IN THE ALABAMA COURT OF THE JUDICIARY

IN THE MATTER OF:

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NAKITA BLOCTON	*	CASE NO. 60
CIRCUIT JUDGE,	*	
BIRMINGHAM DIVISION	*	
DOMESTIC RELATIONS	*	
DIVISION	*	
JEFFERSON COUNTY, AL	*	

JUDICIAL INQUIRY COMMISSION'S RESPONSE TO JUDGE NAKITA BLOCTON'S MOTION FOR RECONSIDERATION AND MOTION TO ALTER, AMEND OR VACATE JUDGMENT

Judge Blocton's motion for reconsideration should be denied because this Court has no jurisdiction to consider it. Rule 16 of the Rules of Procedure for the Court of the Judiciary clearly states that "[t]he decision of the Court shall be final, subject to appeal rights contained in § 157, Ala. Const. 1901 (Off. Recomp.)" (emphasis added). As outlined in depth below, post-judgment motions like this one do not constitute appeal rights under § 157, Ala. Const. 1901.

Further, even if this Court determines that it possesses jurisdiction to adjudicate Judge Blocton's post-judgment motion, Judge Blocton's motion wholly fails on its merits. Although Judge Blocton generally asks this Court to reconsider its denial of her motion for judgment as a matter

of law,[1] she presents specific arguments regarding only two findings of the Court in its final judgment, both of which fail. First, Judge Blocton's repeated use of slurs and abusive language—over the phone, in person, and via text message—is a clear violation the Canons of Judicial Ethics, despite her arguments to the contrary. Indeed, other than simply invoking First Amendment protections in a conclusory fashion, Judge Blocton cites no law whatsoever to suggest that she should be shielded from the application of the Canons simply because her comments were allegedly "private." (The comments actually occurred during working hours, in chambers, and were directed to public employees, litigants, and attorneys.) Second, Judge Blocton's suggestion that the Chief Judge's consideration of an unauthenticated document—rank with hearsay and unsupported by any testifying witness—should somehow change the outcome of this Court's decision regarding her use of Facebook falls woefully flat—especially given that the other evidence supporting this charge was overwhelming.

[1] For example, Judge Blocton does not present <u>any</u> specific argument that the Court erred in finding that "Judge Blocton engaged in a pattern of dishonesty and deception . . . includ[ing] Judge Blocton's . . . asking potential witnesses to delete evidence relevant to the Commission's investigation, and attempting to influence the testimony of witnesses (or potential witnesses) in this matter." *See* Order at 7.

For the reasons outlined below, this Court should deny Judge Blocton's Motion for Reconsideration.

ARGUMENT

1. This Court does not have jurisdiction to consider Judge Blocton's Motion for Reconsideration or Motion to Alter, Amend or Vacate Judgment.

Other courts in Alabama—under the Alabama Rules of Civil and Appellate Procedure—routinely (and properly) exercise their power to hear motions for reconsideration, as well as motions for post-judgment relief. But the rules governing the Court of the Judiciary simply do not allow for these kinds of motions. Indeed, though is well-settled that, except where otherwise provided, the Alabama Rules of Civil and Appellate Procedure apply to proceedings before the Court of the Judiciary,[2] Rule 16 of the Rules of Procedure for the Court of the Judiciary actually does provide otherwise. *See.* R. P. for the Court of the Judiciary 16 ("The decision of the Court shall be final, subject to appeal rights contained in § 157, Ala. Const. 1901 (Off. Recomp.)" (emphasis added).

[2] *See* Rule D of the Rules Governing Appeals from the Alabama Court of the Judiciary.

As Rule 16 plainly contemplates, the finality of the decision of the Court of the Judiciary is not subject to a motion for reconsideration or a motion to alter, amend, or vacate—but only to the appeal rights contained in § 157. Nowhere in that constitutional section does it mention the availability of post-judgment relief. To the contrary, it states clearly that a judge aggrieved by a decision of the Court of the Judiciary has one remedy: "(b) A judge aggrieved by a decision of the Court of the Judiciary may appeal to the Supreme Court. The Supreme Court shall review the record of the proceedings on the law and the facts." *See* § 157, Ala. Const. 1901.

Put simply, based on Rule 16, only the Alabama Supreme Court has jurisdiction to make any kind of ruling regarding the propriety of the final decision of the Court of the Judiciary. And though other Alabama courts routinely allow for this kind of post-judgment relief, it is "otherwise provided" for here. The reasons for this prohibition become clearer where, as outlined in depth below, the Chief Judge of the Court of the Judiciary serves both as a gatekeeper of the evidence and as an ultimate fact-finder.

