



Judicial Discipline & Disability Commission

JUDGE KIRK JOHNSON
CHAIRMAN

323 Center Street • Suite 1060
Little Rock, AR 72201
(501) 682-1050 • Fax: (501) 682-1049
E-Mail: jddc@arkansas.gov

DAVID J. SACHAR
EXECUTIVE DIRECTOR

PRESS RELEASE

POINT OF CONTACT: Special Counsel, J. Brent Standridge

PHONE: 501-315-5292

FOR IMMEDIATE RELEASE

November 21, 2018

The Arkansas Judicial Discipline and Disability Commission has ruled on Motions to Dismiss and promulgated the attached order in relation to JDDC Cases: 17-181, Supreme Court Chief Justice John Dan Kemp; 17-182, Supreme Court Justice Robin Wynne; 17-183, Supreme Court Justice Courtney Goodson; 17-184, Supreme Court Justice Josephine Hart; 17-185, Supreme Court Justice Shawn Womack; 17-186, Supreme Court Justice Karen Baker; 17-187, Supreme Court Justice Rhonda Wood.

The Motion to Dismiss was heard and decided at the JDDC's regular bi-monthly meeting held November 16, 2018. The JDDC made its ruling on the pleadings that were presented. Counsel for the parties were not present.

Formal dismissal letters will be sent to each of the justices. The attached order resolves the above listed seven (7) cases pending before the Commission.

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IN THE ARKANSAS JUDICIAL DISCIPLINE & DISABILITY COMMISSION
DISABILITY COMMISSION**IN RE:****SUPREME COURT CHIEF JUSTICE JOHN DAN KEMP;****SUPREME COURT JUSTICE ROBIN WYNNE;****SUPREME COURT JUSTICE COURTNEY GOODSON;****SUPREME COURT JUSTICE JO HART;****JDDC CASE NOS. 17-181-17-187****SUPREME COURT JUSTICE KAREN BAKER;****SUPREME COURT JUSTICE RHONDA WOOD;****SUPREME COURT JUSTICE SHAWN WOMACK****RESPONDENTS****ORDER**

On November 16, 2018, during the regular meeting of the Arkansas Judicial Discipline and Disability Commission (the "Commission"), the Commission considered the pending motions to dismiss by various members of the Arkansas Supreme Court ("Respondents") in response to Statements of Allegations filed by the Commission Investigative Panel alleging violations of the Judicial Code of Conduct. Based on the pleadings filed herein, the Commission makes the following findings:

1. Respondents' request for oral argument on the motions to dismiss is hereby DENIED based on the Commission's belief that there are no facts in dispute and the filings in the matter have sufficiently addressed the legal issues. Furthermore, the Commission has thoroughly considered, analyzed and discussed these issues and can correctly and fairly rule on the motions without oral argument.

2. This matter comes before the Commission as the result of a Complaint filed by Circuit Judge Wendell Griffen of the Sixth Judicial District, alleging that Respondents violated the canons of judicial ethics by improperly ruling on a petition for an extraordinary writ without giving Judge Griffen sufficient notice and an opportunity to be heard and that Respondents engaged in *ex parte*

communications with the Office of the Arkansas Attorney General. The complaint stems from Respondents forbidding Judge Griffen from hearing all civil and criminal cases that involve the death penalty or the state's execution protocol. *See Statement of Allegations* at 1. Thereafter, in accordance with Discipline and Disability Rules Rule 1F, the complaint was assigned to an Investigative Panel that, after investigation filed a Statement of Allegations, pursuant to Discipline and Disability Rule 8, finding probable cause to believe that the Respondents violated the Arkansas Code of Judicial Conduct by not giving Judge Griffen sufficient notice and ability to respond to the extraordinary writ filed with the Supreme Court. *D.* at 7. The Investigative Panel did not find probable cause that any improper *ex parte* communications occurred. *See Statement of Allegations* at 10.

Except for Respondent Justice Courtney Goodson, all Respondents filed motions to dismiss the Statement of Allegations due to, among other things, the Commission's lack of subject matter jurisdiction.

