



Judicial Discipline & Disability Commission

JUDGE KIRK JOHNSON
CHAIRMAN

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DAVID J. SACHAR
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P R E S S R E L E A S E

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FOR IMMEDIATE RELEASE

July 11, 2017

The Arkansas Judicial Discipline and Disability Commission today announced the filing of formal charges against Saline County Circuit Judge Bobby McCallister. A Statement of Allegations containing the charges follows this press release.

Judge McCallister will be formally served with charges and given thirty (30) days to respond. The judge is entitled to a hearing before the Judicial Discipline and Disability Commission, wherein all allegations must be proven by clear and convincing evidence. All future pleadings in this case will be public information.

Executive Director David J. Sachar will be available at his office until 1:30 p.m. and by phone throughout the day to provide further information

regarding the schedule of litigation and any other inquiries that can be addressed at this time.

Contact information for Judge Bobby McCallister is as follows: Patrick J. Benca, Benca & Benca, 1311 S. Broadway St., Little Rock, AR 72202, (501) 353-0024 and Traci Lacerra, Lacerra, Dickson, Hoover and Rogers, PLLC, 212 Center Street, 2nd Floor, Little Rock, AR 72201, (501) 476-3064.

Statement of Allegations
JDDC Case #17-145

It is hereby alleged that Circuit Court Judge Bobby D. McCallister of the 22nd Judicial District (1st Division) is subject to sanctions pursuant to Amendment 66 of the Arkansas Constitution and the Rules of Procedure of the Judicial Discipline & Disability Commission for conduct that is prejudicial to the administration of justice, for willful violation of the Code of Judicial Conduct and that this conduct is cause for formal discipline.

Relevant Canons and Rules from the Code of Judicial Conduct:

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.

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:

...

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

Factual Allegations:

1. Bobby D. McCallister is an elected Circuit Court Judge in Saline County, Arkansas.
2. Judge McCallister has constantly served as an elected Circuit Court Judge since January 1, 2009.
3. During divorce litigation in what would become case 63-DR-16-940, Saline County (4th Division), S.K. McCallister v. B.D. McCallister, Bobby McCallister was deposed and gave testimony under oath on September 25, 2015. He also gave sworn testimony in an open hearing in the case on June 6, 2017.
4. During this litigation it was made public that Judge McCallister has failed to properly file income tax returns with the Federal and State government as required by law.
5. Regarding Federal income tax returns, these alleged actions appear to be a violation of 26 U.S.C. § 7203, a Misdemeanor for each offense.
6. Regarding State income tax returns, these alleged actions appear to be a violation of A.C.A. § 26-18-202, a Class D Felony for each offense.
7. Failure to pay taxes, including the very taxes that support Judge McCallister's \$160,000.00 salary is an insult to the integrity of the judiciary and brings the judiciary as a whole into disrepute.
8. Judge McCallister did not respond to the JDDC complaint filed by Executive Director David J. Sachar on March 2, 2017.
9. Judge McCallister did not respond to the 8D Letter (the final letter before the Investigation Panel votes on formal charges) sent by Executive Director David J. Sachar on June 7, 2017. McCallister responded on June 10, 2017.

10. The JDDC Investigation Panel obtained documents, including sworn testimony, which support these allegations. Some of these documents are attached to this Statement of Allegations. Others will be provided to the Judge and/or his counsel upon request. By way of example, some of the information received includes:

a. On September 25, 2015, Judge McCallister was deposed under oath during his divorce litigation. (Note: at that time the case was styled DR-2014-298-2 in Hot Spring County before being moved to Saline County and restyled as stated in paragraph 2, above). During that deposition the judge was asked about personal income taxes. Responses included:

- i. He and his wife filed jointly in 2014.
- ii. He had not filed income tax returns for “most of the years” since 1995. He recalled filing twice during that time period.
- iii. He stated he did not file his first year because he knew he did not have sufficient savings to pay the taxes. He chose not to pay because he “basically panicked.” This could be considered an admission to tax evasion or other felony violations of 26 USC § 7201, et. seq.
- iv. During recent years he had withholdings from his judicial position that may have covered any tax due for that particular year. He still did not file returns. When asked if he had a reason for that behavior he testified, “[n]ot one that makes any sense at all.” [Note: Rule 6 C of the Judicial Discipline & Disability

Commission states that the Commission has jurisdiction over misconduct that occurs prior to becoming a judge.]

