

IN THE ALABAMA COURT OF THE JUDICIARY

IN THE MATTER OF:

MARVIN W. WIGGINS
CIRCUIT JUDGE
FOURTH JUDICIAL CIRCUIT

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CASE NO. 51



ANSWER

Comes Now Judge Marvin W. Wiggins and for answer to the complaint as amended states the following:

BACKGROUND

This case was assigned to me after a Petition for Protection from Abuse was filed on July 11, 2013, by Terry L. Delcambre and his wife, Sara Elizabeth Delcambre, against Lakesha Billingsley, the mother of Mr. Delcambre's child (see Exhibit 1). Attorney Vonda Bonham was representing Mr. and Mrs. Delcambre. The allegation was that Ms. Billingsley had vandalized the property of Mrs. Delcambre's mother, had vandalized Mr. Delcambre's vehicle, had threatened to stab and shoot Mr. Delcambre, had stalked him, had threatened to take his child away, and had caused him to fear for the safety of his family. In addition, the record indicated there was a custody, child support, and visitation order entered by Judge Armstrong involving the parties on July 28, 2011 in CS-2011-157 (See Exhibit 2). I signed the Ex parte Protection from Abuse Order on August 8, 2013 (See Exhibit 3).

Attorney Brandon Wooten filed an appearance to represent Ms. Billingsley. After contempt and sanction motions and a few hearings, I issued a Final Order dated May 29, 2015 (See Exhibit 4). Shortly thereafter, Attorney Danny Crenshaw entered an appearance for Ms. Billingsley, and Attorney Terinna Moon entered an appearance for Mr. Delcambre. After a few more hearings, this case (DR-2013-900084) was dismissed (See Exhibit 5).

On June 8, 2017, Mr. Delcambre filed a Petition for Modification, which effectively reopened DR—2013-900084.01 (See Exhibit 6). The records indicate a hearing was set for October 17, 2017, and a final hearing on December 18, 2017.

On November 21, 2017, there were numerous calls to my office from numbers associated with Lakesha Billingsley (See Exhibit 7). At 1:05 pm, I spoke with Ms. Billingsley, who was

screaming, ranting, and raging that she was about to do whatever was necessary to pick up her child; that she was headed right then to where the father was located; and about what was going to happen when she got there, etc. After trying to understand what was going on, I informed Ms. Billingsley that I needed to talk with the attorneys on both sides. At the time of my response to the Judicial Inquiry Commission ("JIC"), I believed that I had in fact attempted to contact Attorney Terinna Moon (counsel for Mr. Delcambre, the father) and Attorney Danny Crenshaw (counsel for Ms. Billingsley, the mother). However, I was incorrect, mistaken and wrong.

I do know that I was alarmed by what Ms. Billingsley had said, and I wanted to avoid any kind of physical altercation. I asked Ms. Billingsley whether she had been talking with the father, Mr. Delcambre, and when she responded that she had, I requested Mr. Delcambre's number. I now know that at 1:09 pm, I contacted Mr. Delcambre. In retrospect, I think what I perceived as a very dangerous, developing situation scared me. I had absolutely no personal or other interest in speaking to either party in an ex parte fashion or without lawyers on the call.

In speaking to Mr. Delcambre, I wanted to better understand the nature of the situation and, more importantly, to eliminate what I perceived was a potentially violent and dangerous encounter. I informed Mr. Delcambre who I was and the reasons for my call. Mr. Delcambre explained some of the problems that had caused the situation to develop. I informed him he needed to keep documentation and talk with his attorney. According to phone records obtained by the JIC, I tried to call Attorney Crenshaw, Ms. Billingsley's lawyer, around 1:45 pm but was unsuccessful. I called Attorney Moon at 1:48 pm, and she returned my call at 2:17 pm. Attorney Moon and I spoke about the conversations I had with Mr. Delcambre and Ms. Billingsley. Attorney Moon indicated she and her client had no problems complying with the previous Orders and that these matters would be addressed at the hearing scheduled for December 18, 2017.

