THE SUPREME COURT OF ARKANSAS

JUDICIAL DISCIPLINE AND DISABILITY COMMISSION **PETITIONER**

v. **CASE NO. 14-_____**

MICHAEL MAGGIO, CIRCUIT JUDGE **RESPONDENT**

PETITIONER'S REPORT OF UNCONTESTED SANCTION

TO THE HONORABLE SUPREME COURT:

PETITIONER, JUDICIAL DISCIPLINE AND DISABILITY COMMISSION, by and through its attorneys of record, David J. Sachar and Emily White, respectfully presents this court with an uncontested report, and states:

1. Pursuant to Rule 12D of the Rules of Procedure of the Judicial Discipline and Disability Commission, the following report is presented to this Court. No briefs are to be filed and the Court shall review the findings and recommendations of the Commission.
2. Respondent is represented by Lauren White Hamilton and Traci LaCerra of North Little Rock, Arkansas. Judge Maggio, with advice of counsel, has agreed that a suspension with pay, from the date of this Court's mandate until the end of his current term, is an appropriate sanction for the conduct in Fact Patterns 3, 4 & 5 of JDDC Complaint No. 14-136, and that a removal from judicial office is an appropriate sanction for his conduct in Fact Patterns 1 & 2 of Complaint

No. 14-136. Respondent understands and agrees that this sanction can only be imposed by the Arkansas Supreme Court and that this removal is permanent. *Proctor v. Daniels*, 2010 Ark. 206, (May 3, 2010). Petitioner's Report is sent to the Court for approval and imposition of sanction with approval of all parties.

3. The case was resolved without a Formal Disciplinary Hearing before the Commission. The Investigation Panel unanimously approved the disposition and the regular members of the JDDC voted 8-0 to approve the recommendation of suspension and removal. There are no transcripts, exhibits or other documents that are available to the Court under JDDC Rule 7.

4. Both parties ask the Court to docket this matter for expedited consideration pursuant to Rule 12B of the Rules of Procedure of the Arkansas Judicial Discipline and Disability Commission.

Respectfully submitted,

David J. Sachar, Executive Director
Judicial Discipline & Disability Commission
323 Center Street, Suite 1060
Little Rock, AR 72201
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and

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CERTIFICATE OF SERVICE

I, David J. Sachar, do hereby certify that a true and correct copy of the foregoing Petitioner's Report of Uncontested Sanction has been served upon counsel for Respondent, Lauren White Hamilton and Traci LaCerra, at Hilburn, Calhoon, Harper, Pruniski & Calhoun, Ltd., One Riverfront Place – 8th Floor, P.O. Box, 5551, North Little Rock, AR 72119, via United States mail and electronic mail on this the 6th day of August, 2014.

David J. Sachar

CERTIFICATE OF COMPLIANCE
AND IDENTIFICATION OF PAPER DOCUMENTS
NOT IN PDF FORMAT

Case Name: JDDC v. Michael Maggio
Docket Number: _____
Title of Document: Petitioner's Report of Uncontested Sanction

Certification: I hereby certify that:

I have submitted and served upon opposing counsel an unredacted and, if required, a redacted PDF document(s) that comply with the Rules of the Supreme Court and Court of Appeals. The PDF document(s) are identical to the corresponding parts of the paper document(s) from which they were created as filed with the court. To the best of my knowledge, information, and belief formed after scanning the PDF documents for viruses with an antivirus program, the PDF documents are free of computer viruses. A copy of this certification has been submitted with the paper copies filed with the court and has been served on all opposing parties:

Identification of paper documents not in PDF format:

The following original paper documents are not in PDF format and are not included in the PDF document(s): NONE

David J. Sachar

EXHIBIT 1

Judicial Discipline & Disability Commission

JUDGE JOYCE WILLIAMS WARREN
CHAIRMAN

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DAVID J. SACHAR
EXECUTIVE DIRECTOR

August 6, 2014

Honorable Michael A. Maggio
Twentieth Judicial District Circuit Judge, Division 2
C/O Lauren White Hamilton, Esq.
Hilburn, Calhoon, Harper, Pruniski & Calhoun, Ltd.
One Riverfront Place, Eighth Floor, US Bank Building
P.O. Box 5551
North Little Rock, AR 72119

RE: JDDC Case #14-136

LETTER OF SUSPENSION AND REMOVAL FROM OFFICE

Dear Judge Maggio:

You were alleged to have committed violations of the Code of Judicial Conduct in the above referenced case. The following facts comprise the conduct involved in the allegations, which the Commission found to be violations of the Code of Judicial Conduct and which you agree are no longer alleged but are proven true:

SECTION I: FINDINGS OF FACT AND AUTHORITY

UNDERLYING FACTS:

1. Judge Michael Maggio (*hereinafter also referred to as "judge" or "Maggio"*) is a full time Circuit Court Judge for the 20th Judicial District, Division 2. He has been a Circuit Court Judge since January of 2001. His main office is in Conway in Faulkner County, Arkansas. He has presided over criminal, civil, domestic relations and probate cases during his tenure as a Circuit Judge. Maggio's docket was removed by the Arkansas Supreme Court on March 24, 2014 but he is not currently suspended and is still an elected judge with the full authority of that office.