2. The overwhelming evidence of Judge Blocton's inappropriate and unethical "private" comments, which occurred during working hours, in chambers, and were directed to public employees about nonconfidential matters clearly violate the Canons of Judicial Ethics.

The phone calls, audio recordings, text messages, and in-person statements depicting Judge Blocton's use of slurs and offensive language to her court staff and to others were plainly admissible and startlingly unethical. Judge Blocton used offensive language, including racial slurs and personal attacks, in text conversations with attorneys during working hours (*e.g.,* T. Shane Smith) and in text conversations with court staff during working hours (*e.g.*, Demetria Doughty), in audio recordings made by Maylynn Torres-Smith in chambers during working hours, in which Judge Blocton used, among other things, used racial epithets to describe her fellow judges, and in direct conversations with court employees and attorneys, such as Lisa Jackson, Maylynn Torres-Smith, and Paul Franklin and Julie Calloway. All of the statements were all appropriately admitted into evidence and reasonably relied upon by the Court.[3]

[3] All of this evidence, as required by Ala. R. Evid. 901(a), was appropriately authenticated through the testimony of JIC witnesses. Further, none of the evidence is hearsay, because it was an admission by a party opponent. *See* Ala. R. Evid. 801 (d)(2)(A) ("A statement is not hearsay if . . . the statement is offered against a party

Nonetheless, for the first time ever in this post-trial motion, Judge Blocton argues that the First Amendment should have precluded the Court's consideration of comments because the conversations were intended to be "private." The Court can reject this argument out of hand.

First, Judge Blocton cites no law whatsoever for this proposition. This is unsurprising because none exists. Indeed, even assuming the statements were in fact private (they were not), the Alabama Canons of Judicial Ethics, which prohibit the use of indecorous language and require that judges act in a manner that promotes confidence in the integrity and impartiality of the judiciary, carry no "private conversation" exception. All of the evidence outlined above, which was properly admitted by this Court, constitutes clear and convincing evidence that Judge Blocton violated Canons 1 and 2 of the Alabama Canons of Judicial Ethics. *See also* Commentary Canon 2.

Second, these conversations were not private at all. The evidence related to Judge Blocton's inappropriate language had nothing to do with the confidential work of the court, *i.e.*, discussing how Judge Blocton may

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and is the party's own statement in either an individual or representative capacity . . . .").

or may not rule on a given case. Instead, they were the bizarre and troubling rantings of a judicial officer—in person, on the phone, and via text message—made to public employees during working hours. In that sense, nothing about these conversations was private.

There is no constitutional shield against Judge Blocton's "pattern and practice of making inappropriate comments." Taken together and individually, these comments constitute clear and convincing evidence, and this Court properly found her guilty of violating Canons 1 and 2 of the Alabama Canons of Judicial Ethics for her behavior.

3. The unauthenticated e-mail of Scott Cockrum is hearsay and it also contains hearsay—and the Court properly excluded it.

As an initial matter, Judge Blocton asserts that the nine-member Court's final decision should be vacated because the Chief Judge was aware of several assertions in an inadmissible FBI report containing out of court statements made by an FBI officer, who failed to testify at trial. This makes no sense. This email was properly excluded by Chief Judge Cole. And the suggestion that, because Chief Judge Cole knew of its existence as a "de-facto exhibit" when he considered its admissibility somehow means that the entire Court (including Chief Judge Cole)

should have considered it when making its final decision simply strains credulity. Indeed, Judge Blocton's argument here is actually a compelling example of the very reason for Rule 16's mandate that only the Supreme Court may review the Court of the Judiciary's final decision (and not the Chief Judge who may have learned "facts" while exercising his pre-judgment authority, under Rule 9, to decide all procedural and evidentiary questions).

But even if this Court were to consider Judge Blocton's argument here as a post-judgment motion, Judge Blocton's suggestion that a single, inadmissible e-mail—unauthenticated by any testifying witness—should ever have been considered by the entire Court, much less relied upon by the entire Court to such a degree as to undermine the overwhelming evidence related to Judge Blocton's use of Facebook aliases begs belief. The unauthenticated e-mail was classic hearsay, not falling under any exception, and the Chief Judge properly excluded it for the following reasons.