On November 29, 2017, Attorney Moon filed a Motion to Recuse (See Exhibit 8). On December 4, 2017, I set the Motion to Recuse for a hearing on January 23, 2018, and continued the hearing on other matters in the case previously set for December 18, 2017. On December 20, 2017, Attorney Moon filed her Complaint with the Judicial Inquiry Commission (See Exhibit 9). On January 23, 2018, Attorney Moon was the only party to appear at the hearing on motion to recuse, and on February 2, 2018, I issued an Order granting the Motion to Recuse (See Exhibit

10). On February 2, 2018, my office received a letter from the JIC, along with Ms. Moon's complaint (See Exhibit 11). Confident in my belief that I had attempted to contact the attorneys prior to contacting Mr. Delcambre, and relying on my memory, I filed my initial response to the JIC complaint on February 21, 2018 (See Exhibit 12), a Supplemental Response on February 21, 2018 (See Exhibit 13), and an Amended Response on February 27, 2018. (See Exhibit 14).

On April 5, 2018, I received a letter from Mr. Billy C. Bedsole, Chairman of the Judicial Inquiry Commission extending an invitation for me to appear before the Commission on April 20, 2018 (See Exhibit 15). I accepted the invitation and appeared before the Commission on April 20, 2018. I appeared without counsel because I honestly and truly believed I had contacted the attorneys before calling Mr. Delcambre. Further, I did not have anything to hide, conceal, misrepresent and/or falsify. I did not offer any altered or misleading documents to support my claim. I testified to what I thought and believed to be true about the calls to Mr. Delcambre and the attorneys. I did not check any records or verify any of the calls because I was fully confident that my representations were true and accurate. I did not make any statement to the Commission in an attempt to mislead it. Throughout the investigation, because I believed them to be true, I consistently represented the same facts and sequence of events.

On August 10, 2018, I received a letter from Chairman Bedsole dated August 2, 2018, indicating the Commission had decided to formally charge me in the Court of the Judiciary. Also, the letter set out my right to participate in the Rule 10 Alternate Dispute Resolution process and scheduled the Rule 10 Hearing for September 14, 2018 (See Exhibit 16). I appeared at the Hearing on September 14, 2018, again without counsel and with the honest belief that my previous representations were true. I requested that the Commission delay filing any charges and allow me (1) to attend ethics training, (2) to secure mentors and implement some self-improvement/corrective procedures to limit the possibility of my having to come before the Commission in the future, and (3) to possibly resolve the pending Complaint. After a detailed discussion, the Commission decided to reconvene the Rule 10 hearing on or about October 26, 2018, for me to submit a proposal and/or develop a plan based on my request. The Commission recommended I consider the National Judicial College as a possible training program.

I immediately enrolled in, and on October 15, 16, 17 and 18, 2018, I attended, the National Judicial College in Henderson, Nevada for the course on "Ethics, Fairness, and Security in your Courtroom and Community" (See Exhibit 17).

On October 26, 2018, I presented to the Commission my Certificate of Completion of the National Judicial College, a copy of letters from Retired Judge Eugene W. Reese dated October 2, 2018, and Retired Judge Aubrey Ford, Jr. dated October 4, 2018, and humbly requested that the JIC delay the filing of charges. On November 30, 2018, I received a letter from Chairman Bedsole indicating the Commission had rejected my proposal. As an alternative, the Commission presented a counter-proposal. Further, the letter extended an invitation for me to discuss the counterproposal and resume the ADR Hearing with the Commission on December 14, 2018.

I accepted the invitation and appeared on December 14, 2018. This time Retired Judge Reese appeared with me. After a discussion, the commission reiterated its decision to file charges and asked that we present any mitigating factors in connection with an effort to reach terms on a proposed settlement agreement. We submitted our proposed mitigating factors to the JIC on January 7, 2019.

On January 10, 2019, I received an email from Ms. Jenny Garrett, Executive Director of the JIC (See Exhibit 21), cancelling the JIC's consideration of a final ADR agreement and indicating that an action for divorce of the parties, Mr. Delcambre and Ms. Billingsley, had been filed on November 19, 2018, in DR-2018-900101, and assigned to me with a verified Ex parte Motion for Immediate Custody (See Exhibit 18). To say the least, I was shocked that a divorce action between these parties had been assigned to me, and I knew nothing about it more than seven weeks later.