2. JDDC Case # 14-136 was a complaint filed by the Executive Director, David J. Sachar based on comments made in a public electronic forum called *"www.tigerdroppings.com/"* by an author using the screen name "geauxjudge."

3. JDDC Case # 14-151 was a complaint filed by Rosey Perkins based on rulings in a case styled *Estate of Martha Bull v. Greenbrier Nursing and Rehabilitation Center, et al.* and certain campaign contributions and campaign activities of the judge.

4. JDDC Case # 14-164 was a complaint filed by Robert Gibson and was similar in nature to JDDC Case #14-136. The disposition of that case is to be considered merged into these final sanctions.

5. JDDC Case #14-201 was a complaint filed by Vanessa Burton and was similar in nature to JDDC Case #14-136. The disposition of that case is to be considered merged into these final sanctions.

6. JDDC Case #14-219 was a complaint filed by Joan Leonard and was similar in nature to JDDC Case #14-136. The disposition of that case is considered merged into these final sanctions.

7. JDDC Case #14-225 was a complaint filed by an anonymous source and was similar in nature to JDDC Case #14-136. The disposition of that case is considered merged into these final sanctions.

<u>UNDISPUTED FACT PATTERN NO. 1: Use of Nonpublic Information Acquired in a Judicial Capacity for a Purpose Unrelated to Judicial Duties</u>

1. In January of 2012, Maggio, under the screen name "geauxjudge" commented in a public electronic forum regarding the closed adoption of a child in Faulkner County, Arkansas. The adoption was of a minor child by actress Charlize Theron.

2. This communication was regarding a private adoption that Maggio did not preside over, however did occur in Faulkner County Circuit Court, Division 2, to which Maggio was assigned. The adoption was performed by another judge sitting in place of Maggio on the day in question. Maggio was later informed about the adoption by the substitute judge.

3. Maggio willfully disclosed this nonpublic information via a public electronic forum.

4. Maggio admits that since November 2005, he was the author of all "geauxjudge" posts on the website known as *"www.tigerdroppings.com/"* (a Louisiana State University sports fan forum page with many different subject forums for public comment). Maggio

admits he made posts on the "*www.tigerdroppings.com/*" forums as "geauxjudge" from either his telephone, his personal home computer or the office computer owned by Faulkner County and supplied to his Circuit Court office.

5. Statement occurring on 1/17/12 from a subject thread started by "geauxjudge":

   Re: Charlize Theron adopt a baby today?

   I don't know if right board but I have a friend who is the judge that did her adoption today. It was a single parent adoption. I offered to be the baby daddy. He said she came dressed with long brown wig, oversized clothes, trying to camoflauge her appearance. They took pics but can't be published because closed proceeding. He said she did have an entourage....I know CSB. Just when you hear it on TMZ

   [question back to geauxjudge] *Did she get herself a black baby?*

   Yep.

   [question back to geauxjudge] *Are you a judge as well?*

   Yes

<u>UNDISPUTED FACT PATTERN NO. 2: Inappropriate Statements Concerning Official Duties, Pending Cases and Independent Investigations of Facts Before the Court</u>

1. Beginning in 2005, Maggio, under the screen name "geauxjudge" commented in a public electronic forum regarding a plethora of subjects, opinions and questions.

2. The communications in question were generally in forums entitled "O-T" or "Politics". There were hundreds of other benign comments on sports and other matters.

3. Maggio admits that since November 2005, he was the author of all "geauxjudge" posts on the website known as "*www.tigerdroppings.com/*". Maggio admits he made posts on the "*www.tigerdroppings.com/*" forum as "geauxjudge" from his telephone, his personal home computer or the office computer owned by Faulkner County and supplied to his Circuit Court office.

4. The examples below are a sample of the improper posts by Judge Maggio. Many others have already been in the public's view since press reports on the matter began on or around March 3, 2014.

Commenting on a cases currently in front of the court:

By geauxjudge on 11/4/08 at 12:54 pm (subject thread started by "geauxjudge"):

I have a bunch of trials in 20minutes

I have bunch of public intox cases in 20 minutes and just can't wait to slam the gavel!

By geauxjudge on 8/12/09 at 10:40 am (subject is divorcing because a man is not sexually satisfied; comment edited for length):

... This case is still pending. I send them to mediation... No need to drag the kids into court if can be avoided. I will say I get tired of hearing how the husband works all the time (uhh no kidding how you think the bills get paid); that he had an affair (Ummm... the wife quits or shuts down sex to nothing, becomes unattractive, and non-supportive and then is shocked when he steps out) what did she think was going to happen.... Food and Frickin go a long way to helping a man overlook a lot of BS.

Comments that call in to question the judge's neutrality:

By geauxjudge on 10/12/12 at 3:22 pm [discussing cars and travel]:

yeah. I am looking for a 69 GTO Judge.

