

BEFORE THE ALABAMA COURT OF THE JUDICIARY

In re

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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ALABAMA COURT OF THE JUDICIARY
Nathan P. Wilson
Secretary

Case 61

MOTION TO STAY PROCEEDINGS

COMES NOW, the Honorable Tracie A. Todd of the Circuit Court in the Tenth Judicial Circuit for the State of Alabama (“Judge Todd”), and hereby files this Motion to Stay Proceedings (“Motion”) and as grounds therefore provides as follows:

1. On March 16, 2022, the Judicial Inquiry Commission (“JIC”) filed a Complaint against Judge Todd, alleging *inter alia* that Judge Todd failed to return to work as previously directed by the Court of the Judiciary (“COJ”), which included Judge Todd’s own presiding judge, the Honorable Elisabeth A. French (“Judge French”), as a member, and that Judge Todd lied to Judge French and other judges on her Circuit Court as to work she conducted upon her reinstatement. Judge French is the primary JIC witness as to most of the Complaint’s allegations.

2. Judge French disqualified herself after the Complaint was filed.

3. On May 19, 2022, this Court issued an Order Setting Trial for August 15 through August 16, 2022.

4. On June 3, 2022, Judge Todd's counsel filed a Motion for Recusal in this Court to order the recusal of each sitting member on the Alabama Court of the Judiciary who has served on this Court with Judge French, including but not limited to any sitting member who presided together with Judge French in JIC Case No. 58. Judge Todd's Motion was timely made. Judge Todd's counsel filed the Motion on June 3, 2022—just fifteen days from the order setting the trial date and prior to issuance of a discovery scheduling order.

5. This Court denied the recusal motion on June 21, 2022 without any explanation.

6. Accordingly, to timely address this wrongful determination in advance of trial, Judge Todd timely filed a Petition for Writ of Mandamus (the "Petition") in the Alabama Supreme Court on July 1, 2022. This Petition respectfully requests that the Alabama Supreme Court grant the writ and order the members of this Court to recuse themselves from her case or, in the alternative, to order members of this Court to provide an explanation for the denial of Judge Todd's Motion. A copy of the Petition is appended to this Motion.

7. Mandamus is appropriate when a trial court improperly denies a pretrial motion for recusal. While the Petition is pending, therefore, the present Matter should be stayed.

8. Alabama law requires recusal of the sitting judges in this Matter. The Alabama appellate courts have held that a judge must recuse himself in any case in which it is "reasonable ... to question the [judge's] impartiality." *State v. Moore*, 988 So.

2d 597, 599 (Ala. Crim. App. 2007). That standard flows from, and is consistent with, Canon 3.C(1) of the Alabama Canons of Judicial Ethics, which states, “A judge should disqualify himself in a proceeding in which ... his impartiality might reasonably be questioned.” When faced with any doubt, the Court must recuse: “All reasonable doubts should also be resolved in favor of recusal.” *Crowell v. May*, 676 So. 2d 941, 944 (Ala. Civ. App. 1996) (citation omitted). *See also In re Murchison*, 349 U.S. 133, 136 (1955) (due process may “sometimes [require the recusal of] judges who have no actual bias and would do their very best to weigh the scales of justice equally between contending parties”).

9. While members of the Court of the Judiciary may insist that they can be impartial and follow the law in this matter, as the ultimate decision makers, the special factual circumstances here give an appearance to the contrary. Here, it would certainly be reasonable for an objective observer to question the impartiality of the COJ members. No matter how well intentioned the COJ members may be, recusal of the judges in this matter is required to ensure the actual and apparent fairness of these proceedings.

10. Mandamus is the appropriate remedy, and it would be unfair, inequitable, and contrary to the administration of justice to proceed in the present matter while the Petition is pending in the Alabama Supreme Court. Mandamus is appropriate when there is “(1) a clear legal right in the petitioner to the order sought; (2) an imperative duty upon the respondent to perform, accompanied by a refusal to do so; (3) the lack of another adequate remedy; and (4) properly invoked jurisdiction of the court.” *Ex parte Moore*, 880 So. 2d 1131, 1133 (Ala. 2003). As this Court denied Judge Todd’s recusal

motion, and the trial court members have refused to recuse themselves, Judge Todd is left with no adequate remedy but to seek a writ of mandamus in this case.

11. Judge Todd should not have to and cannot adequately prepare to defend against the charges in the Complaint while the Petition is pending and will be severely prejudiced in her defense against those charges if this Matter is not stayed pending the Alabama Supreme Court's decision.

WHEREFORE, Judge Todd respectfully requests that the Court grant this Motion and enter an order staying this Matter until the Petition for Writ of Mandamus is decided by the Alabama Supreme Court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have on this 6th July, 2022 electronically filed the foregoing with the Court of the Judiciary, and that I have further served a copy by sending the same via email, and properly addressed as follows:

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