FILED
JUL 21 2020
COURT OF THE JUDICIARY
Rebecca C. Oates
Secretary

IN THE ALABAMA COURT OF THE JUDICIARY

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

JUDICIAL INQUIRY COMMISSION'S MOTION TO DISMISS WITHOUT PREJUDICE, WITH COSTS TAXED, OR IN THE ALTERNATIVE, MOTION TO STAY

COMES NOW, the Judicial Inquiry Commission ("Commission"), and respectfully moves this Honorable Court to dismiss the above-styled cause without prejudice, pursuant to Rule 41(a)(2), Ala. R. Civ. P., with costs taxed to former judge Douglas Patterson ("Respondent"), or in the alternative, to stay the above-styled cause pending conclusion Respondent's criminal trial.[1] The Commission states as follows:

1. Respondent has resigned from the office of district judge of Limestone County.[2] Although his resignation does

[1] This motion is pursuant to the decision of the Commission at its meeting on July 16, 2020, i.e., the first duly called meeting after Respondent filed Notice of Resignation with this Court on July 7, 2020.

[2] See Respondent's Notice of Resignation, filed on July 7, 2020, notifying this Court of his submission of resignation, effective July 3, 2020, to Alabama Supreme Court Chief Justice Tom Parker. (Respondent's resignation letter was attached to his notice filed with this Court.)

not dispose of the Complaint against him in this Court, Respondent also stands indicted for criminal charges based on the same essential facts upon which this Complaint is based. Therefore, an adjudication of guilt on the criminal charges, after a public trial, could serve as factual findings for many essential allegations of this Complaint, thereby declaring his accountability for acts with which he is charged in this Complaint.

2. A judge's relinquishment of office does not deprive either this Court or the Commission of the jurisdiction of pending charges against that judge. See Steensland v. Ala. Judicial Inquiry Comm'n., 87 So. 3d 535 (Ala. 2012).

3. In light of the principles underlying Alabama's system of judicial discipline—to protect, preserve, and restore the integrity and independence of judges and the public's confidence in the judicial system and, when necessary, to safeguard the bench and the public from those who are unfit,[3] a judge cannot use his or her voluntary relinquishment of the office of judge to escape a disciplinary

[3] See Canon 1 and Canon 1 Commentary, Alabama Canons of Judicial Ethics; C. Gray, A Study of State Judicial Discipline Sanctions (Am. Judicature Society 2002), p. 3.

proceeding commenced against that judge. See Steensland; In the Matter of Caldwell COJ No. 8 (the judge was tried, adjudicated, and censured after his voluntary retirement).

4. Respondent's resignation only partially restores the public's confidence in the judiciary. More importantly, the public must be reassured that the judiciary of this State does not tolerate or condone judicial misconduct of the type here, but recognizes and condemns it.

5. Even when a judge relinquishes the judicial office, the presentation of evidence to the Court in a public trial and the Court's exercise of its Constitutionally authorized sanction of censure can be essential in restoring the public's confidence in the judiciary. Ala. Const. 1901, Art. VI, § 157(a). (A censure is the Court's public declaration condemning the judge's specific conduct, and thus, reassuring the public that the Judiciary does not tolerate or condone specific misconduct.)[4]

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[4] See In re Probert, 308 N.W.2d 773, 776 (Mich. 1981) ("When a judge charged with misconduct removes himself from judicial office to avoid the notoriety and ignominy incident to disciplinary proceedings and the possibility of sanctions, censure, if deserved, may be essential to the preservation of the integrity of the judicial system."); In re Steady, 641 A.2d 117, 118 (Vt. 1994) ("Even after leaving office, an ex-judge retains the status of the judicial office on his resume.

6. Under these particular circumstances here, the purpose of the public censure may be achieved by the outcome of the criminal trial, for many of the same facts upon which this Complaint is based may be adjudicated in the criminal trial.

7. Therefore, in the interests of judicial economy during this pandemic, the Commission requests that the above-styled cause be dismissed without prejudice, pursuant to Rule 41(a)(2), Ala. R. Civ. P., which allows for voluntary dismissals by "order of the court and upon such terms and conditions as the court deems proper."[5] See Smith v. Davidson, 58 So. 2d 177 (Ala. 2010).

8. The Commission requests that this Court grant its motion to dismiss, only if that dismissal is without prejudice. Should the outcome of the criminal trial fail to

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The public is entitled to know if the record is tarnished."); Cf. In re Linwood, 296 N.C. 109 (N.C. 1978)(rejecting former judge's mootness argument based on resignation due to other sanctions available besides removal from office).

[5] The Commission recognizes that, in only extreme instances, a dismissal under Rule 41(a)(2) may be with prejudice. The Commission asserts that, in judicial-disciplinary cases, dismissal with prejudice is only appropriate upon agreement of the parties.

satisfy the principles of Alabama's system of judicial discipline, the Commission would consider filing charges.