3. Subject-matter jurisdiction is the power of the court, and in this case, the Commission, to hear and determine the subject matter in controversy between the parties. *Jonesboro Healthcare Center, LLC v. Eaton-Moery Environmental Services, Inc.*, 2011 Ark 501, 385 S.W.3d 797 (2011). Subject-matter jurisdiction cannot be conferred on a [Commission] by consent of the parties, *Priest v. Polk*, 322 Ark. 673, 912 S.W.2d 902 (1995), or by waiver *Pederson v. Stracener*, 354 Ark. 716, 128 S.W.3d 818 (2003). Rule 6 of the Discipline and Disability Rules ("Rule 6") establishes the jurisdiction of the Commission, stating in pertinent part: "The Commission shall have jurisdiction over any "judge" regarding allegations of misconduct or disability, pursuant to the limitations set forth below." One of those limitations to Rule 6 is set forth in subsection (B), which states:

B. *Distinguished from Appeal.* In the absence of fraud, corrupt motive or bad

faith, the Commission shall not take action against a judge for making findings of fact, reaching a legal conclusion or applying the law as he or she understands it. Claims of error shall be considered only in appeals from court proceedings.

4. Moreover, the Arkansas Constitution, specifically Amendment 80, gives general superintending authority and control over all the courts of this state to the Arkansas Supreme Court. *Parker v. Crow*, 368 S.W.3d 902, 206 (Ark 2010). In dismissing an action filed by Judge Griffen against the Arkansas Supreme Court related to this same matter, the U.S. Court of Appeals for the Eighth Circuit, in its analysis of Judge Griffen's claim that the Arkansas Supreme Court violated his due process rights by depriving him of his "constitutionally-protected property interest in his ability to discharge" his duties as a judge, held, that "[t]o state a claim for procedural due process, a plaintiff must show 'a deprivation of life, liberty, or property without sufficient process.'" *In re Kemp*, 894 F. 3d 906, 908 (8th Cir. 2018), and that "[a] protected property interest must be derived from a source independent of the Constitution, such as state law." *Id. citing Buchanan v. Little Rock Sch. Dist. of Pulaski Cty.*, 84 F.3d 1035, 1038 (8th Cir. 1996). The Court went on to cite the *Ark. Const. amend. LXXX* in finding that there was no violation of Judge Griffen's due process rights in the Arkansas Supreme Court's decision to remove all civil and criminal cases related to the death penalty from Judge Griffen because he "has no right to hear specific categories of cases." *See Ark. Const. amend. LXXX*, § 6 (establishing circuit courts "as the trial courts of original jurisdiction of all justiciable matters not otherwise assigned pursuant to this Constitution," but not establishing that a particular judge has a right to hear specific cases); *Ark. Const. amend. LXXX* § 4 ("The Supreme Court shall exercise general superintending control over all courts of the state."); *Parker v. Crow*, *supra* ("Superintending control is an extraordinary power that is hampered by no specific rules or means."). *In re Kemp*, at 908.

5. Because the Statement of Allegations against Respondents does not find any fraud,

corrupt motive or bad faith in the actions of the Arkansas Supreme Court, which led to the complaint, and Amendment 80 of the Arkansas Constitution gives general superintending authority and control over all the courts of this state to the Arkansas Supreme Court and does not give Judge Griffen, or any judge, a property interest in being able to hear a specific category of cases, the Commission hereby finds that the action taken by the Arkansas Supreme Court in removing all death penalty cases from Judge Wendell Griffen's case assignments was a legal conclusion or application of the law within the purview of the Arkansas Supreme Court and, thus, pursuant to Rule 6B and the Arkansas Constitution, the Commission does not have subject matter jurisdiction to hear this matter.

6. Respondents' motions to Dismiss are hereby GRANTED, which shall inure to the benefit of Respondent Justice Goodson.

7. With the disposition of this matter based on lack of jurisdiction, the Commission finds the remaining arguments raised by Respondents in support of their motions to dismiss, moot.

AT THE DIRECTION OF THE COMMISSION: IT IS SO ORDERED.

/s/ Marie-Bernarde Miller
Judicial Commission Counsel

DATED: November 21, 2018