



IN THE ALABAMA COURT OF THE JUDICIARY

IN THE MATTER OF:)
MARVIN W. WIGGINS,) Court of the
Circuit Judge,) Judiciary
4th Judicial Circuit) Case No. 54
)

COMPLAINT

1. The Judicial Inquiry Commission of the State of Alabama ("the Commission") files this Complaint against Judge Marvin Wiggins, Presiding Circuit Judge for the Fourth Judicial Circuit. That circuit is composed of Bibb, Dallas, Hale, Perry, and Wilcox Counties. Judge Wiggins has served as a circuit judge since January 19, 1999.

2. Judge Wiggins has been disciplined by the Court of the Judiciary two times, and at the filing of this Complaint, had a third disciplinary action pending. Thus, this is his fourth disciplinary action in a ten-year period. No other judge in Alabama's history has been disciplined this many times.

a. On January 21, 2016, the Court of the Judiciary adopted the proposed agreement between the Commission and Judge Wiggins; found his conduct violated Canons 1, 2, 2A, and 2B; and publicly censured him and taxed him with costs. See COJ No. 45. Such judgment was based on his instruction, in a "pay-due"

docket, to criminal defendants who owed court-ordered financial assessments and who did not have "any money," to either donate blood or go to jail.

b. On July 30, 2009, the Court of the Judiciary, after rejecting the proposed agreement between Judge Wiggins and the Commission, found Judge Wiggins guilty of violating Canons 1, 2, 2A, 2C, 3C(1), 3C(1)(a), and 3C(1)(d)(ii); publicly reprimanded him; and suspended him three months without pay. See COJ No. 37. Such judgment was based on his failure to recuse himself from a proceeding arising from a voter-fraud investigation being conducted by the Office of the Alabama Attorney General, in which his close relatives were among the subjects of investigation. The Court's July 30, 2009 Public Reprimand stated, in part:

The impartiality of the judiciary is a right of the citizens, not a private right of judges. The public must be able to trust that our judges will dispense justice fairly and impartially. Judge Wiggins, by his actions, disregarded that trust.

c. On May 17, 2019, the Commission filed, in the Court of the Judiciary, a Complaint charging Judge Wiggins with multiple violations of Canons 1, 2, 2A, 2B, 2C, 3A(3), 3A(4), arising from multiple ex parte

communications, creating an appearance of multiple ex parte communications, and numerous instances of untruthfulness in his judicial capacity, on and off the bench. The trial of those charges is set for November 18 through November 20, 2019.

3. This prior discipline and the instant ethical violations indicate—at a very minimum—Judge Wiggins's pattern of careless or indifferent disregard or lack of respect for the high standards imposed on the judiciary.

4. This Complaint is based upon the following conduct of Judge Wiggins, in violation of the Alabama Canons of Judicial Ethics:

a. During a domestic-relations docket on August 25, 2016, Judge Wiggins initiated and/or considered ex parte communications with represented parties—communications not authorized by law, in his chambers outside the presence of counsel, concerning a proceeding pending on that docket, and he abused his judicial authority and interfered with each litigant's attorney-client relationship.

b. During a domestic-relations docket on January 25, 2017, Judge Wiggins initiated and/or considered ex

parte communications with represented parties—communications not authorized by law, in his chambers outside the presence of counsel, concerning a proceeding pending on that docket, and he abused his judicial authority and interfered with each litigant's attorney-client relationship.

c. On June 20, 2017 during a domestic-relations docket, Judge Wiggins initiated and/or appeared to initiate ex parte communications by meeting privately in chambers with a party and that party's attorney—communications not authorized by law, while the other party and counsel sat in another room, concerning a proceeding pending on that docket—and he abused his judicial authority.

d. On August 16, 2017, during a domestic-relations docket, Judge Wiggins initiated and/or appeared to initiate ex parte communications by meeting privately in chambers with a party, that party's attorney, and that party's parents—communications not authorized by law, while the other party and counsel sat in the courtroom, concerning a proceeding pending on that docket—and he abused his judicial authority.

e. On August 16, 2019, Judge Wiggins violated his disqualification as a judge during his interim suspension by responding to another judge's initiation of ex parte communications, concerning the facts of a matter pending before that judge—communications not authorized by law, concerning a pending proceeding, outside the presence of both parties and their respective counsel—and that those communications influenced the outcome of that matter.

