

IN THE COURT OF THE JUDICIARY



IN THE MATTER OF
ROY S. MOORE,
Chief Justice of the
Supreme Court of Alabama

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Court of the Judiciary
Case No. 46

MOTION FOR ORAL ARGUMENT
BEFORE THE ENTIRE COURT ON
THE PENDING MOTION TO DISMISS

Chief Justice Roy S. Moore hereby requests oral argument before all nine members of the Court of the Judiciary (“COJ”) on his pending Motion to Dismiss.

BRIEF IN SUPPORT

On June 21, 2016, Chief Justice Moore filed a Motion to Dismiss that is potentially dispositive of this case. The Chief Justice believes that the Court would benefit from oral argument. By answering questions and engaging in dialogue with the Court, the parties could help facilitate “the prompt disposition of the proceedings.” COJ Rule 7. At a minimum, oral argument would assist the Court in deepening its understanding of the case and narrowing the issues for trial.

A fair reading of the COJ rules indicates that the Chief Judge may not decide a dispositive motion without the participation of the entire Court. COJ Rule 9 states: “The chief judge shall have the authority to decide all procedural and evidentiary questions.” The Motion to Dismiss, a substantive challenge to the legal sufficiency of the complaint as

well as the jurisdiction of the Court, goes far beyond mere procedural or evidentiary questions.¹ Therefore, the participation of the entire Court is required in its disposition.

The 2010 amendment of Rule 9 adopted the current language about the authority of the Chief Judge. The comparable portion of the prior version of Rule 9, as adopted in 2001, stated: “The chief judge shall decide all preliminary motions and all procedural and evidentiary questions.” *Alabama Reporter*, Vol. 802, pp. LXI-LXII. The authority of the Chief Judge to decide “preliminary motions” was removed from the COJ rules in 2010. If the Chief Judge may no longer decide preliminary motions without the participation of the rest of the Court, then surely he also lacks the authority to decide on his own a dispositive motion like the Motion to Dismiss.

The Chief Justice requests that oral argument on his Motion to Dismiss be scheduled after the JIC has filed its response to the motion and the Chief Justice has had the opportunity to file a reply brief.

WHEREFORE, Chief Justice Moore moves the Court to grant oral argument before all nine members of the COJ on his Motion to Dismiss, and for that Motion to be decided by the entire Court.

¹ A procedural motion, such as a request for an extension of time or to substitute counsel, does not address the merits of a case.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I certify that I have this 23rd day of June, 2016, served a copy of this motion for oral argument and brief in support thereof on the Judicial Inquiry Commission and counsel below through electronic mail:

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