

BEFORE THE COURT OF THE JUDICIARY
OF
ALABAMA



In the Matter of MARVIN W.)
WIGGINS, Circuit Judge of) Court of the Judiciary
The Fourth Judicial) Case No. 37
Circuit of Alabama)

COMPLAINT

The Alabama Judicial Inquiry Commission brings this complaint against Judge Marvin W. Wiggins, Circuit Judge of the Fourth Judicial Circuit of Alabama. The facts and charges, upon which this complaint is based, averred separately and severally, are as follows:

Facts

1. Marvin W. Wiggins (hereinafter "Judge Wiggins") took office as a circuit judge of the Fourth Judicial Circuit of Alabama on January 19, 1999.
2. Ms. Gay Nell Tinker, also known as Ms. Bobby Singleton, is Judge Wiggins's sister and was the circuit

clerk of the Hale County Circuit Court from January 16, 2001, to January 15, 2007, and by operation of § 17-11-2, Code of Alabama (1975), the absentee-election manager during that time period (hereinafter, "Clerk Tinker"). Mr. Bobby Singleton is married to Clerk Tinker and is, thus, Judge Wiggins's brother-in-law. He was elected to the Alabama Senate on January 25, 2005, with 42 percent of the votes cast by absentee ballot. Ms. Carrie Reaves is Judge Wiggins's first cousin.

3. In September 2004, the Office of the Alabama Attorney General (hereinafter, "the attorney general's office") began an investigation into voter fraud in Hale County, specifically regarding the alleged forgery and illegal verification of voter signatures on affidavits of absentee ballots, that included, among others, the 2004 and the 2005 elections.

4. Judge Wiggins's three relatives named in paragraph 2 were under investigation: Clerk Tinker, Mr. Singleton, and Ms. Reaves.

5. As part of its investigation, the attorney general's office asked Judge Wiggins to convene a special

grand jury in Hale County. In that written request, the attorney general's office stated that it was conducting an investigation into possible voter fraud in Hale County and that, in furtherance of that investigation, witness testimony and handwriting exemplars were needed. Judge Wiggins granted the request and empanelled the grand jury on December 11, 2006.

6. On August 16, 2007, the investigation resulted in indictments charging Ms. Rosie Lyles and Ms. Valada Paige Banks of multiple felonies related to voter fraud in the October 26, 2004 Hale County Democratic primary special election to fill the office of State Senator for District 24, which Mr. Singleton eventually won in a run-off on December 14, 2004, and also voter fraud in the May 3, 2005 Hale County special Democratic primary election to fill the office of State Representative for District 72, the office vacated by Mr. Singleton when he became a senator.

7. On September 11, 2007, the attorney general's office issued a subpoena and a subpoena duces tecum for Ms. Milliarstine Coleman to appear on September 20, 2007, to provide handwriting exemplars.

8. On September 12, 2007, Hale County District Judge William A. "Sonny" Ryan issued a search warrant for Ms. Coleman's handwriting exemplars. In the affidavit supporting the application for the search warrant, Investigator George Barrows of the attorney general's office stated, among other things, that the voter who allegedly cast absentee ballot # 205 in the May 3, 2005 election for State Representative, District 72, claimed he had not signed the affidavit of that ballot and that Ms. Coleman had signed the ballot # 205 affidavit as a witness.

9. On September 12, 2007, Ms. Coleman was served with the attorney general's office's subpoena and subpoena duces tecum and the district court's search warrant.

10. On September 18, 2007, the attorneys representing Ms. Coleman presented a motion to quash the district court's search warrant to Judge Wiggins. The motion was styled *Milliarstine Coleman vs. Troy King, Attorney General*. It had not been filed in the circuit clerk's office and, consequently, had not been assigned to Judge Wiggins.

11. Ms. Coleman's motion to quash the search warrant consisted entirely of the following grounds:

1. That the search warrant seeks to obtain a handwriting exemplar from Milliarstine Coleman.

2. That under Rule 16.2, Alabama Rules of Criminal Procedure, personal physical evidence of this nature may be obtained by the state and solely in connection with a particular offense with which the defendant is charged.

3. That Milliarstine Coleman has not been charged with any offense.

12. At the time of the presentation of Ms. Coleman's motion, Judge Wiggins knew the attorney general's office was conducting a grand-jury investigation into various absentee-voter fraud irregularities in Hale County and that Clerk Tinker, Mr. Singleton, and Ms. Reaves were, along with Ms. Coleman, subjects of the overall investigation.