August 25, 2016: Ex Parte Communications with Only Parties in Chambers

5. On August 25, 2016, Judge Wiggins presided in DR-2011-000175.02, a domestic-relations case.

6. The parties could not agree on visitation exchange.

7. In open court, with many people present, Judge Wiggins directed the parties into chambers without their lawyers, stating that he wanted to speak to them to try to work out visitation.

8. In chambers, Judge Wiggins spoke with the clients without their lawyers present for approximately ten minutes.

9. Approximately four months later, Judge Wiggins issued a ruling concerning visitation.

January 25, 2017: Ex Parte Communications with Only Parties in Chambers

10. On January 25, 2017, Judge Wiggins, at another domestic-relations docket, announced that he was going to take the docket in chambers without their respective attorneys. DR-2015-900014.

11. Judge Wiggins heard from the parties in DR-2015-9000014 in chambers without their attorneys.

June 20, 2017: Initiation or Appearance of Initiation of Ex Parte Communications with Only One Party During Docket

12. On or about June 20, 2017, Judge Wiggins called the child-support-modification case of DR-2010-000016.02, and then took the parties, their respective counsel, and the paternal grandparents into chambers.

13. In chambers, Judge Wiggins discussed with those present aspects of the case, but could not reach a resolution.

14. When the parties could not reach a resolution, the mother and her attorney left Judge Wiggins's chambers, leaving the father, his attorney, and his parents in chambers with Judge Wiggins, where they remained for approximately thirty minutes, until the mother was informed the case was going to be continued again, "despite the father residing in Texas."

August 16, 2017: Initiation or Appearance of Initiation of
Ex Parte Communications with Only One Party During Docket

15. On or about August 16, 2017, Judge Wiggins again called the case of DR-2010-000016.02, and on this occasion, took the father, his parents, and his attorney in chambers for approximately thirty minutes, all the while the mother remained in the courtroom.

16. When Judge Wiggins returned to the courtroom, the father, his attorney, and the father's mother also returned, and the father's attorney presented social security records from the father's father, who was employed by the Social Security Administration.

Ex Parte Communications and Violation of Interim
Suspension by Failing to Refrain from Acting as a Judge

17. On May 7, 2019, a party filed an emergency petition for modification of custody of minor children. Said case was assigned to Judge Wiggins. DR-2013-900063.03.

18. That same day, on May 7, 2019, Judge Wiggins entered an emergency order modifying custody.

19. On May 17, 2019, Judge Wiggins was suspended due to the filing of the Complaint in COJ No. 51, and the case was assigned to another judge.¹

20. On August 15, 2019, during a hearing before the new judge, that judge announced the following in open court before taking the case under advisement:

I'm supposed to speak with Judge Wiggins today about something, I'll make - see what his thoughts are. Because now, he has more understanding about what's going on. Now I mentioned to him that - and if that's right so far there hasn't been indications - and I'll just see what he has to say.

21. Further, during that hearing, the new judge stated, "[T]hat's why I'm going to call the judge about it to see what he has to say. I'll take it under advisement and talk with him."

22. Judge Wiggins knew or should have known that the other judge would consider those ex parte communications.

¹Article VI, §159 of the Alabama Constitution provides: "A judge shall be disqualified as a judge, without loss of salary, while there is pending . . . a complaint against him filed by the judicial inquiry commission with the court of the judiciary."

Rule 14, Ala. R. Jud. Inq. Comm., states: "If any judge shall continue to act as such while there is pending . . . a complaint against him or her filed by the commission with the Court of the Judiciary, such conduct shall constitute misconduct in office"

23. On August 19, 2019, the other judge entered an order vacating and setting aside Judge Wiggins's previous emergency order changing custody. In that order, that judge stated that his ruling relied on "a consultation with Hon. Marvin Wiggins." (DR-2013-900063.03 Order of August 19, 2019 at 10:28 a.m.)

