

IN THE ALABAMA COURT OF THE JUDICIARY

IN THE MATTER OF:

TRACIE TODD  
CIRCUIT COURT JUDGE  
BIRMINGHAM DIVISION  
CRIMINAL DIVISION  
JEFFERSON COUNTY, AL

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CASE NO. 58

**FILED**

SEP 16 2021

COURT OF THE JUDICIARY  
Rebecca C. Oates  
Secretary

MOTION TO QUASH SUBPOENA

COMES NOW the Alabama Administrative Office of Courts (hereinafter "AOC"), by and through the undersigned attorney, and pursuant to Rule 45(c) and 45(d), Alabama Rules of Civil Procedure, moves to QUASH the subpoena *duces tecum*, served on the AOC by Judge Todd, on or about the 3<sup>rd</sup> day of September, 2021, attached hereto as an exhibit.

As grounds to quash the subpoena AOC avers that compiling the data requested will impose the undue burden and expense of an estimated 15 hours of computer programming time necessary to complete the request, based on the following circumstances:

1. AOC does not have documents responsive to item #1(a) of the subpoena *duces tecum* on file. Compiling a document or documents responsive to item #1(a) will require approximately 1.5 hours of computer programmer time to complete.
2. AOC does not have documents responsive to item #1(b) of the subpoena *duces tecum* on file. Compiling a document or documents responsive to item #1(b) will require approximately 1.5 hours of computer programmer time to complete.
3. AOC does not have documents responsive to item #1(c) of the subpoena *duces tecum* on file. Compiling a document or documents responsive to item #1(c) will require approximately 1.5 hours of computer programmer time to complete.

4. AOC does not have documents responsive to item #1(d) of the subpoena *duces tecum* on file. Compiling a document or documents responsive to item #1(d) will require approximately 1.5 hours of computer programmer time to complete.

5. AOC does not have documents responsive to item #1(e) of the subpoena *duces tecum* on file. Compiling a document or documents responsive to item #1(e) will require approximately 1.5 hours of computer programmer time to complete.

6. AOC does not have documents responsive to item #1(f) of the subpoena *duces tecum* on hand. Retrieving the email communications responsive to item #1(a) will require approximately 2.5 hours of computer programmer time to complete. In addition to the email communications of the Administrative Director of Courts, the subpoena seeks to obtain privileged email communications of the Alabama AOC's current and former staff attorneys. Only after retrieving the emails requested can the AOC determine which emails are entitled to privileged status. To complete the request AOC programmers will also need a listing of "any other person or persons or employee, related to Judge Todd and/or Judge Todd's staff" that the Administrative Director or AOC attorneys are alleged to have communicated with, since 2013. AOC cannot access employees' "text messages," or "instant messages."

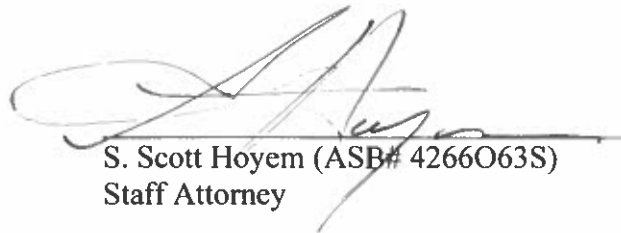
7. AOC does not have documents responsive to item #1(g) of the subpoena *duces tecum* on hand. Retrieving the email communications responsive to item #1(g) will require approximately 2.5 hours of computer programmer time to complete. To complete the request AOC computer programmers will also need a listing of "any other person or persons or employee, related to Judge Todd and/or Judge Todd's staff" that the named individuals (or their staff) are alleged to have communicated with, since 2013. AOC cannot access employees' "text messages," or "instant messages."

8. AOC does not have documents responsive to item #1(h) of the subpoena *duces tecum* on hand. Retrieving the email communications responsive to item #1(h) will require approximately 2.5 hours of computer programmer time to complete. To complete the request AOC computer programmers will also need a listing of “any other person or persons or employee, related to Judge Todd and/or Judge Todd’s staff” that the named individuals (or their staff) are alleged to have communicated with, since 2013. AOC cannot access employees’ “text messages,” or “instant messages.”

9. AOC does not have any documents responsive to item #1(i) of the subpoena *duces tecum* on file. AOC is not an investigative agency and, thus, has no investigators on staff.

**WHEREFORE**, the above premises considered, the Alabama Administrative Office of Courts moves to QUASH the subpoena *duces tecum* served by Judge Todd on the Alabama AOC on or about the 3<sup>rd</sup> day of September, 2021 (see EXHIBIT) or, in the alternative, to have the Court order the pre-payment of programming costs needed to compile this data, as provided for by Rule 33, Alabama Rules of Judicial Administration, and establishing a reasonable deadline by which to provide it.

