

FILED

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COURT OF THE JUDICIARY
Rebecca C. Oates
Secretary

IN THE ALABAMA COURT OF THE JUDICIARY

IN THE MATTER OF: *
*
DOUGLAS L. PATTERSON *
DISTRICT JUDGE, * **CASE NO. 55**
LIMESTONE COUNTY, AL *

COMMISSION'S RESPONSE IN OPPOSITION TO
JUDGE PATTERSON'S MOTION TO STAY THE PROCEEDINGS

COMES NOW, the Judicial Inquiry Commission ("Commission") and responds in opposition to Judge Douglas Patterson's ("Judge Patterson") motion to stay this matter until resolution of his criminal charges. In support, the Commission states as follows:

INTRODUCTION

1. This case is properly before this Court to consider whether Judge Patterson has violated the Alabama Canons of Judicial Ethics. See Ala. Const. 1901, Art. VI, §§ 156(b) and 157(a). This case involves facts establishing violations of the Canons. The result of a criminal trial based on the same facts in which Judge Patterson is the defendant is immaterial to this proceeding for the reasons set out herein.

2. The Commission and the Court of the Judiciary are bodies created by the Alabama Constitution, and they have jurisdiction over the matters alleged in the charge by virtue of these respective provisions. Ala. Const. 1901, Art. VI,

§§ 156 and 157, respectively. These two bodies are solely responsible for the discipline and removal of judges who are charged with the administration of justice in this State.

3. Because of the important constitutional functions assigned to the Commission and the Court of the Judiciary, Alabama's judicial-discipline system is to be attributed a high degree of deference.

4. Although Judge Patterson's criminal case and this proceeding appear parallel, Judge Patterson has failed to demonstrate that he is entitled to a stay of this proceeding. His Fifth Amendment rights are unaffected and do not outweigh the prejudice to the Commission and to the public should a stay be granted.

APPLICABLE LAW

5. In Ex parte McDaniel, No. 1180199, 2019 WL 2240365, at *4 (Ala. May 24, 2019), the Alabama Supreme Court in vacating a trial court's order staying a civil proceeding held:

Generally, under the Fifth Amendment to the Constitution of the United States, "[n]o person ... shall be compelled in any criminal case to be a witness against himself." "While the Constitution does not require a stay of civil proceedings pending the outcome of potential criminal proceedings, a court has the discretion to postpone civil discovery when "justice requires" that it do so "to protect a

party or persons from annoyance, embarrassment, oppression, or undue burden or expense.”” [Ex parte] Rawls, 953 So. 2d [374,] at 378 [(Ala. 2006)] (quoting Ex parte Coastal Training Inst., 583 So. 2d 979, 980-81 (Ala. 1991)). This Court has previously recognized that the Fifth Amendment “not only protects the individual against being involuntarily called as a witness against himself in a criminal prosecution but also privileges him not to answer official questions put to him in any other proceeding, civil or criminal, formal or informal, where the answers might incriminate him in future criminal proceedings.” Rawls, 953 So. 2d at 379-80 (quoting Lefkowitz v. Turley, 414 U.S. 70, 77 . . . (1973)).

. . . .

In Rawls, 953 So. 2d at 378, this Court stated that, in order to determine if a stay is warranted under such circumstances, three factors must be addressed:

(1) whether the civil proceeding and the criminal proceeding are parallel, see Ex parte Weems, 711 So. 2d 1011, 1013 (Ala. 1998); (2) whether the moving party's Fifth Amendment protection against self-incrimination will be threatened if the civil proceeding is not stayed, see Ex parte Windom, 763 So. 2d 946, 950 (Ala. 2000); and (3) whether the requirements of the balancing tests set out in Ex parte Baugh, 530 So. 2d [238, 244 (Ala. 1988)], and Ex parte Ebbers, 871 So. 2d 776, 789 (Ala. 2003), are met.

2019 WL 2240365, at *4.

6. As to the balancing tests of the third Rawls factor, the Supreme Court held, “To justify a stay of a civil proceeding pending resolution of a criminal proceeding, the

Fifth Amendment right of the party requesting the stay must outweigh the potential prejudice to the other party of granting the stay.” Ex parte Rawls, 953 So. 2d 374, 384-85 (Ala. 2006).

