



IN THE ALABAMA COURT OF THE JUDICIARY

In the Matter of:

DOROTHEA BATISTE,
Jefferson County Circuit Judge

Case No. 43

PRE-TRIAL BRIEF OF
DEFENDANT JUDGE DOROTHEA BATISTE

July 24, 2013

Julian L. McPhillips, Jr.
McPhillips Shinbaum, L.L.P.
516 South Perry Street
Montgomery, Alabama 36104
(334) 262-1911
JulianmcpPhillips@msg-lawfirm.com

IN THE ALABAMA COURT OF THE JUDICIARY

In the Matter of:

DOROTHEA BATISTE,
Jefferson County Circuit Judge

Case No. 43

PRE-TRIAL BRIEF

COMES now Judge Dorothea Batiste, and by and through her undersigned counsel, and submits the following pre-trial brief to the Court of the Judiciary as to the five sets of charges against her in the order alleged in the AJIC complaint. In doing so, Judge Batiste attaches portions of the AJIC Exhibit 95, which copy is Judge Batiste's JUDICIAL INQUIRY COMMISSION RESPONSE dated November 22, 2012.

INTRODUCTION (PAGES 1-5)

The first five pages are a general introduction that also sets forth how the complaints have selectively, and vindictively, and almost entirely, come through Scott Vowell, who himself engaged in unethical and prejudicial conduct against Judge Batiste. (See attached Batiste Exhibit A to this brief).

1. ***Bearden v. Bearden*** (Batiste Response to JIC 29-32; JIC Exhibit 95).

The JIC response of Judge Batiste is attached hereto as Exhibit B and incorporated herein. Also attached as Exhibit C is the Affidavit of attorney Wayne Wheeler, with exhibits thereto.

2. **Austin v. Austin** (Batiste Response to JIC 38-41; JIC Exhibit 95).

The JIC Response of Judge Batiste is attached hereto as Exhibit D and incorporated herein.

3. **Isom v. Isom** (No formal JIC numbers).

Attached hereto as Exhibit E and incorporated herein by reference is a Statement of Relevant Facts prepared by Judge Batiste with attachment orders. Also attached as Exhibit E and incorporated herein as Exhibit F is an affidavit of attorney Virginia Meigs, counsel for Cynthia Isom.

4. **Deva Walker in Gibson v. Gibson.** (Batiste Response to JIC 104-105A; JIC Exhibit 95).

The JIC Response of Judge Batiste is attached hereto as Exhibit G and incorporated herein.

5. **Barbara Kyle in Kyle v. Kyle.** (Batiste Response to JIC 17-24; JIC Exhibit 95).

The JIC Response of Judge Batiste is attached hereto as Exhibit H and incorporated herein.

6. **ANSWER TO COMPLAINT**

Also attached as Exhibit I is the original **Answer to Complaint** filed by Judge Batiste.

7. **Affirmative Defenses**

In paragraph 2 of her **Answer to Complaint**, and in paragraphs 3-4 of her **Affirmative Defenses** (page 1), Judge Batiste strongly avers that the entire complaint was wrongfully motivated by a sexual harassment retaliation by Judge Scott Vowell due to Respondent Batiste having rejected Judge Scott Vowell's sexual advances early in her judgeship. (See copy of Batiste's EEOC charge attached as Exhibit J).

That defense was amplified to include a Vindictive Prosecution affirmative defense when the undersigned recently discovered from the Alabama Attorney General's office (Jessie Seroyer, Investigator) that Judge Batiste drove to Montgomery in early October, 2012, to complain about Vowell's sexual harassment and other inappropriate conduct (leading to an Attorney General's office Investigative Report attached hereto as Exhibit K and also attached to said motion).

