

IN THE ALABAMA COURT OF THE JUDICIARY

FILED

MAY - 4 2021

IN THE MATTER OF:

*
*
*
*
*

COURT OF THE JUDICIARY
Rebecca C. Oates
Secretary

JOHN RANDALL "RANDY" JINKS
PROBATE JUDGE
TALLADEGA COUNTY

CASE NO. 57

**JUDICIAL INQUIRY COMMISSION'S MOTION TO COMPEL
AND RESPONSE TO MOTION TO QUASH**

COMES NOW, the Judicial Inquiry Commission (hereinafter "the Commission") and hereby moves this Court to compel opposing counsel Amanda Hardy to comply with the subpoena to testify at a deposition issued in the above-styled cause, and further responds to Probate Judge Randall "Randy" Jinks's (hereinafter "Judge Jinks") motion to quash said subpoena. In support thereof, the Commission states as follows:

1. On April 20, 2021, the Commission served Judge Jinks's counsel with a subpoena to testify at a deposition with the following self-imposed limitation on the scope of the examination: to information concerning only the counsel's independent, firsthand knowledge of facts concerning non-privileged information gained by opposing counsel before representation of Judge Jinks. Said limitation is clearly designated on the first page of the subpoena. See Ex. A. Notice Dep. – Amanda Hardy.

2. Judge Jinks asserts Ms. Hardy's subpoena should be quashed because she is not a necessary witness, as contemplated by a lawyer's prohibition against conflict of interests, Rule 3.7, Ala. R. Prof. Cond., and she "cannot provide any testimony which would be adverse to [Judge Jinks]." He relies in part on the facts that the Commission did not interview Ms. Hardy nor was she subpoenaed to testify before the Commission.

3. The Commission's choice to interview or subpoena a witness is dictated by a number of reasons including time, resources, and strategy.

4. The Commission's subpoena authority is limited to appearances before the Commission for testimony at its duly called meetings, which are only every five to eight weeks. During its meetings, the time allowed to hear testimony from witnesses is limited by the other business before the Commission.¹

¹ For example, at its last regularly scheduled meeting on April 22 and 23, 2021, the Commission met from 9:00 a.m. until 5:00 p.m. each day. In addition to the regular business of the Commission, six witnesses were subpoenaed for one matter; two for another; two for another; and two judges appeared. The Commission had to put off other necessary investigative actions until its next regularly scheduled meeting of June 24 and 25, 2021.

5. Moreover, the fact that an individual—particularly an attorney-witness—is not interviewed prior to the filing of a charge against the judge does not necessarily eliminate the need for that individual to be called as a necessary witness during a trial before the Court or have their deposition taken after a complaint is filed in the Court of the Judiciary.

6. Thus, the circumstances presented here—the compelling need for an efficient, stream-lined, expedited investigation to elicit credible, sufficient evidence to meet a clear and convincing standard of proof—does not in any way separate the necessary witnesses from those who are ultimately unnecessary for trial.

7. The Commission is concerned that Judge Jinks’s counsel is likely to be a necessary witness on her personal knowledge, which is the reason it was brought to Judge Jinks’s counsel’s attention so early on after she entered her notice of appearance. However, taking her deposition with the Commission’s self-imposed limitation is the only way to determine whether opposing counsel’s testimony would concern contested issues, which was explained to opposing counsel in correspondence dated April 16, 2021. See Ex. B. Hardy Letter.

8. Further, as stated in the attached letter of April 16, 2021, the Commission suggested this issue be resolved by filing a joint motion for a status conference. At 4:00 p.m. on April 26, 2021, which was also a state holiday, Judge Jinks's counsel informed Commission counsel via email that a motion to quash would be filed. On April 27, 2021 at 9:12 p.m., which was the night before the deposition scheduled for the next day at 11:00 a.m., Judge Jinks filed a motion to quash. Therefore, any delay or prejudice caused by the issues to both parties was worsened by Judge Jinks.

9. Rule 3.7(a) of the Alabama Rules of Professional Conduct, titled "**Lawyer as Witness**," states that "[a] lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness" It also provides the following three exceptions to this rule: "(1) [t]he testimony relates to an uncontested issue; (2) [t]he testimony relates to the nature and value of legal services rendered in the case; or (3) [d]isqualification of the lawyer would work substantial hardship on the client." Rule 3.7(a), Ala. R. Prof. Cond.

10. The Comment to Rule 3.7 further states:

The opposing party has proper objection where the combination of roles may prejudice that party's rights in the litigation. A witness is required to testify on the basis of personal knowledge, while an advocate is expected to explain and comment on evidence given by others. It may not be clear whether a statement by an advocate-witness should be taken as proof or as an analysis of the proof.”