I want to put "Guilty" on the license plate.

One of many comments on how the judge wishes to be assigned cases involving attractive women, sexual subject matter and nude or explicit pictures:

By geauxjudge on 1/17/12 at 3:35 pm (subject "Bengals Cheerleader accused of sex with minor"):

Please please please let me get this case... The discovery process would be outstanding

Offering what appears to be legal advice on how to beat a DWI when stopped and possibly over the limit:

By geauxjudge on 12/23/12 at 4:44 pm (subject "To Blow or Not to Blow?"):

You have the right to remain silent... so don't say a word. Don't open your mouth "smell of intoxicants" that is the probable cause for FST. Just hand the LEO your license, insurance and registration. Everything they need to write you the ticket (reason for the stop) is on those papers.

Never say a word. If ordered out of car. Get out and lean against car. Don't move. Yes very possible you will be cuffed and stuffed. But at that time all they have is the violation for the stop.

Refuse the BAC test. Yes another ticket but better than the alternative. In the end the less evidence the best.

That being said 99% of folks on the side of the road all think hey I can "talk my way out".

Of course, the single best advice is don't drink and drive ever. LEO don't play.

<u>Comments that show an independent investigation by the judge about an upcoming case and then a report back to the forum about the pending case:</u>

By geauxjudge on 12/27/12 at 9:45 am (subject thread started by "geauxjudge")

Ok I have a case this afternoon involving "backpage.com"
Seems this may be an issue in a divorce/custody case. I never had any idea about this site. So I just asked a LEO cyber investigator... well this could be interesting. Especially since a lot of subpoenas have been issued. Hey, here I thought it was going to be a slow week.

By geauxjudge on 12/27/12 at 3:40 pm (subject thread started by "geauxjudge")

Update: Hollleeeee Craaaaapppp. Think Maury and Springer together.

Cliff notes: [here the judge comments on the facts of the case presented to the judge earlier in the day.]

Needless to say this was interesting.

Ohhhh and BTW anyone sitting in open court can see and hear these things.

<u>UNDISPUTED FACT PATTERN NO. 3: Inappropriate Gender, Race and Sexuality Related Statements</u>

1. See paragraphs 1 through 4 of Fact Pattern No. 2. The examples below are a sample of the improper posts by Judge Maggio that are germane to this Fact Pattern:

   By geauxjudge on 12/30/09 at 3:11 pm (subject "Let me explain women to the young high schoolers visiting us")

   From my years in the courtroom:

1) *All women have an agenda.*
2) *Women look at 2 bulges on a man A) the front and/or B) the back (wallet).*
3) *As long as either one is big enough they can make do without the other.*

*By geauxjudge on 9/26/12 (subject "*Whats the BEST advice?*")*

3 F Rule: If it Flies, Floats or F::ks ... rent it.

*By geauxjudge on 10/24/11 at 7:09 pm (subject "*Should you be able to legally beat up a friend caught sleeping with your wife?")

His defense attorney can argue defense of wife/chattel
He thought it was rape in progress
And Where are the pics???

By geauxjudge on 11/16/11 at 1:54 pm (subject "Before you Overmarry")

I have found the slender ones to go nuts at 40 right after the boob job.

By geauxjudge on 10/18/11 at 9:32 am (subject "is racial profiling good or bad?")

It depends on if you are the profiler or the profilee

By geauxjudge on 7/13/11 at 5:16 pm (subject "story of an upset free mason")

What about Mexican masons??? I mean that all I ever see laying bricks.

By geauxjudge on 8/16/11 at 11:38 pm (subject "Worst tattoo ever?")

I have never understood why African americans just don't use white ink in their tatoos.

By geauxjudge on 1/15/14 at 4:06 pm (subject "Has anyone here dated an Indian chick?")

Teepee or hotel

By geauxjudge on 1/29/12 at 1:43 pm (subject "Ever been to the Grand Canyon??")

Let's see you taking lady friends to Vegas and you want to see grand canyon??? OT ballers just gamble like Arabs, drink like Indians, and do the humpty-hump like rabbits. But hey you want to go and see the grand canyon. Go ahead.

By geauxjudge on 12/24/13 at 7:58 am (subject "Baby names: where's the line between creative and obnoxious?") [truncated version]

...

I do agree about names may not be predictors of future success but in reality. How many Doctors do you hear named Dr. Taneesha or HaHa? How many bankers do hear named Brylee?

...

By geauxjudge on 2/18/13 at 8:29 pm (subject "February Birthdays at La-A's School")

I have said it before. Names are not necessarily predictors of future success but the name picked does have an impact.

Of course, I just saw Q'TUS cause he da cutest baby I has.

By geauxjudge on 2/26/10 at 1:54 pm (subject "Guys, would you make out with another guy for a million?")

You make a hole in one...Doesn't make you a golfer. But make out with another guy...You a homo.

*You know I make a hole-in-one and it doesn't make me a good golfer BUT you su*k on pecker or take in pooper..... You are a homo/gay.*

By geauxjudge on 2/20/13 at 9:05 pm (subject "Vegas woman arrested for sex with pit bull")

How old was the dog? Hey look if you can have TGGLBS sex then it is just a small step to this.

