkansas Criminal Law and Federal Law. The examples are not all inclusive. As discovery continues the allegations may be further amended.

CONCLUSION

The above allegations, if proven, will be willful misconduct by clear and convincing evidence, and would constitute conduct that is prejudicial to the administration of justice. Relevant Canons include: Rule 1.1, 1.2, 1.3, 2.1, 2.2, 2.3, 2.4, 2.5, 2.8, 2.11, 2.16, 3.1, 3.5 and 3.13. The judge may be subject to any of the sanctions listed in Rule 9(I) or (J) of the Rules of Procedure of the Judicial Discipline & Disability Commission.

Pursuant to Rule 8F of the Rules of Procedure of the JDDC, Judge Boeckmann has thirty (30) days to respond to these allegations and file an answer with the JDDC. A formal public disciplinary hearing will be scheduled and conducted pursuant to Rule 9 of the Rules of Procedure of the Judicial Discipline & Disability Commission.

Prepared by Emily White, Deputy Executive Director, at the direction of the Executive Director.