I had court in Selma on January 10, 2019 (See Exhibit 19), and upon seeing the e-mail from Ms. Garrett and a note from my office that Ms. Garrett had called, I called Ms. Garrett's office from my cell at 19:09:04, but did not reach her. Also without success, I called Judge Reese at 19:10:28 and Ms. Garrett again at 19:11:07. Further, in an effort to learn procedurally what had occurred, I called attorney Tacar Sabir at 19:16:21, and Attorney Sabir called me back at 20:04:56 and 20:04:57. I called Ms. Garrett, again unsuccessfully, at 20:41:51. I finally spoke to Judge Reese at 21:15:31 (See Exhibit 20), and at 4:10 pm Judge Reese sent Ms. Garrett

an e-mail inquiring about her e-mail from earlier that morning and seeking advice on my recusal from the new case (See Exhibit 21). Ms. Garrett responded to Judge Reese's e-mail the next day, on January 11, 2019, declining to give any advice (See Exhibit 22). On the same day, January 11, 2019, I entered an Order of Recusal in the divorce case, DR-18-900101 (See Exhibit 23).

On February 28, 2019, I received a letter from Chairman Bedsole, dated February 22, 2019, indicating that the JIC was expanding its investigation to include the following:

1. Although you recused from Delcambre v. Billingsley, 27-DR-2013-900084.01, you did not disqualify from DR-2018-900101, a case with the same parties and same issue of custody, until after the father's immediate-custody remained pending almost two months and until after the Commission called the case to your attention.
2. You have attempted to mislead the Commission and create false impressions, including your representation that you tried to call the attorneys before you spoke ex parte with the Delcambres.

(See Exhibit 24)

On March 11, 2019, I submitted a response to the February 22, 2019 letter from Mr. Bedsole (See Exhibit 25).

On APRIL 17, 2019, Mr. Bedsole sent me a letter requesting I respond to the following facts:

1. Contrary to your testimony and responses, you did not attempt to contact the attorneys representing the parties in Delcambre v. Billingsley, DR-2013-900084.01 prior to your ex parte telephone conversations with Ms. Billingsley at 1:06 pm and with the Delcambres at 1:09 pm on November 21, 2017.
2. After Ms. Garrett's email to you, at 11:59 am on January 10, 2019, notifying you that you had been assigned DR-18-900101 (the parties' divorce case), you contacted Ms. Tacara Lee Sabir, Mrs. Billingsley's attorney in DR-2013-900084.01, at least twice and, thereafter, she filed a notice of appearance at 3:43 pm, an answer, and a motion to consolidate at 4:06 pm in the divorce case assigned to you

(See Exhibit 26)

On or about April 25, 2019, my lawyer responded to the April 17, 2019 letter (See Exhibit 27), and on May 2, 2019, we appeared at a final Rule 10 ADR hearing that ultimately proved unsuccessful.

COUNT I

Count I accuses me in various ways of having had ex parte communications on November 21, 2017. Although the JIC takes the same facts and/or conduct and undertakes to create multiple violations, I do not deny having had ex parte communications on that day. I offer the following in mitigation. The information I received from my staff about Ms. Billingsley's calls were alarming to me. It seemed to me that she was heading for what could be a violent confrontation. I did not know how close she was to Mr. Delcambre's location, but to me it sounded dire. I made a judgment that I needed to take immediate action by talking to her and trying to calm her down. For that reason, I returned her call.

My purpose in doing so, however, was not to have an ex parte communication, i.e., it was not to discuss any issues in the case, but rather was to avoid what appeared to be a developing human tragedy. I disagree with the JIC that my staff should not have communicated Ms. Billingsley's statements to me. This seemed to be an emergency, and any reasonable staff member would have, and in my opinion should have, told the judge what had been communicated.

My conversation with Ms. Billingsley did not allay my fears. Despite my efforts, she seemed to me to be volatile, and even somewhat out of control. Perhaps I was influenced by allegations already made in the case that had accused Ms. Billingsley of both vandalism and of making threats of shooting and stabbing and of taking the child that caused Mr. Delcambre to allege he feared for the safety of his family. Rather than calling lawyers at that point – as I later recalled that I had - I immediately contacted Mr. Delcambre. My purpose was solely to avoid a physical confrontation.