13. That same day, September 18, 2007, Judge Wiggins wrote on the motion the notations that the motion was "granted" and that the case was set for a hearing on October 10, 2007. This action was taken ex parte.

14. Ms. Coleman filed an amendment to her motion to quash, adding the request that the attorney general's office's subpoena duces tecum also be quashed.

15. When Ms. Coleman's motion to quash the district court's search warrant was filed in the circuit clerk's

office on September 18, 2007, Judge Wiggins had already ruled on it, so the clerk assigned Ms. Coleman's case *Milliarstine Coleman v. Troy King, Attorney General*, CV-2007-74, to Judge Wiggins.

16. On September 19, 2007, Judge Wiggins issued a written order ex parte quashing the search warrant and the subpoena duces tecum, pending the October 10, 2007 hearing.

17. On October 3, 2007, the attorney general's office filed a motion for Judge Wiggins to recuse. It argued, in part, that the ruling in Ms. Coleman's case would have precedential significance in all prosecutions and investigations spawning from the comprehensive voter-fraud investigation. In addition, it specifically averred that "the instant investigation of voter fraud focuses on various improprieties of the Hale County absentee voter process administered by . . . Clerk . . . Tinker."

18. The attorney general's office supported its motion to recuse with an affidavit by Investigator Barrows. In that affidavit, Investigator Barrows outlined the investigation, noting the inference of a common plan, scheme, or conspiracy by sixteen persons by virtue of the

facts that all illegal absentee votes were cast for only four candidates and that one or more of the conspirators were related to one or more of the four candidates; specified Clerk Tinker, Mr. Singleton, and Ms. Reaves -- Judge Wiggins's relatives -- as three of the sixteen targets; declared that the investigation had disclosed that the three relatives had forged voter signatures and/or notarized and/or witnessed forged voter signatures; and explained that Clerk Tinker, in her official capacity as the absentee-election manager, would also likely be a material witness in any prosecution arising from the investigation.

19. On that same date, October 3, 2007, the attorney general's office also filed a motion to vacate Judge Wiggins's order quashing the search warrant and the subpoena duces tecum, asserting in part that Judge Wiggins did not have jurisdiction, in a civil action, to quash a search warrant issued in a criminal investigation.

20. On October 10, 2007, the day of the hearing, the attorney general's office filed a motion to dismiss the action. During the hearing, Assistant Attorney General Ben

Baxley argued the merits of the motion to vacate the order quashing the search warrant and the subpoena duces tecum.

21. In the October 10, 2007 hearing, Assistant Attorney General Baxley also addressed the motion to recuse. When Judge Wiggins asked whether Clerk Tinker had done anything illegal with absentee ballot # 205, which Ms. Coleman had witnessed, Assistant Attorney General Baxley stated the following:

I believe that the investigation will eventually be able to demonstrate and prove that that ballot was cast improperly with the knowledge of Ms. Tinker. And that she, in her capacity as circuit clerk, has a duty to make sure that absentee ballots are cast correctly. And she either affirmatively took part in it, had specific knowledge of the impropriety of that ballot, or she looked the other way.

22. Judge Wiggins refused to rule on the attorney general's office's motion to recuse, but granted Ms. Coleman's request to amend her pleadings over Assistant Attorney General Baxley's objection and scheduled another hearing for November 13, 2007.

23. On October 12, 2007, the attorney general's office, in seeking a ruling on its motions to dismiss, to recuse, and to vacate the order to quash, filed "Motion for Ruling

[by October 18] and Notice of Intent to Seek a Writ of Mandamus." In that pleading, it asserted that Judge Wiggins's delay was prejudicing its investigation.

24. On November 1, 2007, the attorney general's office filed a mandamus petition in the Alabama Court of Criminal Appeals, seeking an order directing Judge Wiggins to recuse. In that motion, the attorney general's office asserted that Judge Wiggins was delaying and obstructing the investigation. On November 16, 2007, the Court of Criminal Appeals dismissed the mandamus petition without prejudice. *Coleman v. State*, 994 So.2d 303 (Ala. Crim. App. 2007).

25. On November 30, 2007, the attorney general's office filed a second mandamus petition in the Court of Criminal Appeals, seeking to compel Judge Wiggins to rule on the recusal motion and arguing that Judge Wiggins's continued refusal to rule was impeding the investigation and effectively denying the attorney general's office a final ruling from which to appeal. It also noted that Judge Wiggins had continued indefinitely the November 13, 2007 hearing.

