

IN THE COURT OF THE JUDICIARY



IN THE MATTER OF)
)
)
 ROY S. MOORE,)
 Chief Justice of the)
 Supreme Court of Alabama)
) Court of the Judiciary
) Case No. 46

OBJECTIONS OF CHIEF JUSTICE MOORE TO CERTAIN EXHIBITS OF THE JUDICIAL INQUIRY COMMISSION

The Judicial Inquiry Commission (“JIC”) incorporated 21 exhibits into its *Cross Motion for Summary Judgment and Opposition to Chief Justice Moore’s Motion for Summary Judgment* dated July 15, 2016. The first 17 exhibits (A-Q) were incorporated by reference from the complaint filed May 6, 2016. The last four exhibits (R, S, T, and U) were attached to the opposition and cross motion.

Chief Justice Moore objects to the admission of Exhibits B, C, F, H, I, S, T and U as irrelevant. He additionally objects that Exhibits B and C are prejudicial. Exhibit S is also hearsay and unauthenticated. For these reasons, these exhibits should be excluded.

Discussion

Evidence is relevant if it has “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. Evid. Charges No. 1-5 in the JIC’s complaint all arise from the Administrative Order of January 6, 2016.

Exhibits B and C relate to COJ Case #33 that was tried in 2003. Those exhibits are irrelevant and shed no light on the meaning of the Administrative Order. Furthermore, they

are prejudicial because they are being offered to persuade the Court to convict on the basis of a prior proceeding remote in time to the current case and arising from different facts. Such evidence serves only to confuse the Court and unfairly prejudice the Chief Justice. *See, e.g.*, Ala. R. Evid. 404(a) (setting out a general exclusionary rule regarding character evidence offered as a basis from which to infer how a person acted on the occasion at issue); Advisory Committee's Notes to Rule 401. *See also* Rule 403, Ala. R. Evid. ("Although relevant, 'evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading [the court]").

Exhibits F, H, and I relate to communications from the Chief Justice to the Governor (Ex. F), and to the probate judges (Exs. H & I) in January and February 2015. The Administrative Order describes the status of certain orders of the Alabama Supreme Court issued in March 2015 in the *API* case. Exhibits F, H, and I, dated before the *API* orders were issued, have no relevance to the Administrative Order which, in any event, speaks for itself. Again, the JIC is attempting to confuse the Court by bringing in extraneous evidence that is not material to the issue before the Court—the plain meaning of the Administrative Order of January 6, 2016.

Exhibit S is a press release from Liberty Counsel issued on January 6, 2016. The press release is irrelevant to any fact at issue in this case because Liberty Counsel did not represent the Chief Justice at that time. *See* Reply and Opposition Brief of the Chief Justice dated July 26, 2016, at 12-13. Exhibit S is also inadmissible hearsay and unauthenticated. *See id.*

Exhibit T is irrelevant because it bears no relationship to the matter before the Court—the meaning of the Administrative Order. In exercising their authority to issue marriage licenses, probate judges are not “trial courts,” and only the latter were the subject of Exhibit T.

Charge No. 6 is the only charge that addresses the issue of recusal. The JIC, however, has forfeited that charge by not following the mandatory requirements of Rules 6C and 6D that any matter charged in a complaint must first be presented by allegation in an investigation letter. *See* Motion to Dismiss, at 26-29. Because Charge No. 6 has been forfeited, evidence pertaining to it, such as the transcript portions in Exhibit U, is irrelevant.

Conclusion

WHEREFORE, for good cause shown, Chief Justice Moore requests the Court to exclude JIC Exhibits B, C, F, H, I, S, T and U from the record of this case.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I certify that I have this 5th day of August, 2016, served a copy of the *Objections of Chief Justice Moore to Certain Exhibits of the Judicial Inquiry Commission* on the Judicial Inquiry Commission through electronic mail to:

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