I wish I could say "I never". But I once had a case where the couple argued over a German Shepard...for this reason.

All of the inappropriate comments by Maggio will not be reiterated. However, others included improper jokes and posts about sex with bi-polar women, suggesting a gift of "lube, beer and blow" (when asked about potential ideas for a wedding present), a non-consensual "rodeo sex"

reference, incest references, how sex with teachers is like trophy hunting for teenage boys and how women make divorce decisions on "emotions" rather than business sense.

UNDISPUTED FACT PATTERN NO. 4: Spoliation of Evidence

1. See paragraphs 1 through 3 of Fact Pattern No. 2.

2. Press reports on the *"www.tigerdroppings.com/"* posts became public via a Little Rock based blog, the Blue Hog Report, the morning of March 3, 2014. By noon that day an official press statement from the JDDC had been disseminated stating that the JDDC had an open and ongoing investigation of the same subject matter that had been made public that morning.

3. Maggio admits that at some point after the March 3, 2014 press coverage, he attempted to delete or edit postings he made on the *"www.tigerdroppings.com/"* forum as "geauxjudge."

4. Examples include a post on "Is Money Really the #1 Problem in Marriages." It was edited to remove Maggio's response entirely on 3/3/14 at 12:14 pm. A post on "Would you wear shorts to a strip club?" was edited to remove Maggio's response entirely on 3/3/14 at 12:15 pm.

UNDISPUTED FACT PATTERN NO. 5: Conflict of Interest

1. Approximately February of 2013, April Mathis, Hot Check Coordinator for the 20th Judicial District Prosecuting Attorney, Cody Hiland came in contact with Judge Maggio. She stated that the judge came to her office and brought a check over for prosecution. The check was written by Todd Rivers, whose ex-wife was the live in girlfriend of Maggio. The check was made out to Rivers' ex-wife and signed over to Mike Maggio. The check was returned for insufficient funds. Todd Rivers had tendered the check to his ex-wife (Maggio's girlfriend) to pay for child support obligations. The check was in the amount of $2500.00.

2. Maggio filled out the usual paperwork to have the Prosecuting Attorney's Office attempt to collect or prosecute the check as a criminal offense. This was the second such check that the judge had brought over for Mathis to handle.

3. At the time, Maggio was assigned 100% of the felony hot check cases in Faulkner County.

4. Maggio asked Mathis to "issue a warrant immediately" for Todd Rivers' arrest. The well-established protocol with hot check cases was for the Prosecuting Attorney's Office to give notice to the violator and wait ten (10) days until any further action is taken. This allows for possible payment of the check with added fines, fees and costs.

5. The judge also told Mathis that there was a concurrent civil body attachment for Todd Rivers. Therefore, if he was picked up on a warrant, he would stay in jail because of his inability to pay for the civil case as well as the criminal hot check charge.

6. Mathis stated that she felt the judge was asking her to break the protocol on his behalf. She denied the request and stated she would have to speak with her supervisor about the situation.

7. Upon being notified by Mathis, Prosecuting Attorney Hiland went to speak with the judge in his chambers along with the chief deputy prosecuting attorney. Hiland informed the judge that what he requested was not proper and that the hot check case would follow the usual protocol. The judge stated that he was misunderstood and there was no more conversation on the matter.

8. The Prosecuting Attorney's Office considered the request to be "inappropriate".

9. The judge called Mathis on the tenth (10th) day to ask if the warrant had been issued for Todd Rivers. Maggio mentioned again that he was aware of Todd Rivers' actions in the civil case and that he was eager to see the warrant be issued and served.

10. While the eventual arrest warrant was signed by another judge, the case was still assigned to Judge Maggio's court with him also listed as the victim. The judge recused on the case without a court appearance by Rivers. However, before recusing the judge did sign a scheduling order on the case which was entered into the public file (Cr-12-1124)

11. The judge made no call or other notification to the Circuit Clerk's Office to inform them of his relationship to the defendant and to ensure the case was not assigned to his docket.

12. Maggio acknowledges the appearance of impropriety was present in this Fact Pattern and that a reasonable person could have questioned the judge's integrity and independence.

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"*):

PREAMBLE

...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.

RELEVENT DEFINITIONS

"Impropriety" includes conduct that violates the law, court rules, or provisions of this Code, and conduct that undermines a judge's independence, integrity, or impartiality. *See Canon 1 and Rule 1.2.*

"Integrity" means probity, fairness, honesty, uprightness, and soundness of character. *See Canon 1 and Rule 1.2.*

"Nonpublic information" means information that is not available to the public. Nonpublic information may include, but is not limited to, information that is sealed by statute or court order or impounded or communicated in camera, and information offered in grand jury proceedings, presentencing reports, dependency cases, or psychiatric reports. *See Rule 3.5.*

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.

Comments to Rule 1.2

[1] Public confidence in the judiciary is eroded by improper conduct and conduct that creates the appearance of impropriety. This principle applies to both the professional and personal conduct of a judge.