7. In Ex parte Ebbers, 871 So. 2d 776, 789-90 (Ala. 2003), the Alabama Supreme Court set out the comprehensive listing of factors to consider for the third Rawls factor:

1. The interest of the plaintiff in proceeding expeditiously with the civil litigation, or any particular aspect of it, and the potential prejudice to the plaintiff of a delay in the progress of that litigation.

2. The private interest of the defendant and the burden that any particular aspect of the proceedings may impose on the defendant.

3. The extent to which the defendant's Fifth Amendment rights are implicated/the extent to which the issues in the criminal case overlap those in the civil case.

4. The convenience of the Court in the management of its cases, and the efficient use of judicial resources.

5. The interest of persons not parties to the civil litigation.

6. The interest of the public in the pending civil and criminal litigation.

7. The status of the criminal case, including whether the party moving for the stay has been indicted.

8. The timing of the motion to stay.

871 So. 2d at 789-90 (citations omitted).

8. Critical to application of these factors is Rule 10, Ala. R. P. Ct. Jud.: “[N]o judge may be compelled to give evidence against himself or herself.” This rule sets judicial-discipline cases separate and apart from all other civil proceedings where a party may be called to testify or be subjected to a deposition.

9. Rule 512A(a), Ala. R. Evid., states, “In a civil action or proceeding, a party’s claim of a privilege, whether in the present action or proceeding or upon a prior occasion, is proper subject of comment by judge or counsel. An appropriate inference may be drawn from the claim.”

APPLYING THE RAWLS THREE-FACTOR TEST

10. In evaluating the first factor in Rawls as to whether the civil proceeding and the criminal proceeding are parallel, unquestionably the facts underlying Judge Patterson’s criminal case appear to be parallel with the facts underlying this judicial-disciplinary proceeding.

11. The standard of proof in a Court of Judiciary adjudication is “clear and convincing”—less than the “beyond a reasonable doubt” standard of proof in a criminal trial.

See Rule 10, Ala. R. P. Ct. Jud. Thus, adjudication by this Court could not bar or affect the criminal trial.

12. Next, critical to the second factor in Rawls—whether Judge Patterson’s Fifth Amendment protection against self-incrimination will be threatened if this proceeding is not stayed—is his right under Rule 10 not to be compelled to incriminate himself. The Commission is prohibited from calling Judge Patterson as a witness or subjecting him to a deposition or any other discovery. The Commission is not seeking any discovery in this proceeding.

13. Corollary to this prohibition, the prosecutor in the criminal proceeding cannot use Judge Patterson’s silence against him. See Ala. Code 1975, § 12-21-220. The Fifth Amendment privilege is unharmed.

14. The final determination in Rawls requires balancing the following eight circumstances listed in paragraph 7.

a. *The Commission’s interest in proceeding expeditiously and potential prejudice of a delay to the Commission.* The Alabama Supreme Court recognized the compelling need for expediency in adjudicating a pending complaint. See Rule 8, Ala R. P. Ct. Jud., which states, “The Court shall fix a date for hearing upon the

complaint as expeditiously as possible," and Rule 7, which provides, "Dilatory motions will be treated with disfavor. Any action which, in the opinion of the Court, would interfere with the prompt disposition of the proceedings pending before the Court shall be discouraged." Particularly given that the Commission's charges include Judge Patterson's alleged theft or appearance of theft of court funds collected as a result of his judicial orders, the public's confidence in the judicial system as a whole has been gravely eroded. Thus, the need for an expeditious hearing of this matter is even more compelling. Judge Patterson continues to receive full salary and benefits¹ awaiting trial, while other judges are performing his judicial duties in addition to their own duties and have been since he was administratively removed from hearing cases in August 2019.