Id. (emphasis added).

11. When considering application of the third exception in Rule 3.7(a), the Comment also states that “[i]t is relevant that one or both parties could reasonably foresee that the lawyer would probably be a witness.” Id.

12. Judge Jinks’s 24-page response provided to the Commission during its investigation mentioned his current counsel numerous times when specifically responding to the factual allegations concerning Ms. R.T. and adoption filings (filed November 12, 2020).

13. Section E of the Complaint contains allegations of Judge Jinks’s seeking the early release of Ms. R.T. from a prison sentence, and quoted in the Complaint are parts of a motion for early release prepared and filed, on March 27, 2020, by two attorneys, one of whom is Judge Jinks’s current counsel and the other is Attorney Bob Echols. See

Complaint, “E. Additional Abuse of the Prestige of the Judicial Office: Seeking Early Release of Ms. R.T. from Her Criminal Sentence,” pp. 63-72.

14. Further, in Section E of the Complaint, Judge Jinks’s counsel is mentioned, not by name, but as “another attorney” in the allegation that “Attorney Echols had asked Judge Jinks to appoint him and another attorney as co-guardians ad litem to a few contested adoptions.” See id., p. 69. The Commission may choose to amend its Complaint to avoid any ambiguity.

15. Judge Jinks’s current counsel has worked closely with Attorney Echols, who is one of the main actors in Section E of the Complaint, on the very matters alleged, e.g., she and Mr. Echols met with Ms. R.T. at the jail, she and Mr. Echols worked closely together to convince Judge Jinks and the court staff to accept adoption petitions that had no connection with Talladega County, etc.

16. In addition, Judge Jinks’s current counsel has been in the offices of the Talladega Probate Court to witness the interaction of Judge Jinks with the court staff and others—which relates to a significant portion of the allegations against Judge Jinks.

17. Clearly, Judge Jinks's counsel has personal knowledge of the sections of the Complaint mentioned herein, i.e., the very issues contested in this case. Again, only the taking of Judge Jinks's counsel's deposition would determine whether the counsel's testimony would concern contested issues that would require her to be a necessary witness.

18. The Commission has also previously served Judge Jinks and his counsel with text messages between Judge Jinks and his counsel about Ms. R.T. Said text messages were exchanged prior to counsel's representation of Judge Jinks in this Court.

19. Judge Jinks has been served all witness testimonies of those who appeared and testified before the Commission during the pendency of its investigation. Three of the transcripts from those appearances mention Judge Jinks's counsel by name in the context of helping Ms. R.T. and about adoption filings.

20. Not only does the Commission reasonably foresee that Judge Jinks's counsel would be a necessary witness, Judge Jinks and his counsel could have and further should have reasonably foreseen with great ease that his counsel would be a witness.

21. If Judge Jinks' current counsel were to remain his counsel for trial, it would not be clear whether her statements should be taken as proof or as an analysis of the proof, thereby prejudicing the Commission's prosecution of this matter.

22. Finally, the Commission does not object to a protective order being entered limiting the scope of Ms. Hardy's deposition as indicated on the subpoena itself.

WHEREFORE, premises considered, the Commission respectfully requests that this Honorable Court compel counsel for Judge Jinks to comply with the subpoena to testify at a deposition and deny Judge Jinks's motion to quash.

RESPECTFULLY submitted this 4th day of May, 2021.

/s/ Elizabeth C. Bern
Elizabeth C. Bern
Attorney for the Commission
Alabama Judicial Inquiry
Commission
P.O. Box 303400
Montgomery, AL 36130-3400
elizabeth.bern@jic.alabama.gov
(334) 242-4089

CERTIFICATE OF SERVICE

I hereby certify that I have, on this 4th day of May, 2021, 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:

Amanda Hardy
1620 Tara Drive
Chelsea, Alabama 35051
amandahardylaw@gmail.com

/s/ Elizabeth C. Bern
OF COUNSEL

IN THE ALABAMA COURT OF THE JUDICIARY

IN THE MATTER OF: *
*
JOHN RANDALL "RANDY" JINKS * **CASE NO. 57**
PROBATE JUDGE *
TALLADEGA COUNTY *

NOTICE OF DEPOSITION

Notice is hereby given, pursuant to the Alabama Rules of Civil Procedure, Rule 30, that the Judicial Inquiry Commission ("Commission"), by and through its attorneys, intend to take the deposition of the following Deponent as noted below, before an officer duly authorized to administer oaths and swear witnesses in the State of Alabama, pursuant to the attached subpoena.