[2] A judge should expect to be the subject of public scrutiny that might be viewed as burdensome if applied to other citizens, and must accept the restrictions imposed by the Code.

CANON 2

A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY, COMPETENTLTY, 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.

Comment to Rule 2.3 (as it pertains to the definition of bias and prejudice)

... Examples of manifestations of bias or prejudice include but are not limited to epithets; slurs; demeaning nicknames; negative stereotyping; attempted humor based upon stereotypes; threatening, intimidating, or hostile acts; suggestions of connections between race, ethnicity, or nationality and crime; and irrelevant references to personal characteristics. Even facial expressions and body language can convey to parties and lawyers in the proceeding, jurors, the media, and others an appearance of bias or prejudice. A judge must avoid conduct that may reasonably be perceived as prejudiced or biased.

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...

...

(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.

Comment to Rule 2.9

... The prohibition against a judge investigating the facts in a matter extends to information available in all mediums, including electronic.

RULE 2.10 Judicial Statements on Pending and Impending Cases

(B) A judge shall not make any public statement that might reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court, or make any nonpublic statement that might substantially interfere with a fair trial or hearing.

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.

Comment to Rule 2.16

...Cooperation with investigations and proceedings of judicial and lawyer discipline agencies, as required in paragraph (A), instills confidence in judges' commitment to the integrity of the judicial system and the protection of the public.

CANON 3

A JUDGE SHALL CONDUCT THE JUDGE'S PERSON 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 this 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;
...
(C) participate in activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality;

Comment to Rule 3.1

... Discriminatory actions and expressions of bias or prejudice by a judge, even outside the judge's official or judicial actions, are likely to appear to a reasonable person to call into question the judge's integrity and impartiality. Examples include jokes or other remarks that demean individuals based upon their personal characteristics. ...

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 3.10 Practice of Law

A judge shall not practice law. A judge may act pro se and may, without compensation, give legal advice to and draft or review documents for a member of the judge's family, but is prohibited from serving as the family member's lawyer in any forum.

SECTION II: CONCLUSIONS OF LAW

1. Maggio's willful conduct in Fact Pattern No. 1 violated Canon 1, Rule 1.1.
2. Maggio's willful conduct in Fact Pattern No. 1 violated Canon 1, Rule 1.2.
3. Maggio's willful conduct in Fact Pattern No. 1 violated Canon 3, Rule 3.5.
4. Maggio's willful conduct in Fact Pattern No. 2 violated Canon 1, Rule 1.1.
5. Maggio's willful conduct in Fact Pattern No. 2 violated Canon 1, Rule 1.2.
6. Maggio's willful conduct in Fact Pattern No. 2 violated Canon 2, Rule 2.1.
7. Maggio's willful conduct in Fact Pattern No. 2 violated Canon 2, Rule 2.9 A.
8. Maggio's willful conduct in Fact Pattern No. 2 violated Canon 2, Rule 2.9 C.
9. Maggio's willful conduct in Fact Pattern No. 2 violated Canon 2, Rule 2.10 A.
10. Maggio's willful conduct in Fact Pattern No. 2 violated Canon 3, Rule 3.1 A.
11. Maggio's willful conduct in Fact Pattern No. 2 violated Canon 3, Rule 3.1 C.
12. Maggio's willful conduct in Fact Pattern No. 2 violated Canon 3, Rule 3.10.
13. Maggio's willful conduct in Fact Pattern No. 3 violated Canon 1, Rule 1.1.
14. Maggio's willful conduct in Fact Pattern No. 3 violated Canon 1, Rule 1.2.
15. Maggio's willful conduct in Fact Pattern No. 3 violated Canon 2, Rule 2.1.

16. Maggio's willful conduct in Fact Pattern No. 3 violated Canon 3, Rule 3.1 A.

17. Maggio's willful conduct in Fact Pattern No. 3 violated Canon 3, Rule 3.1 C.

18. Maggio's willful conduct in Fact Pattern No. 4 violated Canon 1, Rule 1.1.

19. Maggio's willful conduct in Fact Pattern No. 4 violated Canon 1, Rule 1.2.

20. Maggio's willful conduct in Fact Pattern No. 4 violated Canon 2, Rule 2.16.

21. Maggio's willful conduct in Fact Pattern No. 5 violated Canon 1, Rule 1.1.

22. Maggio's willful conduct in Fact Pattern No. 5 violated Canon 1, Rule 1.2.

23. Maggio's willful conduct in Fact Pattern No. 5 violated Canon 3, Rule 3.1 C.

SECTION III: DISCIPLINARY FACTORS

The Commission considered all disciplinary factors as outlined by the Arkansas Supreme Court in *Judicial Discipline & Disability Comm'n v. Thompson, 341 Ark. 253* (2000) including:

(a) Whether the misconduct is an isolated instance or evidenced a pattern of conduct;

The judge acknowledges that his postings on *"www.tigerdroppings.com/"* were not an isolated instance, but instead occurred over a period of time. The postings show a pattern of conduct that extends over many years while he was a Circuit Court Judge.

