Judicial Discipline & Disability Commission

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DAVID J. SACHAR
EXECUTIVE DIRECTOR

PRESS RELEASE

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FOR IMMEDIATE RELEASE

March 21, 2014

The Arkansas Judicial Discipline and Disability Commission today announced that an agreed Letter of Admonishment has been issued to the Craighead County District Court Judge of the Jonesboro Division, Judge Keith Blackman of Craighead County, in Commission cases #09-345 and #10-361. A copy of the admonishment against Judge Blackman follows this press release.

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March 21, 2014

Honorable Keith Blackman
Jonesboro District Court Judge
401 West Washington
Jonesboro, AR 72401

RE: JDDC Case No. 09-345 and 10-361

LETTER OF ADMONISHMENT

Dear Judge Blackman:

You were alleged to have committed violations of the Code of Judicial Conduct in the above referenced cases. The following facts comprise the conduct involved in the allegations, which the Commission agrees is conduct that falls short of cause for formal discipline, but is conduct warranting disapproval by the Commission. You agree the conduct violates the Code of Judicial conduct and is no longer alleged but proven:

UNDISPUTED FACTS:

1) Judge Keith Blackman (*hereinafter referred to as "Blackman"*) is a full time District Court Judge for Craighead County, Arkansas, assigned to the Jonesboro Division.
2) JDDC Case No. 09-345 and 10-361 are of a similar nature. One filed by the Executive Director of the Commission and one filed by a citizen of Craighead County, Arkansas. Both cases involve the same alleged conduct.
3) After taking office as Craighead County District Court Judge, on January 1, 2005, Blackman began instituting a $35.00 fee against certain defendants, for changing a plea from "not guilty" to "guilty."
4) Blackman initially called this fee a witness fee under an interpretation of *Ark. Code Ann.* §16-43-801 together with *Williams v. State*, 304 Ark. 279, 801 S.W. 2d 296 (1990).
5) After some number of months of incorporating this "witness fee," Blackman changed the title from witness fee to "contempt fee," in accordance with an interpretation of *Ark. Code Ann.* §16-10-108, *Burradell v. State,* 326 Ark. 182, 931 S.W.2d 100 (Ark. 1996), and *Carle v. Burnett*, 311 Ark. 477, 845 S.W.2d 7 (Ark. 1993).

6) Blackman alleged the basis for the contempt fee was the act of changing one's plea from "not guilty" to "guilty" in open court. This change of plea allowed the Court to act on this "open court" action and institute a contempt fee.
7) Blackman indicated the reasoning for this contempt fee was to dissuade defendants from "abusing the legal process by causing untold hours of work and attendance of witnesses and court and law enforcement personnel." Additionally, Blackman commented on how defendant's actions caused "many dollars to be expended in the preparation of subpoenas and other paperwork and service of subpoenas and transportation and loss of work for witnesses required to appear."
8) Finally, Blackman commented on how the "duplicity of re-docketing such cases and having to handle them a second time in court extended the time in court."
9) In an illegal exaction case prompted by this practice, the circuit judge enjoined the contempt fee as improper and without legal basis, and ordered restoration of the fees paid by the defendants in the district courts where the fees were imposed. The circuit court case resulted in summary judgment against the county for Blackman's actions. Return of the fees was calculated upon remand from the Arkansas Supreme Court in an opinion delivered on January 27, 2011. Judgment became final, and the fees collected were repaid to those making claims.
10) Blackman's conduct failed to recognize the cloak of innocence on every criminal defendant and the State's burden to prove the guilt of every person it charges.
11) Blackman acknowledges his decisions were based on an incorrect interpretation of the law.
12) As a judge, Blackman is charged with upholding the law; promoting confidence in the independence, integrity and impartiality of the judiciary; ruling fairly and impartially; performing the obligations of the judicial role with competence, diligence and cooperation among persons in the Court; and finally, ensuring that every person who appears before the Court has a right to be heard.
13) Blackman's actions in paragraphs one (1) through ten (10) violated Canons 1.1, 1.2, 2.2, 2.5 and 2.6.
14) Blackman has been open and candid with his communication regarding his reasons for this action. He has been cooperative and honest with the Commission in compliance with Canon 2, Rule 2.16.
15) Blackman is admonished for this conduct.