26. On December 18, 2007, the Court of Criminal Appeals directed Judge Wiggins to issue a ruling on the motion to recuse within 21 days. *Coleman v. State*, No. CR-07-0391 (Ala. Crim. App. Dec. 18, 2007). On January 8, 2008, Judge Wiggins denied the motion to recuse, finding that the attorney general's office had failed to present evidence that Clerk Tinker, Mr. Singleton, or Ms. Reaves "were present during anytime the ballots were executed, that either one personally handled the ballots or that either one secured the ballots in any manner." Order, January 8, 2008.

27. On January 10, 2008, the attorney general's office filed a third mandamus petition, requesting the Court of Criminal Appeals to direct Judge Wiggins to recuse. The Court of Criminal Appeals so ruled on February 26, 2008. *Coleman v. State*, No. CR-07-0620 (Ala. Crim. App. Feb. 26, 2008). The Court's order stated, in its entirety, "This petition for a writ of mandamus is GRANTED. Judge Marvin Wiggins is directed to recuse himself from presiding over this case." (Citations omitted.)

28. On March 17, 2008, the grand jury indicted Clerk Tinker on thirteen felony offenses pertaining to voter

fraud, more specifically nine ballots: six cast in the October 26, 2004 Hale County Democratic primary special election and two cast in the May 3, 2005 Hale County special Democratic primary election.

29. Although, according to his testimony before the Judicial Inquiry Commission on October 10, 2008, Judge Wiggins considered himself "done" with the case when the Court of Criminal Appeals issued its order requiring him to recuse, he did not issue an order recusing from *Milliarstine Coleman v. Troy King, Attorney General*, CV-2007-74, until March 26, 2008.

CHARGES

Charge One

30. Judge Wiggins, a circuit judge of the Fourth Judicial Circuit, while serving in that capacity, *failed to uphold the integrity and independence of the judiciary*, as required by **Canon 1** of the Alabama Canons of Judicial Ethics, in that he failed to recuse himself in a timely manner under the circumstances described in paragraphs 1 through 29 of this complaint.

Charge Two

31. Judge Wiggins, a circuit judge of the Fourth Judicial Circuit, while serving in that capacity, *failed to participate in establishing, maintaining, and enforcing high standards of conduct so that the integrity and independence of the judiciary may be preserved*, as required by **Canon 1** of the Alabama Canons of Judicial Ethics, in that he failed to recuse himself in a timely manner under the circumstances described in paragraphs 1 through 29 of this complaint.

Charge Three

32. Judge Wiggins, a circuit judge of the Fourth Judicial Circuit, while serving in that capacity, *failed to avoid impropriety and the appearance of impropriety in all his activities*, as required by **Canon 2** of the Alabama Canons of Judicial Ethics, in that he failed to recuse himself in a timely manner under the circumstances described in paragraphs 1 through 29 of this complaint.

Charge Four

33. Judge Wiggins, a circuit judge of the Fourth Judicial Circuit, while serving in that capacity, *failed to conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary*, as required by **Canon 2A** of the Alabama Canons of Judicial Ethics, in that he failed to recuse himself in a timely manner under the circumstances described in paragraphs 1 through 29 of this complaint.

Charge Five

34. Judge Wiggins, a circuit judge of the Fourth Judicial Circuit, while serving in that capacity, *allowed his family, social, political or other relationships to influence judicial conduct or judgment*, in violation of **Canon 2C** of the Alabama Canons of Judicial Ethics, in that he failed to recuse himself in a timely manner under the circumstances described in paragraphs 1 through 29 of this complaint.

Charge Six

35. Judge Wiggins, a circuit judge of the Fourth Judicial Circuit, while serving in that capacity, *failed to disqualify himself in a proceeding in which his impartiality might reasonably be questioned*, as required by **Canon 3C(1)** of the Alabama Canons of Judicial Ethics, in that he failed to recuse himself in a timely manner under the circumstances described in paragraphs 1 through 29 of this complaint.

Charge Seven

36. Judge Wiggins, a circuit judge of the Fourth Judicial Circuit, while serving in that capacity, failed to disqualify himself in a proceeding in which a person in the fourth degree of relationship to him was known by him to have an interest that could be substantially affected by the outcome of the proceeding, as required by **Canon 3C(1)(d)(ii)** of the Alabama Canons of Judicial Ethics, in that he failed to recuse himself in a timely manner under the circumstances described in paragraphs 1 through 29 of this complaint.

DONE this 1st day of May, 2009.

THE ALABAMA JUDICIAL
INQUIRY COMMISSION

A handwritten signature in black ink that reads "Randall L. Cole". The signature is written in a cursive style with a large initial 'R' and 'C'.

Randall L. Cole
Chairman

BY ORDER OF THE COMMISSION