

IN THE ALABAMA COURT OF THE JUDICIARY



In the Matter of:

HENRY P. ALLRED,
Walker County District Judge

Case No. 42

COMPLAINT

The Judicial Inquiry Commission of the State of Alabama files this Complaint against Judge Henry P. Allred, District Judge for Walker County, Alabama. The Commission alleges and charges as follows:

Facts

1. Henry P. Allred is the District Judge for Walker County. He was elected in 2008 and took office in 2009. Among other duties, Judge Allred presides over the Walker County Small Claims Court.

2. Lawyer A primarily represents creditors in debt collection cases in the district courts and small claims courts in Alabama, including those in Walker County.

3. This Complaint arises out of public statements made by Judge Allred about a contempt proceeding that he initiated against Lawyer A in March, 2012, and other events and actions related to this contempt proceeding.

4. In March, 2012, Judge Allred initiated a contempt proceeding in a small claims court case (the ABC case) after Lawyer A did not attend a January 12, 2012 small claims court docket on which a motion for default judgment in the ABC case filed by Lawyer A on behalf of her creditor client appeared.

5. Ten months previously, in May, 2011, Judge Allred held a "show cause" hearing in which he addressed with Lawyer A, her allegedly repetitive failure to attend

his docket calls. At this May, 2011 hearing, Lawyer A denied repeatedly failing to appear at dockets on which she had cases set. Rather than make any finding regarding the “show case” proceeding, Judge Allred cautioned Attorney A about the various consequences if she continued to miss appearances in her cases.

6. Lawyer A originally had eight cases on Judge Allred’s January 12, 2012 docket, in which she had filed motions on behalf of a client; however, prior to January 12, 2012, Judge Allred had ruled on all pending motions in five of these cases.

7. Lawyer A had filed a motion to voluntarily dismiss two of the remaining three cases several days prior to the pending docket and those motions were subsequently granted.

8. In the ABC case, the third of the remaining cases on the January 12th docket, there was a pending motion for default judgment which was supported by affidavits establishing (a) service on the defendant, (b) that no responsive pleading had been filed within the time allowed by law, (c) the validity and accuracy of the amount of the debt, and (d) that the defendant was not then serving in the armed forces.

9. Lawyer A did not appear at the January 12, 2012 docket call to be heard on the default judgment motion in the ABC case.

10. Judge Allred did not grant the motion for default judgment in the ABC case, but rather on January 23, 2012, entered an order dismissing the ABC case.

11. On January 27, 2012, Lawyer A filed a motion to reinstate the ABC case, realleging that all of the requisites for entry of default judgment had been met and again requesting entry of default judgment.

12. On February 11, 2012, fourteen days after this motion to reinstate the ABC case was filed but had not been acted upon, the January 23, 2012 order dismissing the ABC case became a final order, and Judge Allred lost jurisdiction in the ABC case, pursuant to Rule 59.1(dc), A.R.C.P.

13. On February 17, 2012, Judge Allred entered an order setting a hearing on the motion to reinstate the ABC case for March 5, 2012, and in addition, also stated in this order that at this hearing the court would:

give plaintiff's counsel an opportunity to show-cause why she should not be held in contempt for repeated failure to appear in this court.

14. Lawyer A did not appear at the March 5th hearing.

15. On March 6, 2012, Judge Allred entered a "Writ of Attachment," in which he found that Lawyer A "stands in contempt of this Court" for failure to appear at the March 5, 2012 hearing and "commanded . . . any Sheriff or other law officer of the State" to "arrest the said [Lawyer A] Instantly, and bring her before this Court to testify in this case and show-cause to this Court why she should not be held in Contempt of Court." This "Writ of Attachment" also stated, "Bond Amount: None."

16. On Tuesday, March 6, 2012, Judge Allred sent a Walker County Deputy to Lawyer A's law office to arrest and transport her to the Walker County Jail.

17. On March 6, 2012, when the deputy sheriff arrived at Lawyer A's office, Lawyer A was away from the office. As a result, the deputy could not make the arrest and returned to Walker County.

18. On March 6, 2012, after Lawyer A learned of the Writ of Attachment, she called Judge Allred's office, but Judge Allred declined to speak with Lawyer A.

19. On Wednesday, March 7th, or Thursday, March 8th, after Lawyer A learned that Judge Allred was planning on leaving the state on vacation, she sought the assistance of several attorneys in the area in attempting to arrange a hearing or a meeting with Judge Allred on the contempt charge and the outstanding arrest warrant.