I stress here that I had no personal interest in the outcome of this case. I did not know the parties to the litigation, and my only interest with respect to the parties or the case was to reach decisions required by the facts and the law. With respect to custody issues, my only interest was to do what the facts showed was in the best interest of the child.

The other charges in Count I relate to my informing the lawyers of my communications with their clients, which the records show was done shortly – within 30 to 35 minutes - after I

spoke to Mr. Delcambre. I believe the criticism is that I talked to each lawyer separately. I do not believe these were ex parte communications because I was not discussing the issues in the case, but rather was informing the lawyers of the discussions I had had. Nevertheless, it would have been better to have talked to both lawyers at the same time. Because of the importance of informing the lawyers of these communications, when I received a return call from each lawyer separately, I told the lawyer what had occurred rather than waiting to have both lawyers on the same call.

While the JIC alleges 6 charges under Count I, I believe the foregoing responds to all of them.

COUNT 2

The JIC in Count 2 undertakes to allege another violation – interference with the attorney client relationship - based on my communication with Mr. Delcambre. The communication is the same one alleged in Count 1. In retrospect, it might seem easy to conclude that the conversation should not have occurred or that I should have used different language. I felt I was under pressure to avoid what could be a catastrophe, and perhaps could have used a better approach in my discussion with Mr. Delcambre. I do not, however, believe the JIC should pile on charge after charge based on a single event prompted by what I felt were exigent circumstances. The Court of the Judiciary has a transcript of this communication.

COUNT 3

I deny all wrongdoing in connection with the matter asserted in Count 3. In Charge 8, the Commission charges me with initiation of two phone calls to Attorney Tacara Lee Sabir concerning a pending case on my docket. This call was initiated after Ms. Garrett, on January 10, 2019, called my office and sent me an e-mail about a divorce action pending before me since November 2018, but of which I had no knowledge. Shortly after receiving the note about the call from Ms. Garrett and receiving the e-mail, I tried to contact Ms. Garrett. In fact, I made three unsuccessful calls to Ms. Garrett's office (See Exhibit 20). I tried to reach Ms. Garrett because I was shocked by the pendency of a case assigned to me involving Mr. Delcambre and Ms. Billingsley about which I had no knowledge. I had court in Selma, Dallas County, that day,

January 10, 2019 and was not able to completely assess what Ms. Garrett described in the e-mail.

I also called Judge Reese, unsuccessfully. Thereafter, I called Attorney Sabir. The call was made to obtain information about the contents of Ms. Garrett's e-mail. Attorney Sabir was not the attorney of record in the case, but had represented Ms. Billingsley in the prior case. The call was an inquiry to try to understand what Ms. Garrett was claiming and why I was unaware of the case. The purpose was decidedly not to discuss the facts and/or issues in the case.

Based on what I now know, apparently, Attorney Moon filed the case (DR-18-900101) on or about November 15, 2018, and it was assigned to me. The Clerk's Office, in filing the action, entered it into my motion queue on November 19, 2019, as a Verified Ex Parte Motion for Immediate Custody. When I reviewed the motion and saw that it involved Mr. Delcambre and Ms. Billingsley, I thought it was a motion filed in the case from which I had earlier recused. I, therefore, contacted Judge Collins Pettaway, who was handling the case from which I had recused, and he told me he (Pettaway) was handling the issues and had already scheduled a hearing for the parties, and/or had issued an order. I had absolutely no further contact with the case, and did not know it was a newly filed case or a divorce case until I received the e-mail from Ms. Garrett on January 10, 2019 (See Exhibit 21).

The JIC apparently feels I could have learned all I needed to know about the divorce case filed in November of 2018 from Alacourt. My memory, however, is that AlaCourt was not immediately available to me on January 10, 2019, and it could not in any event explain why I had no knowledge of the case, why the case had not apparently been pursued since its filing, and why my recusal had not been sought in the case.

What I believe is clear, however, is that my conversations with Ms. Sabir on January 10, 2019 were not "ex parte" communications. The following is one definition of what an ex parte communication is:

"'Ex parte' is a Latin phrase meaning 'on one side only; by or for one party.' An **ex parte communication** occurs when a party to a case, or someone involved with a party, talks or writes to or otherwise communicates directly with the judge about the issues in the case without the other parties' knowledge."