b. On June 6, 2017 Judge McCallister gave sworn testimony at an open divorce hearing. During that testimony under oath Judge McCallister was asked about personal income taxes. Responses included:

- i. When asked if he would assume tax liability for past tax years the Judge invoked his 5th Amendment right to refuse to answer.
- ii. When asked if he recalled giving his deposition and acknowledging that he had not filed his taxes, Judge McCallister invoked his 5th Amendment right to refuse to answer.
- iii. When asked if he had made any arrangements or settlement for his tax liability, Judge McCallister invoked his 5th Amendment right to refuse to answer.
- iv. When asked about his current tax liability amount, Judge McCallister invoked his 5th Amendment right to refuse to answer.
- v. When asked if he presented any returns to his wife to read and sign, Judge McCallister invoked his 5th Amendment right to refuse to answer.

c. The Judge's spouse also testified under oath at the June 6, 2017 hearing and a previous open hearing on February 23, 2017. When asked about personal income taxes she stated:

- i. She was found to be an "innocent spouse" for all but one tax year. She has no tax liability remaining.

- ii. Judge McCallister did not disclose the tax issues to his wife. She gave him her tax information and trusted him to file the returns. She discovered the issue of failure to file individual tax returns during depositions in the divorce case as well as finding unopened letters from tax authorities in a box in her garage. After that she hired her own accountant and began to file her own taxes and settle any amount she may owe.
 - iii. She filed her own tax return in 2006 through 2013. In 2014 they filed jointly and she has continued to file on her own in 2015 and 2016.
- d. The JDDC issued a subpoena for state income tax information filed by Bobby D. McCallister since tax year 2009 (the year he became a Circuit Court Judge). The certified information returned from the Arkansas Department of Finance and Administration included an individual 2016 tax year return, a 2014 joint tax year return and an affidavit stating that those were “the only documents and records maintained in their files... which are responsive to the subpoena.”
11. The records and testimony appear to show that the judge has filed no more than four (4) tax returns in the last twenty-two (22) tax years. As the judge has yet to respond there is no credible evidence to deny this allegation.
12. *Arkansas Business* has reported that the judge owes more than \$104,000.00 in Federal tax liens. The liens cover taxes from 2000-2002 and 2005-2008. The judge was in private practice during those years. *Arkansas Business* claims to have 80,000+ readers per issue and 50,000+ e-newsletter subscribers. The coverage of this story led to many other print and online

news agencies reporting on the issue. (see online article by journalist Mark Friedman on June 13, 2017).

13. KLRT reported that the judge invoked the 5th Amendment during his divorce proceeding questioning. The reporter requested and received the transcript of the hearing through a Freedom of Information Act request. KLRT is a statewide Fox affiliate and a media partner with other stations and print media. The coverage of this story led to many other television news agencies reporting on the issue. (see online article and video by reporter Marci Manley, June 13, 2017).

14. A Special Prosecuting Attorney and a Special Circuit Judge have been assigned to handle any potential State criminal case against Judge Bobby McCallister. The JDDC Executive Director referred the matter to State and Federal prosecutors pursuant to Rule 7 C(7).

The above listed allegations were found to be supported by probable cause by JDDC Investigation Panel 1. This Statement of Allegations is public information and will be served on the respondent judge. Prepared by Executive Director David J. Sachar at the direction of Commissioners Lindsey, Terry and Bassett.

Attachments include:

- A. Portions of testimony from June 6, 2017.
- B. Portions of testimony from February 23, 2017.
- C. Portions of the deposition of Judge Bobby D. McCallister on September 25, 2015.
- D. Cover Letter from the Department of Finance and Administration in response to the JDDC's subpoena.

1 (QUESTIONING BY MR. CRAWFORD OF MS. McCALLISTER)

2 Q. All right. So you become aware at some point during
3 the divorce of tax problems, have you not?

4 A. Yes.

5 Q. What have you learned from conversations and from the
6 deposition of your husband?

7 A. Well, I learned first of all that we had not paid
8 taxes starting off at three years and then I learned from
9 another deposition we hadn't paid taxes for ten years,
10 then I learned it was further on it kept on getting worse
11 and worse and then I learned there were liens on the house
12 for some tax years. I went to the saline county land
13 documents. That's when I found out that the house
14 actually had some liens on it. And then I talked to the
15 IRS and.

