

SUPREME COURT OF ARKANSAS
NO. 17-155

Order Delivered: April 17, 2017

IN RE PULASKI COUNTY CIRCUIT
COURT, FIFTH DIVISION, HON.
WENDELL GRIFFEN



PER CURIAM

“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 confidence.” Ark. Code Judicial Conduct, Preamble.

Amendment 80, section 4, provides that this court exercises general superintending control over all the state courts. “Superintending control is an extraordinary power that is hampered by no specific rules or means.” *Parker v. Crow*, 2010 Ark. 371, 368 S.W.3d 902. Rule 2.11 of the Arkansas Code of Judicial Conduct states in pertinent part, “A judge shall disqualify himself or herself in any proceeding in which . . . the judge . . . has made a public statement . . . that commits or appears to commit the judge to reach a particular result or rule in a particular way in the proceeding or controversy.” The United States Supreme Court has explained that, “A fair trial in a fair tribunal is a basic requirement of

due process. Fairness of course requires an absence of actual bias in the trial of cases.” *In re Murchison*, 349 U.S. 133, 75 S. Ct. 623 (1955).

To protect the integrity of the judicial system this court has a duty to ensure that all are given a fair and impartial tribunal. We find it necessary to immediately reassign all cases in the Fifth Division that involve the death penalty or the state’s execution protocol, whether civil or criminal. The administrative judge shall be responsible for determining the appropriate division(s) to receive these cases. In addition, this court instructs the Sixth Judicial District to submit a new administrative plan to this court for approval by close of business on Tuesday, April 18, 2017 that reflects the permanent reassignment of all cases referenced above, future cases involving this subject matter, and any other changes in case assignment to ensure all litigants in this district receive a fair and impartial tribunal. Judge Wendell Griffen is referred to the Judicial Discipline and Disability Commission to consider whether he has violated the Code of Judicial Conduct.

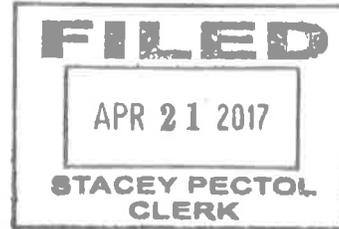
KEMP, C.J., concurring in part and dissenting in part, with written opinion to follow.

SUPREME COURT OF ARKANSAS

No. 17-155

IN RE PULASKI COUNTY CIRCUIT
COURT, FIFTH DIVISION, HON.
WENDELL GRIFFEN

Opinion Delivered: April 21, 2017



CONCURRING IN PART;
DISSENTING IN PART.

JOHN DAN KEMP, Chief Justice

For the reasons set forth below, I concur in part in and dissent in part from this court's per curiam order, *In re Pulaski Cty. Cir. Ct., Fifth Div.*, No. 17-155 (Apr. 17, 2017) (assignment order).

On April 15, 2017, the State of Arkansas filed an emergency petition requesting that this court vacate a temporary restraining order ("TRO") filed by Circuit Judge Wendell Griffen of the Pulaski County Circuit Court, Fifth Division. *Emergency Petition for Writ of Mandamus, Writ of Prohibition, Writ of Certiorari, or Supervisory Writ* (Apr. 15, 2017) (No. CV-17-299). Judge Griffen had previously granted the TRO and enjoined the Arkansas Department of Correction from using a drug sold by respondent McKesson Medical-Surgical, Inc. ("McKesson") as part of a lethal-injection protocol used in Arkansas executions. In its petition, the State contended that Judge Griffen demonstrated "actual bias," that he could not "avoid the appearance of unfairness," and that "his impartiality might reasonably be questioned" in granting the TRO after attending two anti-death-

penalty rallies and after publicly expressing his views about medications used in the executions. The State sought two types of relief: (1) to vacate the TRO through an extraordinary writ and (2) “to remove Judge Griffen from this case.”

This court’s per curiam order of assignment states as follows:

To protect the integrity of the judicial system this court has a duty to ensure that all are given a fair and impartial tribunal. We find it necessary to immediately reassign all cases in the Fifth Division that involve the death penalty, or the state’s execution protocol, whether civil or criminal. The administrative judge shall be responsible for determining the appropriate division(s) to receive these cases. In addition, this court instructs the Sixth Judicial District to submit a new administrative plan to this court for approval by close of business on Tuesday, April 18, 2017 that reflects the permanent reassignment of all cases referenced above, future cases involving this subject matter, and any other changes in case assignment to ensure all litigants in this district receive a fair and impartial tribunal. Judge Wendell Griffen is referred to the Judicial Discipline and Disability Commission to consider whether he has violated the Code of Judicial Conduct.

In re Pulaski Cty. Cir. Ct., No. 17-155, at 2.

I would reassign Judge Griffen “from this case,” *McKesson Medical-Surgical, Inc. v. State*, No. 60CV-17-1921, Pulaski Cty. Cir. Ct., 5th Div. (Apr. 14, 2017), and I agree with the majority to refer him to the Judicial Discipline and Disability Commission (“Commission”) to consider whether he violated the Arkansas Code of Judicial Conduct. See Ark. Jud. Discipline & Disability Comm’n R. 6 (stating that the Commission “shall have jurisdiction over any ‘judge’ regarding allegations of misconduct”).

I disagree with this court’s decision to reassign all cases in the Pulaski County Circuit Court, Fifth Division, that involve the death penalty or the State’s execution protocol because the Commission has not yet investigated any allegations of misconduct against Judge Griffen. Any action taken by the Commission after an investigation of a judge is governed by the Rules of Procedure of the Arkansas Judicial Discipline and Disability Commission.

Pursuant to Arkansas Constitution amendment 66, Arkansas Code Annotated sections 16-10-401 through 16-10-411 (Repl. 2010 & Supp. 2015), and Rules 1 through 15 of the Rules of Procedure of the Arkansas Judicial Discipline and Disability Commission, the supreme court is authorized to review judicial-discipline matters filed with the Commission.

All judges are afforded the procedural rights provided in amendment 66, and my opinion should not be deemed a judgment about, or determination of, any issues that are or could be pending before the Commission or this court. Accordingly, I concur in part and dissent in part.

Concur in part; dissent in part.