

IN THE COURT OF THE JUDICIARY
FOR THE STATE OF ALABAMA



In the Matter of)
PATRICIA D. WARNER,)
Circuit Judge of the) Court of the Judiciary
Fifteenth Judicial) Case No. 40
Circuit of Alabama)

MOTION TO AMEND THE FIRST AMENDED COMPLAINT
TO ADD PRAYER FOR RELIEF

Comes now the Judicial Inquiry Commission and moves for leave to further amend the Complaint in this case by adding a prayer for relief and as grounds therefor states the following:

1. The Chief Judge of the Court of the Judiciary, upon the objection of Judge Warner that no prayer for relief has been included in the Complaint or First Amended Complaint as filed by the Commission, has requested the Commission include a prayer for relief in the pleading.

2. A prayer for relief in a case of this nature could include a range of requests from a request that the Court find Judge Warner guilty of all charges and order her removed from the office of judge or retired judge, to a request that the Court find Judge Warner guilty of all charges and impose such sanction(s) as the Court may deem appropriate.

3. Under the model for judicial discipline provided by the Alabama Constitution, Article VI, Sections 156 and 157 (1901), the most appropriate prayer for relief -- and the one the Commission has in past practice implicitly adopted -- is that the Court impose such sanction(s) as it may deem appropriate. Compare Section 156(b) (the Commission shall prosecute the Complaints) and Section 157 (the Court of the Judiciary shall be convened to hear Complaints filed by the Commission and shall have authority, after notice and a public hearing, to apply sanctions, i.e., "to remove from office, suspend without pay, or censure a judge, or apply such other sanction as may [be] prescribed by law"). In this instance, however, in an effort to assist the Court further in this case, this request to amend by adding a prayer for relief will be more specific.

4. Under the facts and circumstances of this case, in its present posture, the Commission's prayer for relief includes the following:

- a. This Court find, after notice and a public trial or public hearing (the latter, if a alternate-dispute-resolution proposal were to be presented to the Court pursuant to Rule 10, Rules of Procedure of the Judicial Inquiry Commission), that Judge Warner is guilty of all charges as stated in the Complaint; and
- b. This Court publically censure Judge Warner for her conduct;

- c. This Court order that Judge Warner never again sit as an active judge or otherwise perform judicial duties in Alabama; and
- d. This Court tax costs against Judge Warner, said amount to be determined at the conclusion of the proceedings before this Court.

5. In the posture of this case when the Commission considered and filed the Complaint, and based upon the Commission's evidence establishing a reasonable basis to charge Judge Warner with multiple violations of the Alabama Canons of Judicial Ethics, Judge Warner's misconduct would have justified her removal from the office of Circuit Judge of the Fifteenth Judicial Circuit. Such extreme sanction would have been warranted by the following non-exclusive factors: the nature, extent, and frequency of Judge Warner's violations; she committed the violations in the courtroom; she committed the violations in her official capacity; she has not acknowledged or recognized the acts occurred; her decisions were not motivated by the faithful performance of judicial duties; much of her conduct involved actual impropriety and/or the appearance of impropriety; some of her conduct evidenced a lack of independence and impartiality; she committed the misconduct over a significant period of time; she did not evidence an effort to change or modify her conduct; she served as a judge for six years and thus was experienced; her violations had a profound effect on the integrity of and respect for the judiciary; her violations were irreparably injurious to litigants and their children, i.e.,

particularly vulnerable victims; her violations were prejudicial to the actual administration of justice; her violations were premeditated and deliberate; her violations undermined the ability of the justice system to discover the truth in a legal controversy and to reach the most just result; she ignored a Commission advisory opinion issued pursuant to her request; and her violations were clear, unambiguous ethical violations.¹

6. The compelling call for removal of Judge Warner from the office of Circuit Judge of the Fifteenth Judicial Circuit was obviated and mitigated by her abrupt, voluntary retirement from that office on or about June 20, 2011, the date the Commission filed this Complaint against her. This voluntary retirement occurred less than eight months after Judge Warner won a contested election to a second six-year term of office, and five months into that second six-year term. In retiring in anticipation of the Commission's filing of a Complaint in this Court, Judge Warner effectively sanctioned herself by foregoing, at a minimum, the remaining five and one-half years of her second term of office, her salary as a circuit judge during that period, and a significant increase in her retirement benefits, which would have accrued from that additional five and one-half years of state service.

¹ See Cynthia Gray, "Relevant Factors in Determining the Appropriate Sanction," Judicial Conduct Reporter 2, 9 (Winter 2007); Cynthia Gray, A Study of State Judicial Discipline Sanctions 81-82 (American Judicature Society 2002) [hereinafter Gray, State Sanctions Study].

7. In the light of the circumstances listed in paragraph 6, among others, the Commission does not believe that removing or suspending Judge Warner from the office of retired circuit judge is necessary. The Commission notes that Judge Warner's retirement income is based on only six years' judicial service and includes approximately fifteen years' state service in a non-judicial capacity. In addition, Judge Warner has imposed a significant and meaningful sanction upon herself by removing herself from active judicial service and moving her residency from the State of Alabama.