RELEVANT AUTHORITY:

The Judicial Discipline and Disability Commission ("JDDC") determined, and you agree, that the above described conduct 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, COMPETENTLTY, 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 2.5 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 2.6 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 the 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 2.16 Cooperation with Disciplinary Authorities

A judge shall cooperate and be candid and honest with the judicial and lawyer disciplinary agencies.

Good Faith Legal Error May Rise To The Level of Misconduct

The Scope of the Code of Judicial Conduct clearly shows an interest in this agency interfering in cases of "judicial error." As Section 5 of the Scope states, "the rules of the Arkansas Code of Judicial Conduct are rules of reason that should be applied consistent with constitutional

requirements, statutes, other court rules, and decisional law, with due regard for all relevant circumstances. The Rules should not be interpreted to impinge upon the essential independence of judges in making decisions." This is also reiterated in the 3rd Comment to Rule 2.2 of the Code, which says: "[3] When applying and interpreting the law, a judge sometimes may make good-faith errors of fact or law. Errors of this kind do not violate this Rule." However, this agency has disciplined judges for legal error as misconduct in the past. See *Arkansas Judicial Discipline and Disability Commission v. Honorable Willard Proctor, Jr., 210 Ark. 38, pg. 31-37 (January 25, 2010).*

Four factors are generally considered when analyzing error as potential judicial misconduct:

(A) Is the error a solitary event or part of a pattern;

(B) Is the error egregious in nature (i.e. denying individuals their basic or fundamental rights);

(C) What was the judge's motive (was it intentional or a mistake) and;

(D) Is there an appellate remedy readily available for those who are affected. *Judicial Conduct and Ethics, 4th Edition, James J. Alfini (2007), The Line Between Legal Error and Judicial Misconduct: Balancing Judicial Independence and Accountability, Cynthia Gray, Hofstra Law Review, 32:1245 (2004), In Re Schenck 870 P.2d 185 (Or. 1993).*

SANCTION:

You agree that an admonishment is the appropriate sanction for your actions in JDDC cases #09-345 and #10-361. An admonishment is more corrective than an Informal Adjustment. It is for conduct that also falls short of conduct that is cause for formal discipline, but is an expression of disapproval of a judge's conduct. An admonishment may contain a proscription to follow a corrective course of conduct and may direct professional treatment, counseling or assistance if warranted. *Rule 9, Rules of Procedure of the Arkansas Judicial Discipline and Disability Commission.* Additionally, your cooperation with the Commission, your willingness to cease the collection of said fees and your open and candid communication regarding the reasons for your actions were considered by the Commission as mitigating circumstances to the conduct. The fact that you have never previously been disciplined by the Commission, your willingness to accept that your actions were in violation of the Code and your commitment to be more aware of these issues in the future have led the JDDC to refrain from recommending a more serious sanction, public charges or a public disciplinary hearing in this case. Additionally, your commitment to refrain from this type of future action was considered a mitigating circumstance and, as such, the JDDC recommends an admonishment.

By instituting this investigation and recommending this sanction, the JDDC wishes to prevent potential prejudice to future litigants and the judiciary of this state in general. *In re Laster, 274 N.W.2d 742 (Mich. 1979); In re Lichtenstein, 685 P.Wd 204 (Colo. 1984).* Your role as a judge takes precedence over all other roles. Every individual charged by the State of Arkansas with violating the law wears a cloak of innocence until proved otherwise by the State or charging party. Defendants have a right to change their plea at any time before the submission of the facts

of their individual case to the fact finder. The judicial robe magnifies actions and the judicial office imposes conduct restrictions that would be burdensome to the average ordinary citizen. Your willingness to make admissions of wrongdoing and your promise to avoid such behavior in the future negated a likely recommendation of a more serious sanction.

If you violate the terms above or have additional violations of the Code, the JDDC may initiate a new investigation under the Rules of Procedure of the Judicial Discipline & Disability Commission. In any future proceeding, the JDDC may take into consideration the fact that you have had Case No. 09-345 and 10-361, in which allegations have been substantiated and agreed as Code violations.

CONCLUSION:

In view of these circumstances, it is the judgment of the JDDC that your conduct is hereby admonished for Case No. 09-345 and 10-361, jointly. This public sanction constitutes adequate discipline and no further action is warranted.

This Commission action is public information.

Sincerely,

David J. Sachar
Executive Director