

BEFORE THE COURT OF THE JUDICIARY  
OF THE STATE OF ALABAMA



In the matter of: )  
)  
M. John Steensland, Jr., Retired ) Court of the Judiciary  
) Case No. 39  
District Judge of Houston County, )  
)  
In the Twentieth Circuit of Alabama. )

**MOTION TO STRIKE RESPONDENT'S PETITION FOR RELIEF**

COMES NOW, the Judicial Inquiry Commission of the State of Alabama ("the Commission"), by and through its undersigned counsel of record, and hereby moves this Honorable Court to strike Respondent, M. John Steensland, Jr.'s petition for relief, filed with the Court on March 2, 2011. In support thereof, the Commission respectfully offers the Court the following:

1. On December 21, 2010, the Commission filed a motion to set trial date, in which the Commission requested the Court set this matter for trial at the earliest possible date.
2. Thereafter, the Court originally set trial for February 24, 2011. After Respondent, through his counsel, M. John Steensland III, filed a motion to continue on January 19, 2011, asking the Court to continue the trial for at least 30 days, the Court entered its January 27, 2011 order continuing the trial to March 2, 2011, at 10:00 a.m.

3. On February 18, 2011, due to alleged, recently-filed complaints with the Commission against Respondent, Respondent, through his counsel, M. John Steensland III, filed a motion to stay, asking the Court to stay all proceedings “until all complaints before JIC are investigated and resolved,”<sup>1</sup> i.e., indefinitely. On that same date, February 18, 2011, the Court ordered the Commission to file its response to Respondent’s motion to stay by 12:00 p.m. on February 22, 2011. On February 22, 2011, the Commission filed its opposition to Respondent’s motion to stay, requesting the Court keep the March 2, 2011 trial setting. That same day, the Court entered its order denying Respondent’s motion to stay.

4. Thereafter, on Monday, February 28, 2011, Respondent, through his counsel, M. John Steensland III, filed a motion to continue the March 2, 2011 trial, asserting only that due to pressing family engagements over the February 26th-27th weekend, counsel for Respondent did not have adequate time to review additional discovery prior to the March 2, 2011 trial. On that same day, the Court entered its February 28, 2011 order instructing the Commission to respond to Respondent’s motion to continue by 5:00 p.m. that same day. After the Commission timely filed

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<sup>1</sup> The *Rules of Procedure of the Judicial Inquiry Commission* prohibit the Commission from either confirming or denying the existence of any pending complaints against any judge that are being considered or investigated by the Commission. As such, the Commission neither confirms nor denies there were any complaints still being considered or investigated, as alleged in Respondent’s motion to stay.

its response in opposition to Respondent's motion to continue on February 28, 2011, the Court entered an order that same day denying Respondent's motion.

5. At 12:54 p.m. on March 1, 2011, Respondent, through his other attorney, William J. Baxley, filed a motion to dismiss, asking the Court to dismiss this case based on various grounds, including Respondent's argument that the Commission has no jurisdiction over Respondent because Respondent is a retired district court judge.<sup>2</sup>

6. The morning of the trial on March 2, 2011, the Commission had twelve out-of-town witnesses present in Montgomery and ready to testify. However, Respondent's attorney, Mr. Baxley, orally moved this Court to once again continue the trial because Respondent's "trial counsel," M. John Steensland III, sought treatment for a stomach virus the night before at an emergency room.<sup>3</sup> At the March 2, 2011 hearing, the Court heard oral arguments on Respondent's motion to dismiss,

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<sup>2</sup>Respondent, in his petition, declares that he is an inactive-retired judge. The Commission finds the distinction between active-retired status and inactive-retired status to be irrelevant on the issue of jurisdiction. Pursuant to § 12-18-7(b), *Code of Alabama (1975)*, "[a] retiring ... judge, upon being retired, **shall take the oath of office as a retired ... judge and thereupon become an extra or additional judge of the state.**" (Emphasis added.) As "an extra or additional judge of the state," a retired judge may be called to exercise his judicial authority at any time by the Chief Justice, the presiding judge of either court of appeals, or the Governor. *Id.*; see also § 12-18-10(e), *Ala. Code (1975)*. Moreover, pursuant to Article VI, section 156(b), *Alabama Constitution 1901*, the Commission's jurisdiction extends to "**any judge** of a court of the judicial system of this state." (Emphasis added.) Undoubtedly, this Court and the Commission have personal jurisdiction over a retired judge, such as Respondent, for misconduct committed in the exercise of his judicial authority.