8. Despite Judge Warner's voluntary retirement, this Court's finding of guilt, sanction of public censure, and prohibition from serving as a judge are essential if Alabama's judicial disciplinary system is to serve the interests of the public and the judiciary. The general purpose of judicial discipline proceedings is preserving the integrity of the judiciary and public confidence in the judiciary and, when necessary, safeguarding the bench and the public from those who are unfit.² More specific reasons include the following:

- a. Impress upon the judge and other judges the severity and significance of the particular misconduct;
- b. Deter similar conduct by that judge and other judges;
- c. Reassure the public that judicial misconduct is not tolerated or condoned; and

² Gray, State Sanctions Study, supra, note 1, at 3.

d. Foster the public's confidence that the system of judicial discipline established by the Judicial Article is functioning properly, i.e., is capable of and, in fact, actively addresses judicial misconduct.³

9. Just as these are reasons for a public trial of a Complaint filed in the Court of the Judiciary, they also compel public imposition of sanctions, including the sanction of censure and prohibition from judicial service. As drafted and ratified by the vote of the people of Alabama in 1973, the Judicial Article (art. VI, § 157(a)) provides, without exception, for a public trial of all Complaints in the Court of the Judiciary. It does not provide for or authorize private mediation, private settlement, or any other private means for disposition of a Complaint filed in the Court of the Judiciary. Because the Court can impose disciplinary sanctions only after a public trial and formal determination that the judge had engaged in improper behavior, it follows that the censure provided in § 157(a) and the prohibition from serving must also be public.

10. Justice must not only be done, but must be seen by the public to be done.⁴ Ensuring the appearance, as well as

³ Id.

⁴ In re Seaman, 627 A.2d 106, 121 (N.J., 1993):

The ultimate and permeating objective of the canons ... is to maintain the integrity of the judiciary and public confidence in that integrity. Accordingly, the canons evidence concern not only

the reality, of judicial integrity mandates that any censure by the Court be a public censure.⁵

11. Public censure is not to punish the miscreant judge,⁶ but to continually restore, renew, and replenish the public's confidence in the integrity of the judiciary and its ability to police itself. Without making public both (a) the proof of the wrongfulness of that judge's conduct, established either by a public trial or the judge's admission of misconduct, and (b) the censure of the guilty judge, the public is deprived of that which Alabama's constitutional system of judicial discipline was designed to deliver -- assurance that, when a judge violates the

for the reality of judicial integrity, but for the appearance of that reality.

(Emphasis added).

⁵State ex rel. Comm'n on Judicial Qualifications v. Krepela, 628 N.W.2d 262, 271 (Neb. 2001):

The discipline imposed must be designed to announce publicly our recognition that there has been misconduct. It must be sufficient to deter the respondent from engaging in such conduct again, and it must discourage others from engaging in similar conduct in the future.

(Emphasis added.)

⁶ Gray, State Sanctions Study, supra, note 1, at 3 (other supreme courts have repeatedly stated that the purpose of discipline in judicial conduct cases is not to punish the judge). See, e.g., In re Inquiry Concerning a Judge, 788 P.2d 716 (Ak. 1990) (judicial discipline proceedings are neither civil nor criminal, but sui generis, and the purpose of judicial discipline is to protect the public rather than punish the judge).

Canons of Judicial Ethics, that judge's misconduct will not be tolerated, but will be brought to light and effectively and publicly dealt with. Just as the Canons are "a declaration of that which the people of the State of Alabama have a right to expect of [judges],"⁷ the Court's findings of guilt and imposition of sanctions are a declaration to the people of the integrity of the judiciary.

12. In this case, a determination of guilt by clear and convincing evidence on any single charge or any portion of any single charge is sufficient to warrant a public censure for that conduct and a prohibition from ever serving again, particularly in light of the irrefutable nature of the evidence establishing Count Six, i.e., the cited appellate opinions evidencing Judge Warner's lack of good faith and her intentional disregard of known legal standards.

13. The amount of costs is a matter that should be determined after the Court renders its final decision on the merits in this case. Because the Commission is not permitted any access to the judge charged with misconduct and cannot depose the judge,⁸ the Commission is unsure at this time the extent of any additional costs incurred.

⁷ Preamble, Alabama Canons of Judicial Ethics.

⁸ Rule 6F, Rules of Procedure of Judicial Inquiry Commission (no judge may be compelled to give evidence against himself or herself); Rule 10, Rules of Procedure for the Alabama Court of the Judiciary (same).

These premises considered, the Judicial Inquiry Commission respectfully requests that the Complaint in this case be amended as stated in the attached proposed amendment.

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 electronic mail and by placing a copy of same in the United States mail, postage prepaid, addressed as follows on this the 2nd day of November, 2011:

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