20. In response to these attempts, Judge Allred declined to schedule such a meeting or hearing, but simply reiterated to these attorneys that Lawyer A should turn herself in to the Walker County Jail.

21. In the latter half of the week of March 5, 2012, one of a group of eight or ten of Judge Allred's law school classmates with whom Judge Allred communicated through his Facebook¹ account had previously seen and taken note of a third party's criticisms of Judge Allred and his order for Lawyer A's arrest. This classmate member of the Facebook group raised questions about Judge Allred's arrest order in a posting to the rest of the classmate-group.

22. On Thursday, March 8, 2012, Judge Allred wrote or posted a communication on Facebook in which he made comments about Lawyer A and the pending contempt proceedings that Judge Allred had commenced in the ABC case in an attempt to explain or defend his order for Lawyer A's arrest to this group of his law school classmates.

23. This posting, which could originally be read only by a group of approximately 8 to 10 lawyers who attended law school with Judge Allred, stated:

Here's the whole story. Please spread it far and wide. There's a collection lawyer named [Lawyer A]. She rarely comes to court. When I took the bench she would routinely not show up for dockets where she had five to ten cases set. I would dismiss the cases and she would file motions to reinstate. I'd reinstate and we'd start over. After six months or so, I got tired of her wasting my time. So I quit reinstating cases where it was clear that she just blew off court. She continued to file reinstatements. One day, in a moment of inspiration, I set one motion for hearing . . . at 8:00 am. I explained to her that there were many ways to learn about when you have court and should avail herself of those. I told her that if her behavior continued, I would hold her in contempt and fine or place her in jail.

Things got better for about two months. Then she stopped coming to court again. I resumed dismissing her cases. In January she

¹ Facebook is an electronic social media internet program that Judge Allred subscribed to and on which Judge Allred could write or "post" messages that could be read over the internet by other Facebook subscribers who Judge Allred had designated as his "friends."

missed a docket where she had about 8-10 cases. I dismissed them all. She filed a motion to reinstate. So I set it for a hearing and ordered her to appear to show-cause why she shouldn't be held in contempt. She didn't show up. I issued a warrant, but I'm going out of town tomorrow. So I sent a deputy to get her yesterday so I could deal with it before I got out of town and she wouldn't have to sit in jail while I was gone.

Her office lied to the deputy and she's been running ever since. she's made a bad situation much worse. She's basically in open defiance of numerous orders from me to turn herself in. She's gone from one act of contempt to about five. She's a fugitive and she's facing twenty five days now.

24. Judge Allred requested in his Facebook posting that his comments about Lawyer A's pending contempt case be broadly disseminated, i.e., in the second sentence of the Facebook posting, Judge Allred asks the recipients of this posting to "spread it [the information in the posting] far and wide."

25. Also on Thursday, March 8, 2012, Judge Allred sent an e-mail to every Circuit and District Judge in the state via their Alacourt e-mail addresses. The content of that email was as follows:

From: Henry Allred
Sent: Thursday, March 08, 2012 10:34 AM
To: Circuit Judges; District Judges
Subject: [Lawyer A]

Judges,

I am sending this email with great regret, but I must ask for your help. The lawyer listed above is in open violation and defiance of many of my court orders. There is a warrant issued for her arrest that she has been made aware of numerous times. She continues to defy my order and is a fugitive from justice. [Lawyer A] is from [an Alabama city] and does a great deal of collection work around the state. If she appears in your courtroom, please see that she is arrested and held. If you'll contact my office (205-384-7260) or the Walker County Sheriff (205-302-6464), I will send a Walker County deputy to pick her up. Thanks in advance for your help.

26. On Thursday, March 8, 2012, Judge Allred left the state on a family vacation to Disney World in Florida from which he planned to return to Alabama in the middle of the following week.

27. On March 15, 2012, after Judge Allred returned from his vacation, Lawyer A and her attorneys traveled to the Walker County courthouse unannounced, where one of these attorneys spoke with Judge Allred on Lawyer A's behalf.

28. Later, on March 15, 2012, Judge Allred issued an order which was intended to be the "filing of a petition seeking a finding of contempt" required by Rule 70A, A.R.C.P., to commence a civil contempt proceeding.