A. Judge Blocton failed to authenticate the e-mail.

Under Alabama law, Judge Blocton should have taken steps to authenticate the document. *See* Ala. R. Evid. 901(a) ("The requirement of

authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims."). Judge Blocton failed to do so. Despite including Scott Cockrum on her witness list, Judge Blocton failed to properly serve Mr. Cockrum with a trial subpoena and otherwise failed to have him appear at trial. Further, Judge Blocton made no other arguments on the record to attempt to authenticate the e-mail in the absence of live witness testimony, such as those provided in Ala. R. Evid. 901(b)(4). *See* Ala. R. Evid. 901(b)(4) (providing for authentication through "[a]ppearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances."); *see also* Charles W. Gamble, Terrence W. McCarthy, & Robert J. Goodwin, *Gamble's Alabama Rules of Evidence*, § 901(b)(4) (3d ed. 2013).

B. The e-mail was hearsay.

Even if Judge Blocton had properly authenticated the e-mail in question, which she did not, the email itself was rank hearsay—and it contained double hearsay in its contents. As the Court knows, the e-mail—which was purported to have been sent from Scott Cockrum to Detective Jude Washington and which was based upon Mr. Cockrum's

initial investigation that predated Detective Washington's field investigation and in-person interview—contained Mr. Cockrum's initial conclusion that Judge Blocton may not have been the author of one or more of the alleged Facebook aliases. This is a classic out-of-court statement, not made under oath, offered to prove the truth of the matters asserted therein. *See* Ala. R. Evid. 801, 802.

At trial, after the JIC made the proper hearsay objection, Judge Blocton failed to provide any exception to the hearsay rule, which could have justified the Court allowing the e-mail into evidence. It was properly excluded. Had the Court allowed the e-mail into evidence without Mr. Cockrum there to provide context, the JIC would have been unable to cross-examine Mr. Cockrum regarding (a) his bases for forming the conclusions contained therein, (b) the extent of his investigation, *i.e.*, was it perfunctory or detailed, and (c) whether the additional evidence admitted at trial in the days and hours prior to his testimony, might have changed his conclusion.

C. Even if the e-mail had been admitted, the overwhelming evidence of Judge Blocton's use of Facebook aliases still plainly supports the Court of the Judiciary's findings of guilt.

Under the Alabama Rules of Appellate Procedure, "no judgment may be reversed or set aside" unless the "error complained of has probably injuriously affected substantial rights of the parties." Ala. R. App. P. 45. Even if the e-mail had been admitted and considered by the entire Court, the overwhelming evidence of Judge Blocton's use of Facebook aliases still plainly supports the Court of the Judiciary's findings of guilt. This Court's findings with respect to the Facebook aliases was based on numerous pieces of direct evidence and testimony other than that of Jude Washington, as incorrectly argued by Judge Blocton in her motion. This testimony included, but is not limited to, the testimony of Victor Sims, Shane Smith, and Lisa Jackson. It was also supported by compelling documentary evidence, in which the JIC demonstrated that numerous and repeated unique words and phrases used by Judge Blocton in known communications from her appeared over and over again in the Facebook aliases messages. As stated above, a single, inadmissible e-mail—unauthenticated by any testifying witness—was properly excluded at trial and, even if it had been admitted, its

weight paled in comparison to the other pieces of evidence related to Judge Blocton's use of Facebook aliases. The unauthenticated e-mail was classic hearsay, would not have changed the outcome of the Court's decision, and the Court properly excluded it.

CONCLUSION

This Court does not have jurisdiction to reconsider its judgment. However, even if it did, Judge Blocton's motion seeks to have the Court reconsider its sound judgment based on meritless arguments, both of which are unsupported by any legal authority whatsoever. The Judicial Inquiry Commission requests the Court affirm its Judgment in all respects and deny Judge Blocton's Motion for Reconsideration in full.

THE JUDICIAL INQUIRY COMMISSION

/s/. R. Ashby Pate
Jackson R. Sharman, III
R. Ashby Pate
Amber N. Hall
Attorneys for the Commission
Alabama Judicial Inquiry Commission
P.O. Box 303400
Montgomery, AL 36130-3400
apate@lightfootlaw.com
(334) 242-4089

CERTIFICATE OF SERVICE

I hereby certify that I have, on this 24th day of January 2022, 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:

Robert P. MacKenzie, III
Starnes Davis Florie LLP
100 Brookwood Place, 7th Floor
Birmingham, Alabama 35209
(205) 868-6046
bmackenzie@starneslaw.com

Emory Anthony, Jr.
Emory Anthony, Jr. Attorney at Law
1117 22nd Street South
Birmingham, AL 35205-2813
(205) 939-0005
bgemorye@aol.com
(205) 776-2064

R. Bernard Harwood, Jr.
Rosen Harwood, P.A.
2200 Jack Warner Parkway, Suite 200
Tuscaloosa, AL 35401
(205) 344-5000
Email: bharwood@rosenharwood.com

/s/ R. Ashby Pate
OF COUNSEL