

BEFORE THE ALABAMA COURT OF THE JUDICIARY

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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FILED

DEC 10 2021

COURT OF THE JUDICIARY
Rebecca C. Oates
Secretary

Case # 58

**MOTION TO SET ASIDE SENTENCE PURSUANT TO THE CONSTITUTION AND
THE FEDERAL FAIR LABOR STANDARDS ACT**

Comes now, Judge Tracie A. Todd (Defendant), by and through counsel, and requests this honorable Court to set aside its December 3, 2021 order suspending Judge Todd for 90 days without pay, while simultaneously requiring her to work during the suspension.

The Court's order requires Judge Todd to return to work without pay. Requiring Judge Todd to work without pay is likely a violation of the federal Fair Labor Standards Act (FLSA). Under the FLSA an exempt employee's salary cannot be reduced based on performance issues. Judge Todd was placed on paid suspension pursuant to Alabama law when the Commission filed the Complaint. There were no findings of misconduct, only allegations. But, Alabama law requires judges accused of misconduct to be automatically suspended with pay and prohibited from acting in any official capacity. Judge Todd was prohibited from performing her duties by law, not on her own accord.

We contend that this Court lacked subject matter jurisdiction, and that the Commission failed to prove the allegations by clear and convincing evidence as outlined in Judge Todd's motion to reconsider. Even so, FLSA prohibits an employer from reducing an exempt employee's

weekly salary under these circumstances. Such a measure punishes Judge Todd for complying with legal mandates during her suspension.

The Court's Order also suspended Judge Todd while simultaneously reinstating her duties. As a judge in the criminal division, this may leave Judge Todd and the litigants vulnerable to challenges especially in serious cases where she enters an order while suspended. Such an occurrence would seriously undermine the integrity of the court, create avoidable legal quandaries and place a burden on the judicial economy. Additionally, we respectfully submit that the Court's sentencing runs afoul of Judge Todd's protected rights under the Constitution, implicates substantive rights of crime victims and defendants in Alabama.

The allegations against Judge Todd were due to be dismissed when the District Attorney's Office filed an unverified complaint with the Commission. This honorable Court lacked subject matter jurisdiction to adjudicate the case. Nonetheless, the Court's sentence in this case does not comport with federal law, and creates legal conflicts for Judge Todd and the litigants. Therefore, we respectfully move this Court to set aside the December 3, 2021 sentence and vacate its findings. In the alternative, we move this Court to grant funds to secure the opinions of experts in the fields of labor law, judicial ethics, constitutional law for the Court to consider before dispensing with this motion.

Respectfully submitted by Counsel for Judge Todd:

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We hereby certify that we have on this 10th day of December 2021 electronically filed the foregoing with the Court of the Judiciary, and that we have further served a copy by placing the same in the U.S. mail postage pre-paid, and properly addressed as follows:

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Respectfully Submitted,

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