DEPONENT: **Amanda Hardy**

TIME: **11:00 a.m.**

DATE: **April 28, 2021**

LOCATION: **Judicial Inquiry Commission
Alabama Center for Commerce
401 Adams Avenue, Suite 720
Montgomery, AL 36104
(334) 242-4089
VIA Zoom (Zoom Invitation will be
emailed)**

The oral examination will continue day-to-day until completed, and you are invited to attend if you so desire. This deposition is for discovery and trial purposes.



RESPECTFULLY submitted this 20th day of April, 2021.

/s/ Elizabeth C. Bern
Elizabeth C. Bern
Attorney for the Commission
Alabama Judicial Inquiry
Commission
P.O. Box 303400
Montgomery, AL 36130-3400
elizabeth.bern@jic.alabama.gov
(334) 242-4089

CERTIFICATE OF SERVICE

I hereby certify that I have, on this 20th day of April, 2021, 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:

Amanda Hardy
1620 Tara Drive
Chelsea, Alabama 35051
amandahardylaw@gmail.com

/s/ Elizabeth C. Bern
OF COUNSEL

IN THE ALABAMA COURT OF THE JUDICIARY

IN THE MATTER OF:

*
*
*
*
*

JOHN RANDALL "RANDY" JINKS
PROBATE JUDGE
TALLADEGA COUNTY

CASE NO. 57

SUBPOENA TO TESTIFY AT A DEPOSITION

TO: Amanda Hardy
1620 Tara Drive
Chelsea, Alabama 35051
amandahardylaw@gmail.com

FILED

APR 20 2021

COURT OF THE JUDICIARY
Rebecca C. Oates
Secretary

You are hereby commanded to appear at the time, date, and place via zoom set forth below to testify at a deposition to be taken in this action:

DATE: April 28, 2021

TIME: 11:00 a.m.

PLACE: Judicial Inquiry Commission
Alabama Center for Commerce
401 Adams Avenue, Suite 720
Montgomery, AL 36104
(334) 242-4089

VIA Zoom (Zoom Invitation will be emailed)

NOTE: As deponent is opposing counsel, the Commission's attorney will only depose you concerning your independent, firsthand knowledge of facts concerning non-privileged information, which you gained before your representation of Judge Jinks commenced.

This deposition will be before a duly authorized court reporter or notary public. The deposition will continue day-to-day thereafter until

completed. This deposition will be taken pursuant to Rule 32, *Alabama Rules of Civil Procedure* and may be used for discovery or for use as trial testimony at trial.

If you fail to appear at the time and place you have been ordered to appear, you will be liable to punishment for contempt of court as provided by law.

NOTICE

Rule 45 Ala. R. Civ. P., Paragraphs (c) & (d)

(c) Protection of persons subject to subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court from which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney fee.

(2) (A) A person commanded to produce and permit inspection, copying, testing, or sampling of designated electronically stored information, books, papers, documents, or tangible things or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing, or trial.

(B) Subject to subdivision (d)(2) of this rule, a person commanded to produce and permit inspection, copying, testing, or sampling at any time before the time specified for compliance may serve upon the party or attorney designated in the subpoena written objection to producing any of or all the designated materials or to

inspection of the premises or to producing electronically stored information in the form or forms requested. "Serve" as used herein means mailing to the party or attorney. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing, or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing, or sampling commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a resident of this state who is not a party or an officer of a party to travel to a place more than one hundred (100) miles from the place where that person resides, is employed, or regularly transacts business in person, or requires a nonresident of this state who is not a party or an officer of a party to travel to a place within this state more than one hundred (100) miles from the place of service or, where separate from the place of service, more than one hundred (100) miles from the place where that person is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the

state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in responding to subpoena.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the

usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial-preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(3) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.


(4) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(5) A person responding to a subpoena need not provide discovery of electronically stored information from sources the person identifies to the requesting party as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(B). The court may specify conditions regarding the production of the discovery.

(6) If information is produced in discovery that is subject to a claim of privilege or of protection as trial-preparation material, the person or party making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. Any party or the producing person may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

DATED: 4/20/2021


ELIZABETH BERN
Attorney for the Commission


REBECCA C. OATES
Secretary, Court of the Judiciary

Alabama Judicial Inquiry Commission
PO Box 303400
Montgomery, AL 36130-3400
(334) 242-4089
elizabeth.bern@jic.alabama.gov

RETURN OF SERVICE

Received this subpoena at _____ AM/PM on
_____, 2021, I served this subpoena on the
within named person, to wit: _____, by
delivering a copy of the subpoena.

