
IN THE MATTER OF:
DOROTHEA BATISTE
Circuit Judge of Jefferson County,
Tenth Judicial Circuit of Alabama



ORDER

The Judicial Inquiry Commission (the "JIC"), and Judge Dorothea Batiste ("Judge Batiste")--(collectively "the Parties")--appeared on July 24, 2013, for a status conference in the above-referenced matter; this matter is set for a hearing on the disposition of the complaint (hereinafter referred to as "the trial") on July 29, 2013. The following order details the decisions reached during that status conference:

Renewed Motion for Recusal

On or about July 3, 2013, Judge Batiste filed a motion styled as a "Renewed Motion for General Recusal of all Four Judges on Court of Judiciary on Grounds of too Close Relationship with Scott Vowell, Recent Member of the Court of the Judiciary and Main Antagonist Against Judge Dorothea Batiste." This motion is denied. Additionally, I direct the parties to my previous ruling on this matter. In an order filed on June 18, 2013, I stated as follows:

"I, Judge Michael Joiner, do not recuse. Further, I do not suggest that any other judge recuse, but instead, leave that decision to the discretion of the respective Members of this Court; to this end, I have forwarded Judge Batiste's recusal motion to each of the Members of the Court of the Judiciary."

The matter of recusal has been submitted to each of the individual members of the Court of the Judiciary, and the decision of recusal is left to each member.

Motion to Strike

On or about July 3, 2013, Judge Batiste filed a motion styled as a "Motion to Strike []JIC Complaint on Grounds that []JIC is Overwhelming and Unconstitutionally Comprised of Middle-Aged to Older White Male Judges, Whose Demographics Deprive Judge Batiste of a Grand Jury of her Peers." The caselaw relied upon by Judge Batiste in support of this argument speaks to criminal proceedings. Judge Batiste fails to demonstrate that the nature of the proceedings against her are criminal in nature, that the JIC is analogous to a grand jury, or that the JIC is controlled by legal principles applicable to a grand jury; notably, the JIC is not independently responsible for its makeup. Ala. Const. 1901 (Off. Recomp.), Art. VI, § 156(a). Accordingly, this motion is denied.

Motion to Call Witness Out of Order

On or about July 17, 2013, Judge Batiste filed a motion styled as a "Motion to call Witness Wayne Wheeler Out of Turn and for Clarification on Other Witnesses." Mr. Wheeler--who has been subpoenaed to appear at the trial--has indicated that he is unavailable to attend the trial because of personal travel plans.

This motion is denied. As relayed to Judge Batiste in a telephone conference on Friday, July 19, 2013, she may elect to do one of the following: depose Mr. Wheeler, conduct a video deposition of Mr. Wheeler, or require Mr. Wheeler to appear pursuant to his subpoena. Judge Batiste also has the option to present the testimony of Mr. Wheeler by way of videotelephony or Voice Over Internet Protocols ("VOIP") using programs such as "Skype" or "FaceTime." Judge Batiste may pursue the latter option at her own risk, recognizing the fragile nature of technology; although technology can be made available for use in the courtroom, Judge Batiste is responsible for contacting this office to confirm her use of this option and to coordinate technical matters associated with this option. Additionally, if Judge Batiste chooses the latter option, she is required to ensure that Mr. Wheeler has

access to premarked copies of all necessary exhibits.

Motion to Seal

On or about July 17, 2013, Judge Batiste moved this Court "to seal her Motion to Amplify Third Affirmative Defense." At the request of both parties, Judge Batiste's motion to amplify is hereby sealed; likewise, portions of an attachment to that motion to amplify--which contains personal identifying information regarding Judge Batiste--will be redacted.

Motion to Disqualify

On or about July 17, 2013, Judge Batiste filed a motion styled as a "Motion to Disqualify Griffin Sikes as Attorney for []JIC at Forthcoming Trial." This motion is denied.

Objection to Judge Batiste as a witness for the JIC

Initially, the JIC listed Judge Batiste as a witness in its witness list, and Judge Batiste filed an "Objection to []JIC Calling [Judge] Dorothea Batiste as Witness." The parties agree that Rule 10, Ala. R. Ct. Jud.,¹ is controlling and that the JIC may not call Judge Batiste as a witness; the parties also agree, however, that if Judge Batiste chooses to

¹"[N]o judge may be compelled to give evidence against himself or herself; provided, however, that a judge who chooses to testify on his or her own behalf shall be subject to cross examination."

testify, she is subject to cross-examination by the JIC. Accordingly, this motion is granted.

Motion to Dismiss or for Other Sanctions

In a motion for production dated July 1, 2013, Judge Batiste asked the JIC to produce "copies of all written verifications of the five complaints currently pending against her," as well as "copies of all emails, letters, memos, notes of communication, etc., between Judge Scott Vowell[] and Griffin Sikes and/or ... between Scott Vowell and the []JIC or any other panelist on the []JIC, or any other third party, that are in any way related ... to one of the allegations against [Judge Batiste]."

On or about July 22, 2013, Judge Batiste filed a motion styled as a "Motion to Dismiss all Charges Against Judge Dorothea Batiste and/or for Other Sanctions for Failure to Produce Copies of Verified Complaints ... as Required by Rule 6 of the Rules of Judicial Inquiry Commission, or in the Alternative, for Other Sanctions." In her motion, Judge Batiste contends that the charges against her should be dismissed because, she says, the JIC failed "to produce written verifications of three sets of complaints pending against her before the [Court of the Judiciary]," and

because, she says, the JIC failed to produce the requested documents related to communications with Judge Scott Vowell. This motion is denied.