The incidents in fact patterns 4 and 5 were isolated incidents.

(b) The nature, extent and frequency of occurrence of the acts of misconduct;

The judge acknowledges that the postings identified in fact patterns 1, 2 and 3 were inappropriate, unacceptable and in poor judgment. The frequency of the postings was extensive and numerous.

The incidents in fact patterns 4 and 5 were isolated incidents. However, their nature affected faith in the judiciary by destroying evidence and making inappropriate requests in a personal matter.

(c) Whether the misconduct occurred in or out of the courtroom;

The activity would be considered outside of the court room. However, the judge did often make postings at the office and from his office computer. There is no evidence that these postings took place while the judge was on the bench or hearing cases.

The incidents in fact patterns 4 and 5 took place outside the court room.

(d) Whether the misconduct occurred in the judge's official capacity or in his private life;

The statements in fact pattern 2 were made in his official capacity although with the facade of using a screen name to avoid direct detection.

The statements in fact pattern 1 and 3 were made in the judge's private life.

The misconduct in fact pattern 4 was done in the judge's private life.

The misconduct in fact pattern 5 was done to advance private interests but was an inappropriate use of information obtained in his official capacity.

(e) Whether the judge has acknowledged or recognized that the acts occurred;

The judge has acknowledged and recognized that the acts occurred.

(f) Whether the judge has evidenced an effort to change or modify his conduct;

The judge withdrew from an appellate court election, shut down his social media accounts on *"www.tigerdroppings.com/"* and Twitter and began the process of returning campaign contributions.

(g) The length of time of service on the bench;

Judge Maggio served on the Circuit Court bench in Arkansas for over 13 years. He had some prior service as a special municipal judge in Faulkner County.

(h) Whether there have been any prior complaints about this judge;

No prior complaints have resulted in a finding of probable cause to proceed to a formal disciplinary hearing.

(i) The effect the misconduct has upon the integrity of and respect for the judiciary; and

The judge's conduct had a far reaching effect on public perception of the integrity of the judiciary. The statements in fact patterns 1, 2 and 3 made state, national and international news. The Arkansas Supreme Court on March 24, 2014, reassigned the judge's docket to prevent issues with recusal in cases in 2nd Division. The effects of the misconduct are also incorporated in the "discussion" section of this letter. Fact patterns 4 and 5 also have had a negative effect on the respect for judges. The public does not expect their judicial officers to delete evidence or use their office to promote their own personal interests. Respect for the judiciary in general was compromised.

(j) The extent to which the judge exploited his position to satisfy his personal desires.

The judge did not exploit his position except in fact pattern 5. However, regarding fact pattern 1, there is at least a measure of exploitation when a judge uses confidential information to "brag" about having the "scoop" on a noteworthy news item contained in a sealed case file. In fact, the judge used the common internet acronym "CSB" which means "Cool story, bro". CSB is a sarcastic response people use when, for example, a poster presents gossip or tells a story that is off topic or to show off inside knowledge. The judge also stated things such as "just when you hear it on TMZ" to show his eagerness to "scoop" entertainment news.

SECTION IV: DISCUSSION

CONFIDENTIAL INFORMATION

On behalf of the Arkansas Judicial Discipline & Disability Commission, the following comments are addressed to you from the Executive Director. Confidentiality is one of the cornerstones of the legal profession. Every lawyer is taught that it is a fundamental principle to hold inviolate the trust of their client by nondisclosure of confidential communications. This duty is deeply ingrained in our legal system and is uniformly acknowledged as a critical component to the trust that is the hallmark of the client-lawyer relationship. *United States v. Zolin*, 491 U.S. 554 (1989); See also *McClure v. Thompson*, 323 F.3d 1233 (9th Cir. 2003).

Breach of that trust has routinely resulted in severe discipline for attorneys. As a judge, it is at least an equally severe violation. Judges hold confidential information about people who are vulnerable and are given the protection of confidentiality under the law. This is certainly true for most juvenile proceedings as well as closed adoptions.

In this case, you violated the trust of an adopting mother. The case was on your docket and you were informed about the adoption. You had no valid reason to broadcast the information. This resulted in a violation of the faith the people placed in your hands upon taking the oath of your office. It cast doubt on whether information in closed proceedings is ever truly confidential.

SOCIAL MEDIA AND JUDGES

Ironically, you also commented on Electronic Social Media (ESM) in one of your *"www.tigerdroppings.com/"* posts.