A similar definition is implied from a formal Ethics Opinion of the Alabama State Bar, RO-00-02, quoted favorably by the Alabama Supreme Court in Ex parte RDN, 918 So.2d 100 (Ala. 2005):

"For the reasons cited above, it is the opinion of the Disciplinary Commission of the Alabama State Bar that an attorney who serves as a guardian ad litem may not have

an ex parte communication with the trial Judge regarding any **substantive** issue before the Court." (Emphasis added.)

See also Ex parte Berryhill, 410 So. 2d 416 (Ala. 1982), where the Alabama Supreme Court held that "[t]he fundamental principle is that the **decision** of a court must be based on evidence produced in open court lest the guarantee of due process be infringed." (Emphasis added.)

The point is that the prohibition against an ex parte communication implies that the discussion concerned an issue in the case about which the judge at some point is to make, or might make, a decision. That is not what occurred here.

As pointed out above, and repeated for emphasis, I had recused from the earlier case, DR-2013-900084.01, upon Ms. Moon's motion on behalf of Mr. Delcambre. When the new case was filed in November 2018, it did not appear on my computer motion queue as a divorce case, but only as an ex parte motion for immediate custody, the same general issue, i.e., custody, involved in the earlier case. Not only I, but also Judge Pettaway, who had recently had a hearing in the 2013 case, assumed the motion that reached my queue was in the 2013 case and that a clerk had erroneously sent the pleading to me.

After being unable to reach Ms. Garrett and Judge Reese, and being shocked and confused about how there might be a case assigned to me involving these parties without my having any knowledge of the case, I called Ms. Sabir in an effort to understand what had occurred that apparently resulted in the JIC being obviously displeased with me. I called Ms. Sabir thinking she should know about the new case. I was not, however, calling about any issue in any case.

At the time I called Ms. Sabir, I knew that under no circumstances would I be the judge in the case. I had absolutely no interest in the issues involved in the case or what the outcome of the case might be. I obviously had not done anything in the case, and I was never going to decide anything substantive in the case.

Although I do not recall exactly what my conversation was with Ms. Sabir, I do know that I made no effort to have her appear in the case or otherwise file any pleading in the case. Nevertheless, despite that it was not my purpose, my call to Ms. Sabir could possibly have reminded her of the case and prompted her to file pleadings.

To the extent that the JIC may feel that my failure to immediately recuse from the divorce case may have caused some delay, two points should be made. First, I was unaware of the case, or I would have immediately recused. Secondly, any party in the divorce case, including Mr. Delcambre through his lawyer, could have filed a motion to recuse, which upon receipt, I would have promptly granted. To my knowledge, I never received any such motion. I did nothing intentionally or unintentionally to delay the divorce proceedings.

COUNT IV

In this count, the Commission charges me with having made significant misrepresentations to the Commission in my judicial capacity, on the bench, and to Attorney Moon.

Again, the Commission takes the same facts and/or conduct and undertakes to create multiple violations. At all times during these proceedings I was active on the bench and represented the facts as I believed them to be. I consistently presented the same facts to the JIC based on my understanding and belief. And, to my knowledge, there were no misrepresentations to Attorney Moon. I called Attorney Moon, and she returned my call. I related to her the fact of my call to her client and the content of the communication. I do not believe I stated anything inaccurately.

In Charge 9, the Commission charges me with significant misrepresentations in my response to the complaint on February 21, 2018, and in my sworn testimony before the Commission about having tried to call the attorneys before calling Mr. Delcambre. I responded to the complaint, and testified, honestly as to what I recalled at the time of my responses and testimony. I knew that I considered the situation as to the parties a desperate one, and I very much feared a violent encounter between the parties. I also knew that I should get the lawyers involved, and thought I had tried to do so before calling Mr. Delcambre.

It now appears that my memory was faulty in that regard. I cannot, and do not, contest what the telephone records show, but point out that at the time of my first response, approximately three months following the incident, I was well aware from my experiences as a lawyer and a judge that telephone records were available that would either confirm or refute my memory. I had no motive to deceive the JIC because I knew the actual facts were ascertainable.

I also knew from my prior experience with the JIC, and from its reputation, that the JIC would do a thorough investigation and determine from records when calls occurred.