¹ A judge shall be disqualified from acting as a judge, without loss of salary, while there is pending (1) an indictment . . . charging him in the United States with a crime punishable as a felony under a state or federal law, or (2) a complaint against him filed by the judicial inquiry commission with the court of the judiciary.

b. *Private interest of and burden on Judge Patterson.* Judge Patterson's affected private interest is his continuing to be paid his judicial salary while not working. As for any burden, it is actually carried by the public and Judge Patterson's fellow judges, not by Judge Patterson. Judge Patterson argues that, without the discovery from the criminal trial, it would be manifestly unfair to proceed with this matter. However, the Commission's evidence consists of the discovery in the criminal matter, and the Commission is prepared to provide it to Judge Patterson as soon as this matter is set for trial. Judge Patterson's interest in his presumption of innocence in the criminal trial will not be irreparably prejudiced, as he argues, because any result of this civil proceeding cannot be referenced in his criminal trial nor can the prosecution refer to any assertion of his Fifth Amendment rights or Rule 10 right. In addition, Judge Patterson has absolutely no right to avoid removal as a judge to, as he argues, protect his presumption of innocence for the criminal trial.

c. *Extent to which Judge Patterson's Fifth Amendment rights are implicated.* Judge Patterson's Fifth

Amendment rights will not be harmed by expeditiously proceeding in this matter and denying his request to stay. See paragraphs 11-13, supra. Furthermore, any Fifth Amendment assertion is negligible, given Judge Patterson's post-indictment "confession letter" (upon which Count II is based). Either he is going to testify that the signature on the letter is not his or that he was coerced, or he is not going to testify as is his right under Rule 10, which provides that he cannot be compelled to testify before the Court of the Judiciary.

d. *Convenience of the Court in management of cases and efficient use of judicial resources.* As stated in paragraph 14(a), supra, the hearing shall be set as expeditiously as possible, as this matter greatly affects the public, and the public's confidence in the judiciary. Moreover, while Judge Patterson is awaiting his criminal trial, the Unified Judicial System must continue to pay full salary and benefits until he is removed by this Court or he is convicted.

e. *Interest of persons not parties to this pending litigation.* The Alabama Attorney General has no objection to this judicial-disciplinary proceeding being

resolved before the criminal prosecution. Moreover, Judge Patterson's attempt to assert Rule 10 on behalf of Judge Robert Baker is untenable. The Rule 10 privilege is personal to a judge. Only Judge Baker can assert his Rule 10 privilege not to testify. Judge Baker will willingly testify in this matter.

f. *Interest of the public in this pending litigation and the criminal litigation.* The public's interests are significant. They include restoring and maintaining the integrity of the State's judicial system, minimizing disruption of court business, reducing unnecessary expenditures, and reducing the length of time Judge Patterson receives full salary and benefits, while not performing his judicial duties.

g. *Status of the criminal case.* Although Judge Patterson has been indicted and the criminal matter is set for trial June 15, 2020, there is no certainty the trial will be held on the scheduled date. A myriad of circumstances could disrupt the progression of the criminal prosecution.

h. *Timing of the motion to stay.* The motion to stay was made orally in Court on February 24, 2020.

15. In sum, a stay in this matter is not warranted. The overarching public interest in an expedited resolution of disciplinary proceedings against a sitting judge furthers the goal of restoring and maintaining the public's confidence and trust in this State's judiciary while, at the same time, minimizing expense and inconvenience to the public. Judge Patterson's Fifth Amendment rights are unaffected because Rule 10 prevents him from being compelled to give evidence against himself, and further, his Fifth Amendment rights do not outweigh the prejudice to the public and the judiciary in granting a stay.

16. Judge Patterson has failed to meet his burden of showing that the Rawls balancing tests requires a stay of this proceeding.

WHEREFORE, premises considered, the Commission respectfully requests that this Honorable Court deny Judge Patterson's motion to stay the proceedings and set this matter for trial as expeditiously as possible.

RESPECTFULLY submitted this 11th day of March, 2020.

/s/ Elizabeth C. Bern
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CERTIFICATE OF SERVICE

I hereby certify that I have, on this 11th day of March, 2020, electronically filed the foregoing with the Court of the Judiciary, and that I have further served a copy upon the following by placing same in the United States Mail, postage prepaid and properly addressed and/or via email as follows:

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