> By geauxjudge on 11/15/11 at 10:03 am:
>
> *I can not tell you the amount of information on FB, Twitter, etc. that opposing parties look up.*
> *Not only is your direct info being looked at so are your "friends" info. The Photos that people are in on their friends sites, they are tagged and date stamped. It just amazes me some of the things posted.*

Your statements on line were not anonymous. It took little time once the posts were sorted to find numerous facts in the posts that proved your actual identity. Examples include:

- a sitting circuit court judge;
- someone who lives in Arkansas;
- attended the University of Mississippi law school for two years;
- attended a Catholic high school growing up in Mississippi;
- attended Millsaps College in Mississippi for an undergraduate degree;
- had a daughter who played collegiate golf at LSU;
- the same daughter transferred to Texas A&M;
- father is a medical doctor and more specifically a psychiatrist;
- was appointed to his position by a governor and subsequently won election to his current position;
- the screen name "geauxjudge" was also used on the Arkansas sports site, *Hogville.net* and in those posts "geauxjudge" also talks about information that reveals your identity as Circuit Judge Michael Maggio;

There were dozens, if not hundreds, of other posts identifying you as the poster through context and comments. Additionally, you made no secret that you were in fact a sitting judge and continually commented on your job and your role as a judge. Even your screen name indicated your official position.

There is some protection on ESM when you control the account. A person can shut down their own Facebook or Twitter account. They can also text individuals without broadcasting their comments to the world wide web without constraint. The site *"www.tigerdroppings.com/"* did not require a person to be a member to look at all of your comments. What you actually did was use a pseudonym and identify yourself through context while broadcasting to the public the comments that would ultimately bring you to discipline.

Last year the American Bar Association issued Formal Opinion 462 on *"Judge's Use of Electronic Social Networking Media"*. Electronic Social Media (ESM) is fast becoming a major issue in all types of litigation. Judicial discipline cases are no exception.

All of a judge's social contacts, including ESM, are governed by the requirement that judges must at all times act in a manner "that promotes public confidence in the independence, integrity, and impartiality of the judiciary" and must "avoid impropriety and the appearance of impropriety."

The Arkansas Code of Judicial Conduct requires judges to "*... 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 1.2.* Judges must be very careful and deliberate in their interactions with others, certainly no less when using ESM. The ABA Opinion states that:

> Judges must assume that comments posted to an ESM site will not remain within the circle of the judge's connections.
>
> Comments, images, or profile information, some of which might prove embarrassing if publicly revealed, may be electronically transmitted without the judge's knowledge or permission to persons unknown to the judge or to other unintended recipients.
>
> Such dissemination has the potential to compromise or appear to compromise the independence, integrity, and impartiality of the judge, as well as to undermine public confidence in the judiciary.

Undermining public confidence in the judiciary as a whole is a major factor in your public discipline. Corruption of respect for the judiciary was mentioned by you in a discussion about a judge who lost her temper and yelled at the attorneys in front of her as if they were "children":

> By geauxjudge on 5/27/10 at 2:25 pm:
>
> *I wish I could say that is an isolated incident. Unfortunately, all too common. I truly think all the TV judge shows, Springer, Montel, et al. Along with Judicial Discipline witchhunts and the "rights" of people to disrespect the judicial system have led to a general decay of respect/fear.*
>
> *Of course, this is endemic of society as a whole.*

Your actions have led to "disrespect of the judicial system" and an undermining of public confidence in the judiciary as a whole.

IMPROPER COMMENTS BY A SITTING JUDGE

Judges should maintain the dignity of judicial office at all times. They should aspire to conduct that ensures the greatest possible public confidence in their independence, impartiality, integrity and competence.

Of course a judge must also take care to avoid *ex parte* communications concerning pending or impending matters in violation of *Rule 2.9(A),* and avoid using any ESM site to obtain information regarding a matter before the judge in violation of *Rule 2.9(C).* The ABA Opinion mentioned above also states that "a judge should avoid comment about a pending or impending matter in any court to comply with Rule 2.10, and take care not to offer legal advice in violation of Rule 3.10." These kind of comments (some of which are noted in Undisputed Fact Patten No. 2) are improper and further the end of destroying public trust in the judiciary.

The volume of your comments result in much more than a problem of taste, decorum or personal opinion. It adds up to someone who demonstrates that he is unfit for the bench. Your actions offended and, even worse, gave rise to legitimate concerns that bias would overcome fairness and due process for a large number of potential litigants and their attorneys. Even the cases that you decided based purely on the facts and the law are now suspect by parties who look at the kind of statements you made. Whether it is race, gender, sexual orientation or specific subject matter, your comments made it impossible for you to be taken seriously as a judge who would be fair and impartial. You essentially disqualified yourself from the bench.

CONFLICTS OF INTEREST

Conflicts of interest are common challenges for judges. Particularly since our elected judges were usually previously involved in their legal community as well as having personal and business relationships throughout their jurisdiction. An obvious conflict existed when you were personally involved in Todd Rivers' hot check case. You were, for a time, listed as both the victim and the presiding judge over the case of *State v. Todd Rivers* (CR-12-1124) for a felony violation of the Arkansas Hot Check Law. While you recused on the case you could have easily made sure the case never appeared on your docket. You did enter an order in the case though you did not have Mr. Rivers physically appear in front of you. Even the most elementary ethics analysis should have led you to identify this as a case that you should have had nothing to do with in your official capacity. You should have taken extra care to not appear as if you were exerting the power of your office in a personal matter. Your contact with Hot Check Coordinator, April Mathis, was poor judgment at best and left public officials in the reasonable position of thinking you were asking for special treatment. This is exacerbated by the fact that the prosecuting attorney had cases in your court and the entire hot check docket for Faulkner County Circuit Court was assigned to you at the time.