<sup>3</sup> The Commission first received notice of Respondent's request for a continuance the morning of trial when Mr. Baxley made his oral motion to continue in open court. No prior notice was afforded the Commission despite the parties' knowledge that the Commission had several out-of-state witnesses present and ready to testify at trial.

and subsequently entered an order that same day denying Respondent's motion.<sup>4</sup> By the same order, the Court granted Respondent's last-minute motion to continue based on M. John Steensland III's purported illness, but ordered Mr. Steensland "to produce to [the] Court the medical records regarding his illness of March 1-2, 2011, which was the basis of the motion to continue."

7. On March 2, 2011, Respondent also filed his petition for relief "pursuant to the Rules of the Judicial Inquiry Commission" seeking the Court to stay all proceedings "until Respondent can appropriately present the issue of jurisdiction to the Alabama Supreme Court," and the Court gave the Commission seven days to respond. The Commission strenuously objects to Respondent's petition and opposes any stay of these proceedings.

8. Respondent's petition for relief is wholly improper and due to be stricken as it plainly violates the Rules of Procedure of the Judicial Inquiry Commission. Although Respondent's petition fails to specifically identify which procedural rule Respondent is attempting to utilize in filing his petition, it is readily apparent that Respondent is attempting to bring his petition pursuant to Rule 19 of the Rules of Procedure of the Judicial Inquiry Commission.<sup>5</sup> Rule 19, however,

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<sup>4</sup>It should be noted, in *In re William H. Robertson*, No. 27 (C.O.J. 1997), this Court addressed the issue of whether the Court has jurisdiction over an inactive-retired judge when the complaint is based on actions occurring prior to his retirement. This Court found the Commission indeed has jurisdiction over retired judges, such as Respondent.

<sup>5</sup> Rule 19 is the only rule in the Commission's procedural rules that permits a respondent judge to file a petition for relief with this Court.

pertains only to a judge's "[r]ight to relief from violations of these rules by [the] [C]ommission." Ala. R. P. Judicial Inquiry Comm'n Rule 19 (2011). Indeed, Rule 19 provides a vehicle for relief only when the Commission allegedly violates any of its procedural rules, and that violation causes prejudice to the judge. **Respondent's petition for relief, however, utterly fails to allege the Commission has violated any of the Commission's rules of procedure.** Instead, Respondent's petition improperly asks this Court to once again stay these proceedings; this time apparently to afford Respondent an opportunity to "appropriately present the issue of jurisdiction to the Alabama Supreme Court." (Respondent's Petition for Relief, p. 2.) There is absolutely nothing in the Commission's procedural rules allowing a respondent judge to move this Court for a stay of proceedings so he can seek relief from the Alabama Supreme Court on a substantive issue of jurisdiction. As such, Respondent's petition should be summarily stricken.

9. Respondent's attempt to further delay these proceedings by requesting a stay is even more misplaced because Respondent wishes to seek interlocutory relief from the Alabama Supreme Court on a substantive issue regarding the extent of the Commission's jurisdiction. Such an issue is more appropriately addressed by appeal, not interlocutory review, and there is simply no valid reason to delay this trial any longer. Moreover, the Commission is not even aware of any filing by Respondent with the Alabama Supreme Court seeking a review of any issue heretofore addressed

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and disposed of in these proceedings. Therefore, Respondent's petition should be stricken.

10. It is apparent throughout the course of this litigation Respondent has repeatedly attempted to delay these proceedings in violation of Rule 7 of the Rules of Procedure for the Alabama Court of the Judiciary, which reminds the parties that “[d]ilatory motions will be treated with disfavor[, and any] action which . . . would interfere with the prompt disposition of the proceedings pending before the Court shall be discouraged. . . .” As such, the Commission reasserts its position that it is ready to move forward and proceed with trial as soon as possible. The Commission, therefore, respectfully requests the Court summarily strike Respondent's unsupportable petition for relief and set this matter for trial as expeditiously as the Court deems appropriate.

WHEREFORE, ABOVE-PREMISES CONSIDERED, the Commission hereby respectfully requests this Honorable Court strike Respondent's petition for relief and promptly re-set this matter for trial at the earliest possible date.

Respectfully submitted,

  
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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 email and the United States mail, postage prepaid, addressed as follows on this the 9<sup>th</sup> day of March, 2011:

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