Another affirmative defense cited by Judge Batiste in paragraph 4 of her Affirmative Defenses section of her **Answer to Complaint** (page 11) is that of race discrimination. Judge Batiste alleges, and can easily prove that out of Scott Vowell's mouth in his deposition answers already on file with this Court, that there has been highly disparate treatment in the way Batiste, an African-American female, has been treated in comparison to Jefferson County Domestic Relations judge Suzanne Childers. (See also copies of Judge Childers' contempt order attached,

sentencing litigants to 325, 520, 310, 355, and 255 days respectively, attached hereto as Exhibits L, M, N, O, and P).

In his deposition, Scott Vowell answered that he had never complained about Judge Childers. Given Scott Vowell's alleged sensitivity about overcrowding in the jails (see letter to that effect), it is preposterous for Vowell or the AJIC to contend that he (Vowell) knew nothing about Childers' gargantuan contempt sentences.

8. The famous quote of AJIC Chairman Ben McLaughlin on January 18, 2013 was :

Judge (referring to Batiste), regardless of what comes of this proceeding, I would urge you to do a careful study of the law of contempt. I think you have a misunderstanding of some of the aspects of contempt. A lot of judges do. It's sort of a difficult aspect of the law; and we don't deal with it as much as we do some other aspects; and, consequently, we don't - - just not as familiar with it as we need to be. (See Exhibit Q.)

9. Indeed, although Judge Vowell was the main antagonist in stirring up, or encouraging, multitudinous complaints against Judge Batiste, while ignoring problems with other judges, he (Judge Vowell) nonetheless agreed with AJIC Chief Judge McLaughlin about the difficulty for judges in understanding this complicated area of the law (Vowell dep. 92-93), and Vowell also agrees with Alabama case law militating in favor of Batiste in this case, i.e. Carroll vs. State (Vowell dep. 145-146).

10. Scott Vowell, though knowledgeable about all the AJIC complaints against Batiste before the Court of the Judiciary acknowledges that Judge Batiste had a great deal of discretion in her own courtroom. (Vowell dep. 153). Significantly, Judge Vowell was unable to give any specific facts as to how Judge Batiste acted "outside her sound discretion in any of the five cases brought against her by the AJIC. Vowell dep. 151-152). Exhibit R.

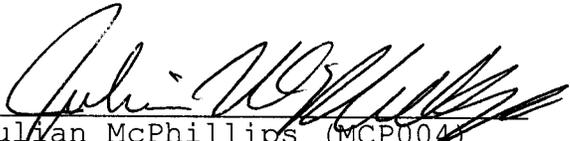
11. Judge Batiste hereby attaches and incorporates by reference a memorandum of law on contempt power (attached as Exhibit S) which memorandum of law the defense will refer to and draw upon, especially since Scott Vowell referred to the same in his deposition and largely agreed with all the cases cited, which are helpful to defense.

12. Finally, the AJIC wishes to focus on five cases it challenges which in the opinion of its counsel, Judge Batiste violated the law. As a final exhibit (Exhibit T), the defense attaches a Clearance Rates Report by Judge Batiste, which shows how dramatically she increased the disposal of cases long sitting before the Domestic Relations Division of the Jefferson County Circuit Court, starting with January, 2011 (the last month of her predecessor's term) on up through November, 2012. It can clearly be seen that the enormous good Dorothea Batiste has accomplished as Circuit Judge of the Domestic Relations Division has far exceeded any mistakes she has made, and this should be taken into

account especially on the punishment phase of the case, if it gets that far.

Dated this 24th day of July, 2013.

Respectfully submitted,


Julian McPhillips (MCP004)
Attorney for Plaintiff

OF COUNSEL:
McPHILLIPS SHINBAUM L.L.P.
P.O. Box 64
516 South Perry Street
Montgomery, Alabama 36104
(334) 262-1911
(334) 263-2321 FAX

CERTIFICATE OF SERVICE

I hereby certify that I have hand-delivered a copy of the same to Judge Michael Jointer, and served the same, via hand-delivery, upon the following, on this the 24th day of July, 2013:

Griffin Sikes, Esq.
Alabama Judicial Inquiry Commission
401 Adams Street
Suite 720
Montgomery, Alabama 36104


JULIAN L. McPHILLIPS

ATTACHMENTS
OMITTED