16 Q. Don't tell me what the IRS said.

17 A. I got an innocent spouse thing done. Do I go there
18 or not?

19 Q. You have found to be an innocent spouse by the IRS?

20 A. Yes I have been found not eligible for the year,
21 2000. That's the one year I was on something --

22 Q. You started filing your own taxes --

23 A. Yes.

24 Q. -- at some point during the separation?

25 A. Yes. Paid an accountant with some money that's

EXHIBIT

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Valarie D. Flora, CCR, RPR
501.303.1584

1 probably.

2 Q. What tax years have you filed?

3 A. Let's see. 2000 -- let's see, 2006, 7, 8, 9, 10, 11,
4 12, 13, we did 2014 together. 2015 by myself. 2016 I
5 think I'm pretty caught up. Actually I don't owe anybody
6 any money they probably owed me money but because it was
7 so late I never got any o money back.

8 Q. I'm going to try to summarize what just told me.
9 When you discovered all of these tax years that weren't
10 paid you and your accountant have now filed individual
11 returns for you for all of those years?

12 A. Yes, sir.

13 Q. Do you know if the IRS claims you owe anymore taxes
14 at this point?

15 A. I do not owe anything.

16 Q. Do you know the status of your husband's tax liens or
17 excuse me. That's the wrong word. Your husband's tax
18 obligations for these years that weren't filed?

19 A. They have sent me a note before telling me he still
20 owes them money but it's usually if I get them I send them
21 to him.

22 Q. You don't know exactly what?

23 A. No.

24 Q. His status is?

25 If there is liability owed for his income that he

1 didn't file returns on, are you asking he be responsible
2 for those?

3 A. Yes.

4 Q. Now, I want to be clear, Ms. McCallister. During the
5 marriage and before this divorce occurred, were you aware
6 that he wasn't filing taxes?

7 A. No.

8 Q. Did you go and check on it?

9 A. No.

10 Q. Why?

11 A. Because I trusted him. Because when I had tax issues
12 or if my tax return came in for Birch I put them in a
13 manila envelope. I would give them to him and I wouldn't
14 think about them again. I actually found some in the
15 suitcase in the manila envelope that I still took to my
16 accountants he office.

17 Q. Let's stay on point here. I understand it frustrates
18 you.

19 A. It angers me.

20 Q. But Ms. McCallister --

21 A. Sorry.

22 Q. -- we're trying to get to the fact here and get this
23 done?

24 A. That is the fact though but okay.

25 Q. Whatever liability if any for the tax years preceding

1 2016 you want that to be his obligation?

2 A. Yes, sir.

3 Q. And to hold you harmless for any liability from
4 those?

5 A. That would be honorable thing to do yes.

6 Q. You understand that if you sell these properties your
7 home and your rental there could very well be some
8 proceeds seized by the IRS?

9 A. Yes.

10 Q. If those proceeds include some of your equity, are
11 you asking that Mr. McCallister be ordered to reimburse
12 you your half of the equity?

13 A. Yes.

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23 (QUESTIONING BY MR. CRAWFORD OF MR. MCCALLISTER)

24 Q. That's fine. So in this question is -- if you'll
25 listen to it very carefully. Are you willing to assume

1 any tax liability for past taxes years? I'm not asking
2 have you done anything wrong or right just are you willing
3 to do that?

4 A. I think I should answer that by taking the fifth.

5 Q. I see. Do you recall your deposition?

6 A. Yes, sir I do.

7 Q. Do you recall in your deposition acknowledging to me
8 that you hadn't filed taxes?

9 A. I will take the fifth.

10 Q. You don't you recall that you already answered that
11 question?

12 A. I will take the fifth.

13 Q. Do you or do you not remember your answers in the
14 deposition?

15 A. I recall many of my answers in general in the
16 deposition.

17 Q. Do you recall your answers with specific questions
18 concerning filing of tax returns?

19 A. I will take the fifth.

20 MR. CRAWFORD: Your Honor I ask the witness be
21 directed to answer the question

22 THE COURT: I'm not going to direct him to.
23 You got a deposition. You can use it for whatever
24 purpose you wish.

25 MR. CRAWFORD: That's fine, Your Honor.

1 BY MR. CRAWFORD:

2 Q. This again if you'll listen to this question
3 carefully. Have you made arrangements and gotten a
4 settlement with your tax liability?

5 A. I will take the fifth.

6 Q. Do you have any idea of what your tax liability is?

7 A. I will take the fifth.

8 Q. With regards to your joint returns during the
9 marriage, did you present those to your wife to read and
10 sign?

11 A. I will take the fifth.

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1 A. Yes.

