



Judicial Discipline & Disability Commission

JUDGE JOYCE WILLIAMS WARREN
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DAVID J. SACHAR
EXECUTIVE DIRECTOR

September 16, 2015

Honorable Josephine L. Hart
Arkansas Supreme Court
625 Marshall Street
Little Rock, AR 72201

Re: JDDC #15-156, 157, 158, 159, 164, 165, 166 and 167

Dear Justice Hart,

A Judicial Discipline & Disability Commission Investigation Panel reviewed a complaint against you filed by two different complainants. An investigation was conducted to determine if any of the allegations might constitute a basis for action by this Commission.

The complaint raised concerns about whether *Smith v. Wright*, [CV-14-427](#) (the Arkansas case on the legality of same sex marriage) was unduly delayed, in general, or because of bias or fear of public criticism. See Rule 2.5, Rule 2.3 (A) and Rule 2.4 (A).

This complaint concerns delay in the ruling but is also a complaint about the reason for the time lapse between submission and rendering a final decision. It is always in the best interest of the Court, the public and the justice system in general, to make decisions on cases as quickly as possible while still honoring the dictates of Due Process. As this Court stated just a few months ago, “[t]he prompt resolution of all matters before a court is vital to the administration of justice.” *Roberts v. Talley*, 2015 Ark. 265 (per curiam).

To investigate these issues the Panel authorized the JDDC Staff to conduct an interview of all the justices who were involved in the case at any point. This includes six (6) justices who were interviewed by the Director and/or Deputy Director over the course of several weeks. The four (4) justices that were the subject of this investigation also met in person with the Director and Deputy Director in addition to providing written responses. Interviews were conducted in person and by telephone and took several hours each to complete. The Justices’ responses, along with memoranda, pleadings, letters, other witness statements and additional potential evidence was obtained and reviewed by the Panel. The Panel met four times to discuss the matter. Each time they discussed and analyzed all new material presented to them.

The Panel carefully considered the matter in light on the Arkansas Code of Judicial Conduct, the Rules of Procedure of the Arkansas Judicial Discipline and Disability Commission, and case law, and determined:

1. No testimonial or documentary evidence was found that the delay in ruling on *Smith v. Wright*, CV-14-427, was due to bias, prejudice or fear of public clamor.
2. There was a delay in deciding the case that was caused by several factors (listed in a paragraph below). None of these factors constituted judicial misconduct.
3. The Court has traditionally followed unwritten “customs and practices”. These “customs and practices” were responsible in part for the timing of rendering a final decision on the merits of the case. These “customs and practices” are not available to the public in written form or even anecdotally in case law.

The Panel carefully considered the information they obtained in order to release to the public a basic timeline of events. A similar timeline was also set forth in the May 7, 2015 opinion of the Court in *Smith v. Wright*, CV-15-227:

May 15, 2014, - An appeal was lodged in *Smith v. Wright*, CV-14-427.

May 16, 2014, - State Defendants – Appellants’ Petition for Emergency Stay and Separate White, Washington, Lonoke and Conway County Appellants’ Expedited Motion for Stay are granted by the Supreme Court. Briefing schedule was set and the Court took its summer recess. Numerous motions and amicus curiae briefs were filed.

September 10, 2014, - Justice Cliff Hoofman recused from the matter.

October 2, 2014, - Then Governor Mike Beebe appointed Robert W. McCorkindale to serve as special justice in place of Justice Hoofman.

October 13, 2014, - The Supreme Court granted Wright’s request for oral argument.

October 23, 2014, - A majority of the court, with Special Justice McCorkindale joining the majority, granted Wright’s motion to expedite the appeal, with Justice Hart dissenting and Justice Hoofman not participating.

October 23, 2014, - Oral argument was scheduled by the Supreme Court Clerk at the direction of Chief Justice Hannah, to be held on November 20, 2014.

November 20, 2014, - Oral Argument is held on *Smith v. Wright*, CV-14-427. Longstanding “customs and practices” were followed for debate. These “customs and practices” dictated the time for authoring a majority opinion by the main justice assigned to the case as well as the time for authoring a dissent. The main justice also had time to read the dissent and determine whether or not to respond according to the Court’s unwritten “customs and practices.”

December 18, 2014, - The 2014 term of the Arkansas Supreme Court concluded without an issued opinion in *Smith v. Wright*, CV-14-427.

December 31, 2014, - Justice Corbin's and Justice Hoofman's terms on the Court expired.

