



BEFORE THE COURT OF THE JUDICIARY OF ALABAMA

In the Matter of)	
PATRICIA D. WARNER,)	
Circuit Judge of the)	Court of the Judiciary
Fifteenth Judicial Circuit)	Case No. 40
of Alabama)	

MOTION FOR PROTECTIVE ORDER

COMES NOW the Judicial Inquiry Commission of Alabama ("the Commission"), by and through counsel, and pursuant to Rule 26(c) of the Alabama Rules of Civil Procedure, hereby moves this Honorable Court for a protective order prohibiting Respondent from deposing the Commission. In support of said motion the Commission respectfully offers the following:

1. On June 20, 2011, the Commission filed its complaint against Respondent based on Respondent's numerous acts of judicial misconduct committed in bad faith in violation of the Alabama Canons of Judicial Ethics.

2. On July 21, 2011, Respondent served the Commission with Respondent's Notice of 30(b)(6) Deposition by Video of Alabama Judicial Inquiry Commission, in which Respondent states she intends to

take a videotaped deposition of a representative of the Commission on August 31, 2011. Respondent identifies twenty-four separate subject areas in her deposition notice, which Respondent wishes the Commission's designated representative(s) to have knowledge concerning. The Commission objects to the Respondent's notice of deposition, including each and every subject area identified therein, and moves the Court for an order protecting the Commission by striking Respondent's notice as harassing, unduly burdensome, and wholly improper.

3. Article VI, Section 156 of the Constitution of Alabama states:

The [Judicial Inquiry Commission] shall be convened permanently with authority to conduct investigations and receive or initiate complaints concerning any judge of a court of the judicial system of this state. The commission shall file a complaint with the Court of the Judiciary in the event that a majority of the members of the commission decide that a reasonable basis exists, (1) to charge a judge with violation of any Canon of Judicial Ethics, misconduct in office, failure to perform his or her duties, or (2) to charge that the judge is physically or mentally unable to perform his or her duties. **All proceedings of the commission shall be confidential except the filing of a complaint with the Court of the Judiciary.** The commission shall prosecute the complaints.

Alabama Const. Art. VI, Sec. 156 (b) (2011) (emphasis added). The Supreme Court of Alabama has stated, "Our present judicial disciplinary machinery is now found in the Alabama Constitution, Art. VI, §§ 156 and 157 (1973 Supp.), creating a two-tiered system. In brief, this present system provides for a Judicial Inquiry Commission, **an investigatory body analogous to a grand jury**, and a Court of the Judiciary." In re Samford, 352 So. 2d 1126, 1128-29 (Ala. 1977) (citations omitted) (emphasis added).

4. By issuing her deposition notice, Respondent is improperly attempting to depose "an investigatory body analogous to a grand jury" and to force the Commission to violate its constitutional mandate of keeping all proceedings of the Commission confidential. Indeed, nothing contained in the Rules of Procedure of the Judicial Inquiry Commission or the Rules of Procedure of the Court of the Judiciary permits a respondent judge to treat the Commission as a party to a civil action and propound discovery upon the Commission. As such, the Court should enter a

protective order and strike Respondent's notice of deposition.

4. Rule 6 of the Commission's Rules of Procedure states as follows:

C. If a complaint is not dismissed on preliminary review pursuant to Rule 6.B., the commission, within 14 days of its decision to conduct some investigation of the complaint, and in no event more than 84 days after a complaint is filed, shall serve upon the judge who is the subject of the complaint copies of the complaint and all other documents or other materials of any nature whatsoever constituting, supporting, or accompanying the complaint, or accumulated by the commission before such service upon the judge. Further, the commission shall advise the judge of those aspects of the complaint that it then considers worthy of some investigation.

D. Every six weeks after serving the judge pursuant to Rule 6.C., the commission shall serve on the judge being investigated copies of all materials of any nature whatsoever not already served upon him or her tending to establish that the conduct either did or did not occur or that the investigation is or is not still appropriate, and shall serve upon the judge a full statement of whether the commission intends to continue the investigation and any modification of the previous advice as to aspects of the complaint that it then deems worthy of some investigation. The chairman or acting chairman may extend any deadline arising under this subdivision for up to 21 days in the event that exigent circumstances prevent the commission from complying with such deadline. As soon as practicable after any such extension is made, the chairman or acting

chairman, or his or her designee, shall notify in writing the judge to whom the materials and statement are to be provided of the extension and shall describe the exigent circumstances necessitating the extension.

Ala. R. P. Judiciary Inquiry Comm'n Rule 6.C and 6.D

(emphasis added). Finally, Rule 7.C of the

Commission's Rules of Procedure states:

Prior to or simultaneously with serving a subpoena on a person or entity being subpoenaed, **the commission shall serve a copy of the subpoena on the judge being investigated, charged, or prosecuted.** Failure to serve the judge as required by this subdivision of this rule shall bar the admissibility of the information or material sought by the subpoena, all information and material obtained in response to the subpoena, and all information and material discovered as a result of information or material obtained in response to the subpoena.

Ala. R. P. Judiciary Inquiry Comm'n Rule 7.C (emphasis added).

5. Pursuant to Rules 6C and 6D of the Commission's Rules of Procedure, the Commission has already identified and/or served Respondent with copies of all documents and materials the Commission has obtained during the course of its investigation of the complaints against Respondent. In addition, the Commission has already advised Respondent of those

aspects of the complaints the Commission considers worthy of investigation. In compliance with Rule 7.C, the Commission served Respondent with copies of all subpoenas the Commission issued during its investigation. As such, Respondent received notice of every witness who appeared and testified before the Commission, as well as every document, recording, or other material the Commission has obtained during the Commission's investigation. The Commission has already identified and/or produced to Respondent everything the Commission is mandated to provide under the rules. Therefore, Respondent's notice that Respondent intends to depose the Commission is nothing less than an attempt to annoy, harass and unduly burden the Commission and amounts to nothing less than a clear abuse of the discovery process.

6. Since the creation of the Judicial Inquiry Commission, the Commission has never been the subject of a respondent judge's discovery requests. The Court of the Judiciary has never permitted a respondent judge to depose the Commission, propound written discovery to the Commission, or annoy, harass, or unduly burden the

Commission as Respondent now seeks to do. Therefore, because the Commission has already served Respondent will all materials mandated in Rule 6 and Rule 7, the Commission requests the Court enter a protective order striking Respondent's notice of deposition and prohibit Respondent from deposing the Commission.

WHEREFORE, ABOVE-PREMISES CONSIDERED, the Commission respectfully requests this Honorable Court enter a protective order striking Respondent's Notice of 30(b)(6) Deposition by Video of Alabama Judicial Inquiry Commission.

Respectfully submitted,

/s/Richard Trehella
RICHARD E. TREWHELLA, JR. (TRE010)
Counsel for the Judicial Inquiry
Commission

OF COUNSEL:

CARR ALLISON
100 Vestavia Parkway
Birmingham, AL 35216
(205) 822-2006
rtrehella@carrallison.com

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing pleading upon all counsel of record in this cause via electronic mail and by placing a copy of same in the United States mail, postage prepaid, addressed as follows on this the 12th day of August, 2011:

Charles A. Dauphin, Esq.
Baxley, Dillard, Dauphin, McKnight, James
2008 Third Avenue South
Birmingham, AL 35223
cdauphin@baxleydillard.com

/s/Richard Trewhella
OF COUNSEL