**RESPECTFULLY** submitted this 16<sup>th</sup> day of September 2021.



S. Scott Hoyem (ASB# 4266063S)  
Staff Attorney

Alabama Administrative Office of Courts  
Heflin-Torbert Judicial Building  
300 Dexter Ave.  
Montgomery, AL 36104  
Tel. (334) 954-5120

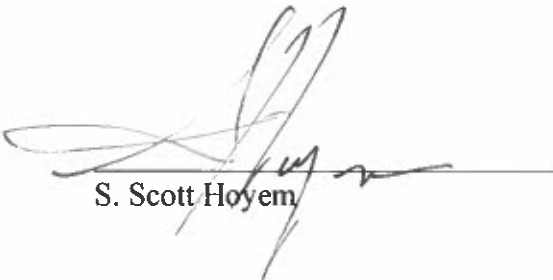
**Certificate of Service**

I certify that I served a copy of the foregoing *Motion to Quash* on the parties to this action by mailing a copy of the same to them via First Class US mail, postage prepaid and addressed to them as follows, on this the 16<sup>th</sup> day of September 2021:

Emory Anthony Jr. Esq.  
1117 22<sup>nd</sup> St. South  
Birmingham, AL 35205

William Pompey Esq.  
Pompey & Pompey  
P.O. Box 189  
Camden, AL 36726

Judicial Inquiry Commission  
Attn: Elizabeth Bern, Esq.  
P.O. Box 303400  
Montgomery, AL 36130-3400

  
S. Scott Hoyem

**FILED**

AUG 26 2021

COURT OF THE JUDICIARY  
Rebecca C. Oates  
Secretary

IN THE COURT OF THE JUDICIARY OF ALABAMA

IN THE MATTER OF:

STATE OF ALABAMA JUDICIAL INQUIRY  
COMMISSION

V.

THE HONORABLE TRACIE A. TODD  
CIRCUIT JUDGE, BIRMINGHAM DIVISION,  
CRIMINAL DIVISION, JEFFERSON COUNTY, ALABAMA

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Case # 58

CIVIL SUBPOENA DUCES TECUM

TO: CUSTODIAN OF RECORDS  
ADMINISTRATIVE OFFICE OF COURTS  
300 DEXTER AVENUE  
MONTGOMERY, AL 36104

YOU ARE HEREBY NOTIFIED of the following request of the Defendant that you produce, within fifteen (15) days, unless the Court orders otherwise, after service of this subpoena, a copy of the following documents to the offices of Emory Anthony, Jr., Esq., 1117 22nd Street South, Birmingham, Alabama 35205, to-wit:

1. The following reports related to Judge Tracie A. Todd:
  - a. Total number of cases disposed of by Judge Todd during the course of her tenure;
  - b. Cases that have been appealed during Judge Todd's tenure and corresponding disposition such as affirmation or remand
  - c. Cases involving attorney Charles Salvagio and Judge Todd, along with corresponding disposition;
  - d. A report of all capital cases assigned and adjudicated by Judge Todd during her tenure on the bench;
  - e. Capital cases appealed including Rule 32 Petitions, and corresponding appellate disposition;

*EXHIBIT*

- f. Electronic messages on all state issued, funded or supported equipment, programs and applications, including but not limited to emails, text messages and instant messaging, exchanged between **Dr. Rich Hobson, Todd Russell, Dean Hartzog, David Sawyer, Eric Anderson, Nathan Wilson**, support staff for said employees, and any other person or employee, related to Judge Todd and/or Judge Todd's staff from 2013 to present;
- g. Electronic messages on all state issued, funded or supported equipment, programs and applications, including but not limited to emails, text messages and instant messaging, exchanged between **Judge Joseph Boohaker, Judge Clyde E. Jones, Judge Houston Brown, Jefferson County Clerk Anne-Marie Adams, Assistant County Clerk Cindy Collins**, support staff for said employees, and any other person or employee, related to Judge Todd and/or Judge Todd's staff from 2013 to present;
- h. Electronic messages on all state issued, funded or supported equipment, programs and applications, including but not limited to emails, text messages and instant messaging, exchanged between **court administrators and Judge Joseph Boohaker, Judge Clyde Jones and Judge Houston Brown**, support staff for said employees, and any other person or employee, related to Judge Todd and/or Judge Todd's staff from 2013 to present;
- i. Electronic messages on all state issued, funded or supported equipment, programs and applications, including but not limited to emails, text messages and instant messaging, exchanged between **AOC investigators**, support staff for said investigators, and any other person or employee, related to Judge Todd and/or Judge Todd's staff from 2013 to present;

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**NOTICE**

Rule45Ala.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 fails to allow reasonable time for compliance;*

*i. 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*

*ii. requires disclosure of privileged or other protected matter and no exception or waiver applies, or*

*iii. 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.*

*(C) Duties in responding to subpoena.*

- i. 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.*
  - ii. 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.*
- 4) 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.*
  - 5) A person responding to a subpoena need not produce the same electronically stored information in more than one form.*
  - 6) 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.

- 7) 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: August 26, 2021

*Rebecca C. Oates, Secretary*  
Rebecca C. Oates Secretary, Court  
of Judiciary

Attorneys for the Judge:

/s/William Pompey  
117 Broad Street  
Camden, Alabama 36726

/s/ Emory Anthony, Jr.  
1117 Twenty Second Street South  
Birmingham, Alabama 35205  
(205) 776-2064  
bgemory@aol.com