First, Judge Batiste conceded at the hearing that the JIC had, in fact, supplied her with the verified complaint that she sought. Second, contrary to her assertions, the JIC responded to her request for production regarding communications with Judge Scott Vowell; specifically, in its response to her motion to produce, the JIC asserted that it "ha[d] no such written or recorded materials other than any sworn complaints that may have been filed by Judge Vowell ... [and] [a]ll records responsive to this request have previously been produced to Judge Batiste[.]"

Motion for Leave to File Motion to Strike

On or about July 19, 2013, the JIC filed a motion "for leave to file a motion to strike portions of the answer and affirmative defenses." This motion is granted.

Motion to Strike Judge Batiste's Motion to Amplify

On or about July 17, 2013, Judge Batiste filed a motion "to amplify [her] third affirmative defense." Judge Batiste purports to support her motion to amplify with an attached document that, according to her, is "evidence of what has

wrongfully driven the entire set of complaints against Judge Batiste[.]"

On or about July 19, 2013, the JIC filed a motion to strike Judge Batiste's motion to amplify. The JIC's motion is granted. Specifically, the document attached to the motion to amplify--which serves as the basis for the motion--is merely a summary of a verbal statement given by Judge Batiste to agents of the Alabama Attorney General's office.

Motion to Strike

In her answer to the complaint filed by the JIC, Judge Batiste alleged, in part, as follows:

"2. Denies the allegations of paragraph 2 of the Complaint, for reasons set forth more fully in my responses to paragraphs 9-117 of the Complaint; further avers that the entire proceeding against her by the [JIC] is an abuse of process and travesty of justice spurred on by retaliation by Judge Scott Vowell against her for Batiste's having rejected Vowell's sexual advances during the first year-and-one-half of her judgeship in Jefferson County, 2011-2012. Judge Batiste also asserts that she is a victim of race discrimination because of the disparate way she, as a black person, has been treated for her use of the contempt power of the judiciary, when compared to certain other white circuit court judges in Jefferson and Chilton Counties who have used, and/or abused, the contempt power for far greater lengths of time and under much more questionable circumstances. Judge Batiste also believes that her identification as a 'colored Republican,' so derisively referred to by Scott Vowell as such, has also factored into Scott Vowell's actions against her."

Later in her answer, Judge Batiste asserted "affirmative defenses," including the following:

"3. This entire Complaint, in its original instance, was wrongfully motivated by a sexual harassment retaliation by Judge Scott Vowell due to Respondent Batiste's having rejected Vowell's sexual advances early in her judgeship (See copy of Batiste's EEOC charge No. 420-2013-01858 attached to Batiste's Discovery Responses).

"4. This Complaint also amounts to a form of race discrimination by the []JIC and Scott Vowell, due to the disparate treatment of Judge Batiste when compared to at least two other white Circuit Court judges, Susan Childers of Jefferson County, and Sibley Reynolds of Chilton County, who have engaged in far more lengthy, frequent, and draconian uses of the contempt power without penalty or discipline by the []JIC. (See copy of Batiste's EEOC charge No. 420- 2013-01858 attached to Batiste's Discovery Responses).

".....

"7. The Complaint also violates respondent Batiste's right of due process of law because it has denied Batiste an opportunity to confront her accusers, and even take the deposition of Scott Vowell, which deposition was requested by her attorney before the AJIC's Complaint was issued, all before respondent Batiste was suspended by the AJIC. (See Exhibit A). The []JIC ignored attorney McPhillips' request to take Scott Vowell's deposition, or did not answer it, but instead rushed to file its complaint against Batiste before the Court of the Judiciary.

"8. The Complaint also violates respondent Batiste's right to equal protection of the laws guaranteed by the 14th Amendment's equal protection clause, because the Complaint treats Batiste in a disparate manner, in seeking to sanction and punish

Batiste for alleged misuse of her contempt power when far greater misuses of said powers have been exercised by white circuit judges in Alabama without penalty or sanction by the [JIC]."

On or about July 19, 2013, the JIC moved this Court to "strike paragraphs 3, 4, 7, and 8 of the affirmative defense and paragraph 2 of the answer."

The "defenses" asserted by Judge Batiste are not affirmative defenses because they are not "assertions of facts and arguments that, if true, w[ould] defeat [the JIC's] claim[s], even if all the allegations in the complaint are true." Ex parte Gadsden Country Club, 14 So. 2d 830, 833 (Ala. 2009); see also Rule 8(c), Ala. R. Civ. P. Likewise, the "defenses" asserted by Judge Batiste are not negative defenses because Judge Batiste does not "simply seek[] to refute [] essential allegation[s] of the [JIC's] complaint." Id. at 834. The JIC correctly concludes that Judge Batiste "attempt[s] to plead 'insufficient defenses,' i.e., defense which have never ... been recognized as affirmative defenses to charges of judicial misconduct or violations of judicial canons."

Not only are the assertions not defenses, the assertions are irrelevant to the matters alleged in the JIC's complaint. "'Relevant evidence' means evidence having any tendency to

make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Rule 401, Ala. R. Civ. P. The allegations made by Judge Batiste are not defenses, nor are they material or relevant to the matters alleged in the JIC's complaint. Accordingly, the JIC's motion to strike is hereby granted.

Although this ruling strikes Judge Batiste's "defenses," it does not necessarily prohibit her from presenting evidence of a similar nature for impeachment purposes--such as to show bias or question the credibility of a witness--or necessarily prohibit her from presenting such evidence as it relates to mitigating any possible penalties imposed by this Court.

It is so ordered.



J. MICHAEL JOINER
CHIEF JUDGE
COURT OF THE JUDICIARY

Dated: July 24, 2013