CHARGES

Pattern and Practice of Ex Parte Communications

COUNT I

24. By initiating and/or considering each ex parte communication listed in each Charge below, jointly and severally, not authorized by law and concerning issues in a pending proceeding, outside the presence of all parties and/or their attorneys, Judge Wiggins violated the following provisions of the Alabama Canons of Judicial Ethics:

Canon 1: A judge should uphold the integrity and independence of the judiciary.

A judge should participate in establishing, maintaining, and enforcing, and should himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved.

Canon 2: A judge should avoid impropriety and the appearance of impropriety in all his activities.

Canon 2A: A judge should respect and comply with the law

A judge . . . should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Canon 2B: A judge . . . should avoid conduct prejudicial to the administration of justice which brings the judicial office into disrepute.

Canon 2C: A judge . . . should [not] convey or permit others to convey the impression that they are in a special position to influence him.

Canon 3A(4): A judge should accord to every person who is legally interested in a proceeding, or his lawyer, full right to be heard according to law

A judge should . . . , except as authorized by law, neither initiate nor consider ex parte communications concerning a pending . . . proceeding.

Charge 1

25. As set forth in Paragraphs 7 and 8, on August 25, 2016, Judge Wiggins's initiation and/or consideration of the ex parte communications that occurred during his

private meeting with the parties in his chambers without counsel present, regarding visitation in DR-2011-000175.02.

Charge 2

26. As set forth in Paragraphs 10 and 11, on January 25, 2017, Judge Wiggins's initiation and/or consideration of the ex parte communications that occurred during his private meeting with the parties in his chambers without counsel present, regarding the parties' divorce case in DR-2015-900014.

Creating the Appearance of Initiating and/or Engaging, and/or Considering Ex Parte Communications

COUNT II

27. By creating the appearance of initiating and/or engaging and/or considering in each ex parte communication listed in each Charge below, jointly and severally, unauthorized by law, concerning a pending proceeding, outside the presence of all parties and/or their attorneys, Judge Wiggins violated the following provisions of the Alabama Canons of Judicial Ethics:

Canon 1: A judge should uphold the integrity and independence of the judiciary.

A judge should participate in establishing, maintaining, and enforcing, and should himself observe, high

standards of conduct so that the integrity and independence of the judiciary may be preserved.

Canon 2: A judge should avoid impropriety and the appearance of impropriety in all his activities.

Canon 2A: A judge should respect and comply with the law

A judge . . . should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Canon 2B: A judge . . . should avoid conduct prejudicial to the administration of justice which brings the judicial office into disrepute.

Charge 3

28. As set forth in Paragraph 14, on June 20, 2017, when DR-2010-000016.02 was set for a hearing, Judge Wiggins's private meeting in chambers with a party to that case, that party's attorney and that party's parents while the other party and counsel waited in another room for thirty minutes.

Charge 4

29. As set forth in Paragraph 15 and 16, on August 16, 2017, when DR-2010-000016.02 was called on the docket, Judge Wiggins's private meeting with a party, that party's

attorney, and that party's parents while the opposing party and counsel waited in the courtroom for thirty minutes.

Engaging in Prohibited Ex Parte Communication
with Another Judge

COUNT III

Charge 5

30. By responding to another judge's initiation of ex parte communications not authorized by law—concerning DR-2013-900063.03, which had been reassigned from Judge Wiggins to another judge—Judge Wiggins, with the implicit knowledge that the other judge would consider those ex parte communications and without all parties and/or their attorneys present, violated the following provisions of the Alabama Canons of Judicial Ethics:

- Canon 1: A judge should uphold the integrity and independence of the judiciary.

A judge should participate in establishing, maintaining, and enforcing, and should himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved.
- Canon 2: A judge should avoid impropriety and the appearance of impropriety in all his activities.
- Canon 2A: A judge should respect and comply with the law

A judge . . . should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Canon 2B: A judge . . . should avoid conduct prejudicial to the administration of justice which brings the judicial office into disrepute.