PROCESS SERVER



Judicial Inquiry Commission

TELEPHONE: (334) 242-4089 FAX: (334) 353-4043

MAILING ADDRESS:
POST OFFICE BOX 303400
MONTGOMERY, AL 36130-3400

STREET ADDRESS:
401 ADAMS AVENUE, SUITE 720
MONTGOMERY, AL 36104

April 16, 2021

C E R T I F I E D M A I L

Ms. Amanda Hardy, Esq.
1620 Tara Drive
Chelsea, Alabama 35051

Via Email at amandahardylaw@gmail.com

Re: COJ 57 Complaint against Probate Judge John Randall "Randy" Jinks

Dear Ms. Hardy:

This correspondence is in response to your email, dated April 12, 2021, concerning questions regarding our conversation of April 9, 2021. In that conversation, I relayed to you that the Commission is concerned that your participation in events underlying some of the allegations in the Complaint likely makes you a necessary witness and thereby could disqualify you from representing Judge Jinks. I asked whether you had had the opportunity to review the materials served on Judge Jinks during the Commission's investigation. When you acknowledged you had not, I stated I would email you some of the pertinent materials and asked that you let me know, after you had the opportunity to review those materials, whether you would continue representing Judge Jinks because, as I explained, the Commission would have to consider filing a motion to disqualify you.

In your response that you do not see any proper basis for any objection by the Commission or for any violation of Rule 3.7, Ala. R. Prof. Cond., you requested I address several questions you posed. In the spirit of expediently resolving any ambiguity or conflict on this issue, I offer the following additional information for your consideration of your representation of Judge Jinks.

Pursuant to the Commission's information and belief at this time, you are likely to be a necessary witness on issues believed to be contested at trial. This assessment is based primarily on the following:

- Judge Jinks's 24-page response provided to the Commission during its investigation mentions you by name numerous times when specifically responding to the factual allegations concerning Ms. Rebecca Tanner and adoptions filed by you and Attorney Bob Echols. His response clearly puts into contest at least one of the critical issues in the Complaint, by his

declaration that he “never asked Bob Echols or Amanda Hardy to do anything with respect to Ms. Tanner.”

- You have worked closely with Mr. Echols, who is one of the main actors in Section E of the Complaint, i.e., the allegations of Judge Jinks’s seeking Ms. Tanner’s early release. By virtue of your signing the motion for early release, you most likely are also a main actor, albeit not named in the Complaint. Moreover, you and Mr. Echols met with Ms. Tanner at the jail, and you worked closely together to convince Judge Jinks and the court staff to accept your adoption petitions that had no connection with Talladega County.
- In Section E of the Complaint, you also are referenced, not by name, but as “another attorney” in the allegation that “Attorney Echols had asked Judge Jinks to appoint him and another attorney as co-guardians ad litem to a few contested adoptions.”
- You have been in the offices of the Talladega Probate Court to witness the interaction of Judge Jinks with the court staff and others—interaction that relates to a significant portion of the allegations against Judge Jinks.
- Judge Jinks and you exchanged text messages (which I emailed to you on April 9) about receiving appointments from Judge Jinks and also about Ms. Tanner.
- Three witnesses, in their testimonies before the Commission referenced you by name in the context of your helping Ms. Tanner and also in the context of adoption filings by you and Mr. Echols.

You were retained only last week, and this case has not yet been set for trial. To minimize prejudice to both parties, this issue should be resolved immediately. Therefore, the Commission requests to depose you concerning only non-privileged information, which you gained before your representation of Judge Jinks commenced, to determine if, in fact, your testimony is likely necessary to contested issues. The Commission is available on Tuesday, April 26 or Wednesday, April 27 via Zoom. Please let me know what date and time works best for you, and then, the Commission will serve you with proper notice.

If you are unwilling to submit to a deposition, I would propose that we file a joint motion for a status conference for the Presiding Judge to settle this issue. If I do not receive a response from you by Monday, April 19, 2021, as to whether you will either submit to a deposition or join in on a motion for a status conference, I will file a motion for a status conference on Tuesday, April 20, 2021.

Ms. Amanda Hardy
April 16, 2021
Page 3

If you have any questions, please let me know.

Sincerely,

A handwritten signature in blue ink that reads "Elizabeth C. Bern". The signature is written in a cursive style with a large initial "E" and a stylized "B".

Elizabeth C. Bern
Legal Counsel

cc: Mr. Billy C. Bedsole, Chairman

Enclosed -