

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

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COURT OF THE JUDICIARY
Rebecca C. Oates
Secretary

Case # 58

MOTION TO STRIKE COMMISSION OBJECTION TO EXPERT TESTIMONY

Comes now, Judge Tracie A. Todd (Defendant), and requests this Honorable Court to deny and/or strike the Commissions motion to preclude expert witnesses called by the Defendant.

On August 31, 2021, the Defendant requested funds commensurate with the resources provided through tax payer funding for the Jefferson County District Attorney's Office and the Commission. In that request, the Defendant sought funds to retain a number of experts including an expert in the field of legal and judicial ethics. The Commission was served with said motions. The Court denied these requests. As a result, the Defendant now defends against two state funded agencies with only her personal funds, which are limited. The Defendant needed time to secure the funds necessary to retain an expert in the fields of ethics. The Defendant's efforts to identify experts were further hindered by the very limited number of qualified experts in this field.

The Complaint filed by T. Michael Anderton, in his official capacity as interim district attorney, was filed on December 17, 2017. The Commission has delayed the prosecution of this matter for nearly four years. Most importantly, the strategy used to prosecute the Defendant is

unprecedented. The testimony of an ethics expert is necessary. Said testimony will not be proffered to invade the province of the Court, but to provide relevant evidence based on the Alabama Judicial Canons for the Court to consider.

The Commission's complaint details allegations that span nearly a seven-year period, and was investigated by two State agencies: 1. The Jefferson County District Attorney's Office, the largest prosecuting agency in the State of Alabama; and 2. The Judicial Inquiry Commission. Because this prosecution is brought to the Court by two state agencies, there are a number of legal issues of first impression. Critical to fair proceedings is the Defendants ability to present relevant testimony for the Court to consider.

In addition to conducting a seven-year combined investigation, both State agencies have access to the necessary state funding to vigorously prosecute the Defendant. As a public servant, the Defendant is unable to personally fund an adequate defense against two state funded agencies without financial ruin. The possibility of suspension without pay for a prolonged period coupled with personally funding an adequate defense against two government funded agencies, would materially affect the Defendant. The Defendant has now secured the expert testimony of Professor Abbe Smith, an expert in the field of legal ethics. The Defendant now gives further notice to the Commission of her intention to proffer Mr. Leroy Maxwell as an expert in the field of death penalty litigation. *See Exhibit 1: Curriculum Vitae for Leroy Maxwell.* The Defendant respectfully requests that this Court deny the Commission's motion, and allow a proffer of these experts.

Respectfully submitted by Counsel for Judge Todd:

/s/ William Pompey

Pompey & Pompey, P.C.
117 Broad Street
Camden, Alabama 36726
(334) 682-9032

We hereby certify that we have on this 4th day of November, 2021 electronically filed the foregoing with the Court of the Judiciary, and that we have further served a copy, and properly addressed as follows:

Rosa H. Davis
Attorney for the Commission
RosaH.davis@jic.alabama.gov

Elizabeth Bern
Attorney for the Commission
elizabeth.bern@jic.alabama.gov

John Seldon
Attorney for the Commission
john.seldon@jic.alabama.gov

Respectfully Submitted,

/s/ William Pompey
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Case # 58

**MOTION FOR FUNDS COMMENSURATE WITH THE RESOURCES AVAILABLE
TO THE PROSECUTING AUTHORITIES**

Comes now Judge Tracie A. Todd (the Defendant), and moves this Court to grant necessary funds guaranteeing a fair trial for the compensation of current legal counsel and assistants, and investigative services commensurate with the resources available to the Jefferson County District Attorney's Office and the Judicial Inquiry Commission, the two Executive Branch agencies supporting this prosecution of a judicial member, and a pre-determination that these funds will not be taxed to the Defendant notwithstanding the outcome of these proceedings.

Respectfully submitted by Counsel for Judge Todd:

/s/ William Pompey
Pompey & Pompey, P.C.
117 Broad Street
Camden, Alabama 36726
(334) 682-9032

We hereby certify that we have on this 31st day of August, 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:

Rosa H. Davis
Attorney for the Commission
Alabama Judicial Inquiry Commission
P. O. Box 303400
Montgomery, Alabama 36130-3400

Respectfully Submitted,

/s/ William Pompey
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Case # 58

**MOTION FOR FUNDS TO RETAIN EXPERT FOR EQUAL PROTECTION AND
CIVIL RIGHTS ANALYSIS**

Comes now Judge Tracie A. Todd (the Defendant), and moves this Court to grant funds to retain an expert to conduct a comprehensive equal protection and civil rights analysis of the information requested from the Commission regarding prosecutions of judicial officers, and a pre-determination that these funds will not be taxed to the Defendant notwithstanding the outcome of these proceedings.

Respectfully submitted by Counsel for Judge Todd:

/s/ William Pompey
Pompey & Pompey, P.C.
117 Broad Street
Camden, Alabama 36726
(334) 682-9032

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Respectfully Submitted,

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Case # 58

**MOTION FOR FUNDS TO CONDUCT WITNESS DEPOSITION FOR PRE-TRIAL
AND TRIAL MATTERS**

Comes now Judge Tracie A. Todd (the Defendant), and moves this Court to grant funds to depose several key witnesses necessary to prepare an adequate defense during the pre-trial and trial stages, and a pre-determination that these funds will not be taxed to the Defendant notwithstanding the outcome of these proceedings commensurate with the resources afforded both state funded agencies bringing this prosecution.

Respectfully submitted by Counsel for Judge Todd:

/s/ William Pompey
Pompey & Pompey, P.C.
117 Broad Street
Camden, Alabama 36726
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Case # 58

**MOTION FOR FUNDS FOR EXPERT ETHICS AND DEATH PENALTY LITIGATION
ANALYSIS**

Comes now Judge Tracie A. Todd (the Defendant), and moves this Court to grant funds to secure the services of an expert ethics and death penalty litigation analysis. The allegations as presented by the Commission are legal issues of first impression and involve arcane questions of ethical and death penalty litigation considerations. To prepare an adequate defense said experts will be necessary for a fair trial, and a pre-determination that these funds will not be taxed to the Defendant notwithstanding the outcome of these proceedings, commensurate with the resources afforded both state funded agencies bringing this prosecution.

Respectfully submitted by Counsel for Judge Todd:

/s/ William Pompey
Pompey & Pompey, P.C.
117 Broad Street
Camden, Alabama 36726
(334) 682-9032

We hereby certify that we have on this 31st day of August, 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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Case # 58

MOTION FOR FUNDS FOR ADMINISTRATIVE COSTS AND TRIAL MATERIALS

Comes now Judge Tracie A. Todd (the Defendant), and moves this Court to grant funds to pay for various administrative costs related to preparation for an adequate defense during the pre-trial and trial stages, and a pre-determination that these funds will not be taxed to the Defendant notwithstanding the outcome of these proceedings commensurate with the resources afforded both state funded agencies bringing this prosecution.

Respectfully submitted by Counsel for Judge Todd:

/s/ William Pompey
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Case # 58

MOTION FOR LEAVE TO FILE ADDITIONAL MOTIONS

Comes now Judge Tracie A. Todd (the Defendant), and moves this Court to grant leave to file motions as needed.

Respectfully submitted by Counsel for Judge Todd:

/s/ William Pompey
Pompey & Pompey, P.C.
117 Broad Street
Camden, Alabama 36726
(334) 682-9032

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