Canon 2C: A judge . . . should [not] convey or permit others to convey the impression that they are in a special position to influence him.

Pattern and Practice of Abuse of Judicial Authority and Interference with Attorney-Client Relationship

COUNT IV

31. By invoking his judicial authority to initiate ex parte communications listed in each Charge below, jointly and severally, not authorized by law and concerning pending proceedings in his court, outside the presence of each party's attorney, thereby interfering with the parties' respective attorney-client relationships, Judge Wiggins violated the following provisions of the Alabama Canons of Judicial Ethics:

Canon 1: A judge should uphold the integrity and independence of the judiciary.

A judge should participate in establishing, maintaining, and enforcing,

and should himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved.

Canon 2: A judge should avoid impropriety and the appearance of impropriety in all his activities.

Canon 2A: A judge should respect and comply with the law
A judge . . . should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Canon 2B: A judge should at all times maintain the decorum and temperance befitting his office

A judge . . . should avoid conduct prejudicial to the administration of justice which brings the judicial office into disrepute.

Canon 3A(3): A judge should be patient, dignified, and courteous to litigants

Canon 3A(4): A judge should accord to every person, who is legally interested in a proceeding, or his lawyer, full right to be heard according to law

Charge 6

32. As set forth in Paragraph 7 and 8, Judge Wiggins's August 25, 2016 ex parte communications during his private meeting with the parties in his chambers

without counsel present, regarding visitation in DR-2011-000175.02 and pursuant to his direction.

Charge 7

33. As set forth in Paragraph 10 and 11, Judge Wiggins's January 25, 2017 ex parte communications during his private meeting with the parties in his chambers without counsel present, regarding the parties' divorce case in DR-2015-900014 and pursuant to his direction.

Failure to Refrain from Acting as a Judge during
Interim Suspension

COUNT V

Charge 8

36. As set forth in Paragraph 22 and 23, during Judge Wiggins's interim suspension, by discussing the basis of his prior ruling in DR-2013-900063.03 with the judge who was about to enter a subsequent ruling, Judge Wiggins committed

misconduct in office,"² in violation of Article VI, § 159,³ Alabama Constitution, thereby violating the following provisions of the Alabama Canons of Judicial Ethics:

Canon 1: A judge should uphold the integrity and independence of the judiciary.

A judge should participate in establishing, maintaining, and enforcing, and should himself observe, high

² The Alabama Supreme Court, in promulgating Rule 14, Ala. R. P. Jud. Inq. Comm., used the specific term "misconduct in office." Prior to its use in the rule, the Court stated the following regarding that term:

Any time a judge of any court is charged with misconduct in office it shivers the timbers of the judicial system. Public confidence in the courts is shaken and the administration of justice is rendered suspect in the eyes of the citizens; the impartiality of the judges is questioned. A judge should not engage in an[y] conduct in private or public life which would bring about disrespect to him or the high office he holds. His conduct should not be such as would violate the public trust judges hold.

Misconduct in office is defined as any unlawful behavior by a public officer in relation to the duties of his office, willful in character. It involves intentional wrongdoing or total lack of concern for one's conduct. It is more than that conduct which comes about by reason of error in judgment or lack of diligence. Whether an act constitutes misconduct must be determined from the facts surrounding the act, the nature of the act, and the intention of the actor.

In re Emmet, 293 Ala. 143, 145-46, 300 So. 2d 435, 438 (Ala. 1974)(citations omitted; emphasis added).

³ See fn. 1, supra.

standards of conduct so that the integrity and independence of the judiciary may be preserved.

Canon 2: A judge should avoid impropriety and the appearance of impropriety in all his activities.

Canon 2A: A judge should respect and comply with the law

A judge . . . should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Canon 2B: A judge . . . should avoid conduct prejudicial to the administration of justice which brings the judicial office into disrepute.

Done this 15th day of November, 2019.

THE JUDICIAL INQUIRY COMMISSION



Billy C. Bedsole
Chairman

BY ORDER OF THE COMMISSION