9. Respondent's delay in resigning, mere days before trial, not only burdened the State by continuing to pay his judicial salary, but also increased costs to the Commission. Therefore, the Commission requests that this Court tax Respondent with costs. Although the Commission spent its sparse resources for weeks preparing for trial—only for Respondent to provide notice of his resignation to this Court and the Commission two days before that trial, the law allows for recovery of only certain costs. Accordingly, the Commission requests that costs be taxed to Respondent in the amount of $563.44, as evidenced by the attached affidavit ("JIC Exhibit 1"). See In the Matter of Enfinger, COJ No. 17, and In the Matter of Woodard, COJ No. 31, for taxing the respondent-judge with costs, after the judge resigned and the Commission moved to dismiss.[6]

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[6] Respondent's delayed resignation cost the Judicial Department over $70,000 in judicial salary, as well as health insurance costs, since December 17, 2019, the date he signed a letter addressed to the Presiding Circuit Judge of the 39th Judicial Circuit wherein he admitted to, while a judge, stealing from elderly clients and stealing funds belonging to the people of Limestone County. The Commission is not aware of any legal mechanism for recouping these costs for the Judicial Department. In fact, Art. VI, § 159, Ala. Const.,

10. A proposed order for dismissal without prejudice with costs taxed is attached.

11. If the Court does not dismiss this cause without prejudice, the Commission alternatively moves to stay this matter until the conclusion of Respondent's criminal trial.

12. This alternative order is appropriate, given the particular circumstances here, i.e., Respondent has resigned and is awaiting criminal trial.

13. In addition, Respondent would not be prejudiced by a stay of this matter, as he requested a stay on March 4, 2020. See Ex parte Rawls, 953 So. 2d 374, 384-85 (Ala. 2006).

14. A stay would preserve valuable judicial resources by waiting to see if further proceedings may be necessary.

WHEREFORE, premises considered, the Commission respectfully requests this Honorable Court to dismiss the above-styled cause without prejudice, with costs taxed to Respondent, or in the alternative, that the cause be stayed pending conclusion of Respondent's criminal trial.

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provides that a judge against whom a complaint is pending in the Court of the Judiciary serves his or her interim suspension without loss of salary.

RESPECTFULLY submitted this the 21st day of July, 2020.

/s/ Elizabeth C. Bern
Elizabeth C. Bern

/s/ Jenny Garrett
Jenny Garrett

/s/ Rosa H. Davis
Rosa H. Davis

Attorneys for the Commission
Alabama Judicial Inquiry Commission
P.O. Box 303400
Montgomery, AL 36130-3400
elizabeth.bern@jic.alabama.gov
jenny.garrett@jic.alabama.gov
(334) 242-4089

CERTIFICATE OF SERVICE

I hereby certify that I have, on this 21st day of July, 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:

Chuck Warren, Esq.
Potts & Young, Attorneys, LLP
109 South Court Street
Florence, AL 35630
cwarren@pottsyoung.com

/s/ Elizabeth C. Bern
OF COUNSEL

IN THE ALABAMA COURT OF THE JUDICIARY

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

[PROPOSED] ORDER

THIS MATTER having come before the Court on the Judicial Inquiry Commission's Motion to Dismiss Without Prejudice, with Costs Taxed, or in the alternative, Motion to Stay, and upon consideration thereof and for good cause shown,

IT IS HEREBY ORDERED that the Commission's Motion to Dismiss Without Prejudice is **GRANTED**. The Court orders that all counts shall be dismissed, without prejudice. The Court orders costs of $563.44 taxed to Respondent.

This the ___ day of July, 2020.

_____

Judge Scott Donaldson
Chief Judge, Court of the Judiciary

COUNTY OF MONTGOMERY)
STATE OF ALABAMA)

AFFIDAVIT OF ELIZABETH C. BERN

Personally appears before the undersigned officer, duly authorized to administer oaths, to me known, Elizabeth C. Bern, who deposes, and states as follows:

1. My name is Elizabeth C. Bern, and I am over nineteen (19) years of age. I am competent to make this Affidavit, and this Affidavit is being made upon my personal knowledge.

2. I am an attorney, specially licensed to practice law in the State of Alabama. I am employed as an attorney for the State of Alabama Judicial Inquiry Commission.

3. I certify that the total costs listed in the Judicial Inquiry Commission's Motion to Dismiss Without Prejudice against Respondent were incurred solely for use in Case Number 55 of the Alabama Court of the Judiciary, an action brought by the Judicial Inquiry Commission against Douglas Patterson.

4. I further certify that all expenses described herein were reasonably necessary for the preparation of the case.

5. The Commission incurred costs for the Trial Subpoenas, pursuant to Rule 45(b)(1) that commanded the witness's attendance at a place more than 100 miles from the witness's residence, i.e., the cumulative amount of the checks issued for the witness fees for two days' attendance and an amount to reimburse the mileage allowed by law. The witness fee checks served along with the subpoenas totaled $136.74 for seven witnesses (one witness was located within 100 miles). The Commission served eight subpoenas by certified mail, which cost $55.60. The subpoenas and service of those subpoenas were necessary to the Judicial Inquiry

Commission's case. The total subpoena cost, including witness fees and certified mail cost, was **$192.34.**

6. The Commission incurred copying costs associated with producing eleven copies of the Trial Notebooks and Trial Exhibits, which were presented to this Court's clerk within hours prior to receiving notice of Mr. Patterson's resignation. These Trial Notebooks were essential, because the Judicial Inquiry Commission's case depended on numerous documents included in those notebooks. Those copies were made by the Commission staff. I have calculated those costs at $0.05 per page for 7,422 pages for a total of **$371.10.**

7. The costs reasonably necessary for the preparation of the case, including Trial Subpoenas ($192.34) and copy charges for Trial Notebooks ($371.10), equal the sum of **$563.44.**

FURTHER AFFIANT SAYETH NOT.

Elizabeth C. Bern

ELIZABETH C. BERN

COUNTY OF MONTGOMERY)
STATE OF ALABAMA)

SWORN TO AND SUBSCRIBED BEFORE ME on this 16th day of July, 2020.

Notary Public