2 Q. Can you give me examples of why that is?

3 A. I think I tend to focus on maybe some things I don't
4 need to or -- I almost feel like you could answer that
5 one.

6 Q. But I don't get to testify, Starla.

7 Do you have problems remembering what I tell you?

8 A. Yes.

9 Q. Do we go over things constantly?

10 A. Yes.

11 Q. Have you had some preoccupation with past records and
12 information?

13 A. Yes.

14 Q. Did you have an occasion to do some cleaning and some
15 work in your garage?

16 A. Yes.

17 Q. Did you have some discoveries there?

18 A. I did.

19 Q. Tell me about those discoveries.

20 A. I found some tax records

21 MS. LACERRA: Your Honor, at this point I'm
22 going to object to the relevance. We're here on a
23 temporary hearing.

24 THE COURT: I'm not sure, but I'm going to let
25 her answer a little more to see if it might be

uncertified rough draft

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tabbles

certified rough draft

1 relevant.

2 MR. CRAWFORD: It's going to be highly
3 relevant, but it's going to be very brief.

4 THE COURT: I'm going to get the answer then
5 I'm going to determine --

6 MS. LACERRA: Okay.

7 BY MR. CRAWFORD:

8 Q. What did you discover when you reviewed the tax
9 records?

10 A. I discovered a lot of tax records that had not been
11 opened, that were addressed to me or Bobby and both of us,
12 and things that I had given him. Like every year I give
13 him manila --

14 Q. Ms. McCallister, I promised this was going to be
15 brief. I'm going to try to direct you.

16 Did you discover whether or not you had filed --

17 MS. LACERRA: Again, Your Honor, I object to
18 the relevance. We're here on temporary support.

19 THE COURT: I'm thinking what this is supposed
20 to show is that she has a lot of problems and this is
21 just an example of how severe they are, is that she
22 didn't even file tax forms.

23 MS. LACERRA: I don't think that's where he's
24 going with it because I know the case. And I do
25 object to the relevance, Your Honor.

1 MR. CRAWFORD: Your Honor, I guess I can
2 respond. Her answer will reveal, Your Honor, that
3 taxes were not filed, both federal and state, for
4 over a period of ten years. And that goes highly to
5 the relevant question of morality and legality and it
6 goes highly to the question of whether or not this
7 gentleman thinks he should be a custodial parent.

8 THE COURT: Oh, I don't agree. Okay. I mean,
9 let me put it. I suspect it has a lot to do with
10 ultimate financial condition of the parties. And
11 when we get to the final hearing, I mean, I'm
12 probably going to hear about it, but as far as
13 whether or not you can have a custodial parent if you
14 haven't filed tax return is not of a concern to me.

15 BY MR. CRAWFORD:

16 Q. In terms of your financial concerns, do you have
17 concerns about IRS?

18 A. Yes. I had to file innocent spouse.

19 MS. LaCERRA: Again, Your Honor, we're just
20 here to embarrass now.

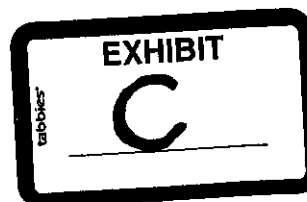
21 THE COURT: Right.

22 MR. CRAWFORD: Let's move on.

23 BY MR. CRAWFORD:

24 Q. When we first filed this case, did you agree or did
25 you -- strike that question.

- 1 Q Okay. Would it be fair to say those were accumulated during the
2 marriage?
- 3 A No, sir, not all three (3) of them.
- 4 Q Tell me the ones that might have been in place before 1990?
- 5 A The .357 I got when I was at UCA in college.
- 6 Q Okay.
- 7 A That would be approximately 1987.
- 8 Q The other two (2) were accumulated after the marriage?
- 9 A Yes, sir.
- 10 Q Now you and Ms. McCallister filed a joint 2014 tax return is that correct?
- 11 A Yes, sir.
- 12 Q Both Federal and State?
- 13 A Yes, sir.
- 14 Q And there are a period of years in which a return has not been filed---or
15 that's not a good question. Let's make it a question. Are there a period of years in
16 which either you or both Ms. McCallister have not filed tax returns?
- 17 A Yes, sir.
- 18 Q What years to your knowledge are those years?
- 19 A Most of the years from '95 up.
- 20 Q Okay so from '95 to '14?
- 21 A Yes, sir.
- 22 Q Is there a reason why there's been no tax returns filed?
- 23 A There were two (2) years that were filed in there.
- 24 Q Somewhere in the middle there somewhere?
- 25 A Yes, sir.