The timing of the child support case also showed you had knowledge of the situation and chose not to take extra precautions to avoid involving yourself. You had ample time and opportunity

to make sure no one would believe you were using your office to exert pressure on a pending criminal matter that affected you and your girlfriend at the time.

MITIGATION

Your agreement to these facts, findings and sanctions has saved time, expense and further embarrassment to judiciary. You have acknowledged your mistakes and accepted a harsh punishment.

Your time handling the 2nd Division cases ended with some docket issues that stemmed from public knowledge of your statements on the internet. However, prior to that there were no actionable complaints about your efficiency and docket management in general. The Commission recognizes that Faulkner County Circuit Court, Second Division manages a large docket and that you heard thousands of cases as a district court judge, during which time, no allegations rose to the level of actionable misconduct.

Based on the most aggressive litigation schedule and estimated appeal time, you would have remained on the bench until the end of your term. Even under a deliberate pace of litigation it would be difficult to charge, go through the discovery process and try you during 2014. Due Process guarantees and the Arkansas Constitution and the Rules of Procedure of the Arkansas Judicial Discipline & Disability Commission require time to be taken in a judicial discipline case. Then the sanctions, if any, would have been the subject of an appeal. You chose to make admissions and accept the recommendations listed below to the Arkansas Supreme Court. These are among the reasons the JDDC was willing to recommend the separate sanction for your violations of Fact Patterns 3, 4 and 5.

SECTION V: SANCTION

The JDDC has applied the factors in the *Thompson* test to the findings of fact and conclusions of law listed above. You agree, after deliberation with counsel, that the sanctions are appropriate based on the conduct you have stipulated is attributable to you. The following recommendation will be presented to the Arkansas Supreme Court under Rule 12 D (*see Judicial Discipline & Disability Comm'n v. Pope*, 2012 Ark. 373 (October 4, 2012)) as a "Report Not Contested," as you do not challenge or object to the Commission's report.

The effect of these sanctions will also make moot JDDC Case #14-151, concerning certain campaign finance issues and a jury award in a case against Greenbrier Nursing and Rehabilitation Center. The JDDC is aware of the Arkansas Ethics Commission agreed findings as a result of a parallel investigation by that office for the facts included in #14-151. No specific judicial Canon violations were agreed to in that negotiated resolution of June 27, 2014. The JDDC investigation into #14-151 was on-going when you agreed to these sanctions. The case was going to take considerably more time to investigate and posture for a probable cause determination than the case at bar. JDDC #14-151 is concluded with "no finding" due to the

investigation being mooted by the disposition below. Additional case files, JDDC Case #14-164, #14-201, #14-219 and #14-225, were similar in nature to the facts in this case. The basic allegation in each was that your comments on "*www.tigerdroppings.com/*" called into question your rulings by a party who read your gender and/or race related comments. These files are considered closed and merged into any findings by the Arkansas Supreme Court in this case.

For the factual allegations of Fact Pattern 1 and 2:

It is the judgment of the JDDC that your actions justify a recommendation of removal from office pursuant to the authority granted by the Arkansas Constitution, Amendment 66. The removal is effective at the end of business on December 31, 2014. You have agreed this sanction is appropriate. Even though the sanction applies to the time when your term of office is expiring, the declaration of removal has a legal effect. Your removal from office is permanent and prohibits you from holding a judicial office in the State of Arkansas in the future. *Proctor v. Daniels*, 2010 Ark. 206 (May 3, 2010). Removal is necessary in this case to restore and maintain the dignity of the judicial branch of government. This sanction can only be imposed by the Arkansas Supreme Court. An agreed report will be sent to the Court for approval and imposition of the sanction.

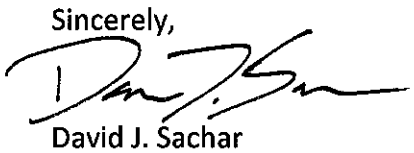
For the factual allegations of Fact Pattern 3, 4 and 5:

It is the judgment of the JDDC that your actions justify a recommendation of suspension with pay pursuant to the authority from the Arkansas Constitution, Amendment 66. You agree that a suspension from office with pay is appropriate. The recommendation is for the suspension to begin upon a mandate being issued by the Arkansas Supreme Court until your removal from office pursuant to the paragraph noted above. The JDDC notes that had you chosen to exercise your right to trial, it would have taken until the end of your term or longer to secure a final verdict. This sanction can only be imposed by the Arkansas Supreme Court. An agreed report will be sent to the Court for approval and imposition of the sanction.

CONCLUSION:

These public sanctions constitute adequate and appropriate discipline and no further action is warranted. A motion will now be filed with the Arkansas Supreme Court pursuant to Rule 12 D of this Commission. This Commission action is public information.

Sincerely,



David J. Sachar
Executive Director