In addition, I knew that if I called Mr. Delcambre without attempting to call his lawyer first, it would have been – although terribly wrong under normal circumstances - perhaps excusable, or at least explainable, under the dire circumstances confronting me.¹ A judge facing an emergency, potentially violent situation, who had been contacted by a highly volatile individual speaking in threatening tones, can be, and perhaps should be, excused for seeking through instinct to resolve the crisis without first tending to the (admittedly very important) step of first contacting lawyers. At the time, I knew only that Ms. Billingsley was headed right then for a confrontation with Mr. Delcambre, and I did not know how close he was to a possibly, life threatening calamity.

The point is that had I remembered that I called Mr. Delcambre before trying to call Ms. Moon, I would have revealed that to the JIC. I had no reason not to do so. My only motive in responding to the JIC was to present the facts as I recalled them. Unfortunately, it appears that I recalled the time sequence incorrectly.²

In Count 4, Charges 10, 11, 12 and 13, the Commission charges me with the same misrepresentations, but alleges that the representations were made on different days. Again, these are the same facts and the same context. I was mistakenly confident in my memory on each such occasion, and relied on my memory when it now appears in retrospect that I should not have done so.

¹

I also knew, of course, that there was no way to contact a represented party without that party's lawyer learning of the contact. I obviously made no effort to avoid Mr. Delcambre's informing his lawyer of the call. This evidence demonstrates further that at the time of the call to Mr. Delcambre, I believed I was acting appropriately under the dire circumstances with which I was confronted.

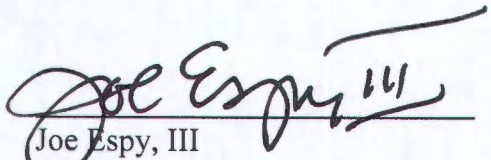
² As my lawyer and mentor, Retired Judge Reese, has noted, Circuit Judges have numerous hearings almost every day. When they return to their offices from the courtroom, they have people waiting to see them and/or numerous messages and calls to return. They also have numerous orders to enter. Their days are crowded, and after two to three months have passed before a matter is called back to a Judge's attention, it is not difficult to understand how their memories may not be exact with regard to the timing of calls and the sequence of events. I believe this is particularly true in a Judicial Circuit such as mine that involves a wide geographic area and five (5) separate courthouses.

In closing my response to the JIC's complaint, I recognize that I made errors in dealing with the matters that are the subject of the complaint. That is why I approached the JIC expressing a willingness to take responsibility. That was the basis for my decision to appear before the JIC twice without counsel and to acknowledge my conduct as I recalled it. It is the reason I proposed that I receive ethics training and that I enrolled in, and attended, the very (out of state) training suggested by the JIC without first entering into any agreement with the JIC as to the resolution of the complaint against me. It is because I recognized that I had made errors that I chose to participate in the Rule 10 ADR process. At no point during the JIC's entire investigation did I ever intentionally misstate any fact. At no time until receiving word to the contrary from the JIC did it ever occur to me that any fact I had presented might be erroneous.

**THE ABOVE IS PROVIDED BOTH IN REGARD TO MITIGATION OF
CERTAIN CHARGES AND DENIAL OF OTHER CHARGES .**

Judge Marvin W. Wiggins

Dated: 6-18-19


Joe Espy, III

William M. Espy

MELTON, ESPY & WILLIAMS, P.C.

P.O. Drawer 5130

Montgomery, AL 36103

(334) 263-6621

jespy@mewlegal.com

wespy@mewlegal.com

Robert D. Segall

COPELAND, FRANCO, SCREWS & GILL, P.A.

P.O. Box 347

Montgomery, Alabama 36101-0347

334-834-1180

segall@copelandfranco.com

Attorneys for Judge Marvin W. Wiggins

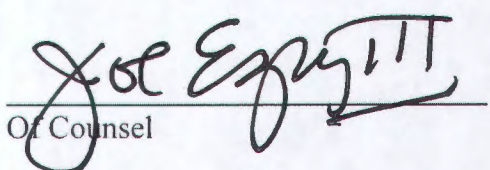
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was hand delivered on this the 18 day of June, 2019 to the following:

Judicial Inquiry Commission

401 Adams Avenue

Montgomery, Alabama 36104


Of Counsel