1 Q Okay. Do you have answers to why they weren't filed?

2 A The first year was my first year of self-employment and we also were
3 buying the house on Sevier Street. I had, during the first portion of that year every
4 time I would get a paycheck at that time I had a checking account and a savings
5 account, and every time I would get a paycheck I would take half of it and put it in
6 our joint account and half of it and put it in the savings account to try to pay taxes
7 with it.

8 The Sevier Street house ended up basically being a money pit and ah
9 there was just an unbelievable number of expenses that were associated with it.
10 Even to the extent one of the first summer months there we had a utility bill that
11 was about \$800.00 and----

12 Q So maintaining that Sevier Street caused you to not have sufficient
13 savings to pay those taxes?

14 A Yes, sir.

15 Q And you just made the choice not to file them because you don't have to
16 deal with it or didn't have the money I guess-----

17 A In all honesty I basically panicked.

18 Q Okay. Let me ask you this. You've obviously turned a corner since that
19 time with your practice and/or your current job such that you could pay. In fact
20 you've had withholdings----well let me ask that first question. You've had the
21 ability to pay in the last few years is that fair to say?

22 A Yes, sir.

23 Q And there's withholdings on both Starla's and your income for these past
24 few years so you might very well not even owe taxes.

25 A I understand.

1 Q Is that a, that's my question. Is that possible?

2 A I'm sure it is.

3 Q Okay. Notwithstanding that, is there a reason why once you've reached
4 the point where you think there might be sufficient withholdings you still haven't
5 filed taxes?

6 A Not one that makes any sense at all.

7 Q And that's a fair answer. We've asked about financial entities, do you
8 have any and I'm going to use a different word, projects, financial projects in which
9 you're either exploring or working with anyone on, partnerships or investing or
10 developing at this point?

11 A No, sir.

12 Q What is 'Integrity'? It's an entity that I found in some of the records?

13 **MS. LaCERRA:** Is it the definition of the word?

14 Q No, no, and I apologize. That was a terrible question. In the course of
15 looking through records I found references to I think a business entity called
16 'Integrity'. Does that spark any recollection to you?

17 A No, sir.

18 Q And there was also in some of the documents references to maybe stock
19 in either a company that does slot machines or something?

20 A Yeah.

21 Q Is that a different thing?

22 A Yeah. One time and I can't remember what year. It was years, it was I
23 want to say back in the 90's. Terry Jensen was my law partner and Terry did
24 really really well in the stock market and I let a guy talk me into very foolishly
25 investing \$2,000.00 in this absolutely no miss stock and I want to say within two



STATE OF ARKANSAS
**Department of Finance
 and Administration**

**REVENUE DIVISION
 Individual Income Tax**
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 Post Office Box 3628
 Little Rock, Arkansas 72203-3628
 Phone: (501) 682-7225
 Fax: (501) 682-7691
 www.dfa.arkansas.gov

CERTIFICATE OF AUTHENTICITY

I, Matthew Benson, being duly sworn state:

1. I am employed by Arkansas Individual Income Tax (IIT) as Tax Auditor and am the person designated by the Commissioner of Revenue as custodian of records with the authority to make this certificate.

2. On June 8, 2017 Matthew Benson was served with a subpoena to produce certain records before the State of Arkansas Judicial Discipline and Disability Commission.

3. A diligent search of Bobby Dale McCallister's pertinent files has produced certain documents responsive to this subpoena and these documents are attached.

4. I hereby certify that each memorandum, report, record, and data compilation attached herewith is a record made and retained by IIT.

5. I further certify that each memorandum, report, record, or data compilation attached and provided herewith is a record kept in the course of the regularly conducted business activity of IIT.

6. I further certify that it is the regular practice of IIT to make and retain such a memorandum, report, record, or data compilation.

7. I further certify that each attached memorandum, report, record, or data compilation of acts, events, condition, opinion, or diagnosis by or from information transmitted by a person with knowledge of the event recorded.

8. I further certify that the attached documents are the only documents and records maintained in the files and possession of IIT which are responsive to the subpoena.

Matthew Benson

 (Signature of Records Custodian)

Matthew Benson

 (Name of Records Custodian)

6-8-17

 Date

RECEIVED
 17 JUN 16 AM 10:40
 JUDICIAL DISCIPLINE
 AND
 DISABILITY COMMISSION