29. This March 15th order set a hearing on the contempt charges for March 21st and, in addition to the original contempt charge alleging that Lawyer A had repeatedly failed to appear for hearings in Judge Allred's court, expanded the charges against Lawyer A to include:

- a. repeatedly filed frivolous motions to reinstate cases that were dismissed after her failures to appear;
- b. failed to appear at the show-cause hearing set for March 5, 2012;
- c. provided false information to the deputies that came to her office to arrest her on March 6, 2012; and
- d. repeatedly failed to follow Judge Allred's verbal orders to appear and answer these charges.

30. Judge Allred presided at the contempt hearing held on March 21, 2012, in Jasper.

31. Prior to beginning testimony, Lawyer A's attorney moved:

- a. to dismiss the contempt charges on grounds that Judge Allred lacked jurisdiction in the ABC case and therefore he had no jurisdiction to hear them;

b. to dismiss the contempt charges on grounds that the February 17, 2012 show-cause order was legally insufficient under Rule 70A to commence a contempt proceeding; and

c. for Judge Allred to recuse himself based on the provisions of Rule 70A, A.R.C.P.

32. Judge Allred denied all motions to dismiss or to recuse and proceeded to hear and rule on the contempt charges.

33. At the conclusion of the contempt hearing on March 21st, Judge Allred announced in open court that he found Lawyer A not guilty of repeatedly failing to appear in his court, but found Lawyer A guilty of the other four contempt charges.

34. Judge Allred sentenced Lawyer A on these four contempt charges to 60 days in the Walker County Jail.

35. Lawyer A appealed the contempt findings and sentence to the Court of Civil Appeals.

36. The Court of Civil Appeals subsequently remanded the case to Judge Allred, instructing him to enter a written order on the contempt charges, and on September 24, 2012, Judge Allred entered a written order in which he incorporated his findings made at the March 21st hearing into a court order.

37. In an opinion first released in October, 2012, and subsequently revised in January, 2013, the Court of Civil Appeals reversed Judge Allred's contempt order on grounds that he failed to disqualify himself from hearing the charges as required by Rule 70A, A.R.C.P. and remanded the case to Walker County to be heard by another judge, holding:

[W]e conclude that the trial judge erred in denying [Lawyer A's] motion asking the trial judge to disqualify himself pursuant to Rule 70A(f) (citation omitted) Therefore, we reverse the contempt judgment entered by the trial judge and remand the cause with instructions for the presiding circuit-court judge to transfer the contempt proceeding against [Lawyer A] to another judge in

accordance with Rule 70A(f). Because we have disposed of the appeal based on [Lawyer A's] first argument, we do not reach her other arguments.

38. The contempt charges against Lawyer A remain pending at the time of the filing of this Complaint.

Charges

Charge 1

(Canon 3A(6))

39. By making public comments on his Facebook page and in his e-mail sent to all state court judges about contempt proceedings then pending against Lawyer A, Judge Allred violated Canon 3A(6), which provides:

A judge should abstain from public comment about a pending or impending proceeding in any court[.]

Charge 2

(Canon 2A)

40. By making public comments on his Facebook page and in his e-mail sent to all state court judges about contempt proceedings then pending against Lawyer A and requesting that his Facebook friends “spread” the his Facebook posting “far and wide,” Judge Allred violated Canon 2A, which provides:

A judge should . . . conduct himself at all times in a manner that promotes public confidence in the . . . impartiality of the judiciary.

Charge 3

(Canon 1)

41. By making public comments on his Facebook page and in his e-mail sent to all state court judges about contempt proceedings then pending against Lawyer A and requesting that his Facebook friends “spread” his Facebook posting “far and wide,” Judge Allred violated Canon 1 which provides:

A judge should . . . observe high standards of conduct so that the integrity and independence of the judiciary may be preserved.

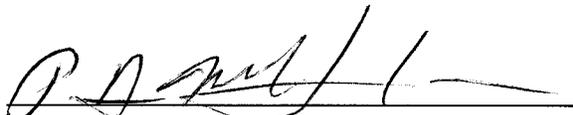
Charge 4
(Canon 2B)

42. By making public comments on his Facebook page and in his e-mail sent to all state court judges about contempt proceedings then pending against Lawyer A and requesting that his Facebook friends “spread” his Facebook posting “far and wide,” Judge Allred violated Canon 2B, which provides:

A judge . . . should avoid conduct prejudicial to the administration of justice which brings the judicial office into disrepute.

Done this 28th day of February, 2013.

THE JUDICIAL INQUIRY COMMISSION


P. Ben McLauchlin, Jr.
Chairman

BY ORDER OF THE COMMISSION