January 1, 2015, - Justice Wynne and Justice Wood begin their eight year terms after winning the 2014 statewide elections to become Associate Supreme Court Justices.

January 7, 2015, - During the first conference of the new Supreme Court, Justice Wood states her belief that it is her Constitutional duty to hear *Smith v. Wright*, CV-14-427, unless she has a reason to recuse. Special Justice McCorkindale maintains that he has been appointed by proper gubernatorial authority to sit on *Smith v. Wright*, CV-14-427, until the case is concluded. With no clear answer in the form of a written court rule or case law the Arkansas Supreme Court arguably has eight justices on the case. However, the Arkansas Constitution only allows for seven Justices.

January 23, 2015, - The Arkansas Attorney General files a Motion for New Oral Argument and also contends the newly elected justices should be the ones that comprise the Arkansas Supreme Court for the purposes of deciding *Smith v. Wright*, CV-14-427.

February 5, 2015, - The Supreme Court enters a unanimous per curiam asking the parties to supply authority on their positions about which justices comprise the Court for purposes of deciding *Smith v. Wright*, CV-14-427. Briefing and debated followed on this issue. This postpones the upcoming scheduled debate on the case itself until the issue of which of the justices is the 7th member of the Court is decided for this case.

March 18, 2015, - The Supreme Court unanimously decides to take the matter up as a separate case in order to get a final answer on which justices will sit.

April 2, 2015, - The Supreme Court decides to take the matter as a separate case with only Justice Danielson dissenting. (*Smith v. Wright*, CV-15-227)

April 8, 2015, - Justice Danielson and Justice Hannah recuse from the new separate case on the issue of the composition of the Court. (*Smith v. Wright*, CV-15-227)

April 10, 2015, - JDDC Complaints #15-156 - 159 are reported and opened as new judicial discipline case files.

April 10, 2015, - Plaintiffs' counsel in *Smith v. Wright*, CV-14-427, cannot agree on which justices should decide the case.

April 14, 2015, - Governor Hutchinson appoints Hon. Betty Dickey, Hon. Brett Watson and Hon. Shawn Womack to replace Justice Wood, Justice Danielson and Chief Justice Hannah on *Smith v. Wright*, CV-15-227.

April 15, 2015, - JDDC Complaints #15-164 - 167 are reported and opened as new judicial discipline case files.

May 7, 2015, - The Arkansas Supreme Court decides *Smith v. Wright*, CV-15-227 by declaring the appointment of Special Justice McCorkindale to *Smith v. Wright*, CV-14-427, expired, effective December 31, 2014 and that Justice Wood occupies the seat on the Court

to decide *Smith v. Wright*. The Court's ruling is not final until a mandate is issued twenty (20) days later.

May 27, 2015, - Mandate in *Smith v. Wright*, CV-15-227 is issued by the Supreme Court Clerk. The Court's ruling in *Smith v. Wright*, CV-15-227, dated May 7, 2015 was final. The Court had considered granting leave to immediately issue the mandate pursuant to Rule 5-3(b) of the Rules of the Arkansas Supreme Court but determined the requirements of the Rule were not met. *Smith v. Wright*, CV-14-427 is presented to the seven (7) members of the Arkansas Supreme Court.

June 26, 2015, - The Arkansas Supreme Court dismisses *Smith v. Wright*, CV-14-427 as moot, following the ruling of the United States Supreme Court in *Obergefell v. Hodges*, 576 U.S. _____ (2015).

July 25, 2015, - Mandate in *Smith v. Wright*, CV-14-427, is issued by the Supreme Court Clerk.

Numerous procedural reasons existed for the extended time this case remained under consideration. The lack of information to the public, the absence of written internal rules of the Court and the nature of this case contributed to suspicion about the reason for the Court not rendering a decision. Nevertheless, suspicion does not equal proof and this investigation concluded with no proof of wrongdoing on the part of the Justices named in the complaint.

The investigation initiated by these complaints did not reveal evidence of judicial misconduct, wrong doing or incapacity within the Commission's jurisdiction. In accordance with Rule 7 of the Rules of Procedure of the Arkansas Judicial Discipline and Disability Commission, you are hereby notified that the allegations leading to the investigation have proven to be groundless. This recitation of information concerning the lack of cause to proceed is released to the public pursuant to Rule 7 (C)(5) of the Rules of Procedure of the Arkansas Judicial Discipline and Disability Commission. As a result of this finding, there is no cause to proceed and these complaints are dismissed. This dismissal notice is the Commission's final notice in these complaints and is public information.

Sincerely,



David J. Sachar
Executive Director