

IN THE ALABAMA COURT OF THE JUDICIARY

IN THE MATTER OF: \*  
\*  
TRACIE TODD \*  
CIRCUIT COURT JUDGE \*  
BIRMINGHAM DIVISION \*  
CRIMINAL DIVISION \*  
JEFFERSON COUNTY, AL \*

CASE NO. 61 **FILED**

JUL 25 2022

ALABAMA COURT OF THE JUDICIARY  
Nathan P. Wilson  
Secretary

MOTION TO QUASH SUBPOENA OF JENNY GARRETT

COMES NOW, the Judicial Inquiry Commission (hereinafter “the Commission”), via the undersigned attorneys, John A. Selden, Elizabeth C. Bern, and Jacob D. Jackson, and hereby moves this Honorable Court, pursuant to Rule 45(c)(3)(A), Alabama Rules of Civil Procedure, to quash the subpoena addressed to Jenny Garrett by counsel for Judge Tracie A. Todd (hereinafter “Judge Todd”). In support thereof, the Commission states the following:

1. Jenny Garrett filed a Notice of Appearance as counsel in this proceeding with the Court on July 20, 2022, as she has returned to work at the Commission as a part-time retired state employee effective July 16, 2022. See Ex. A.

2. Ms. Garrett, as an employee and counsel for the Commission, participated in discussions and deliberations with members of the

Commission and fellow Commission attorneys regarding COJ No. 61.

3. At 8:46 a.m. on Monday, July 25, 2022, the Commission was emailed thirteen deposition notices, subpoena notices, and subpoenas. See Ex. B. One of those was for Ms. Garrett. See Ex. C. The July 25 email is the first method by which the Commission was provided the notices. The certificates of service incorrectly state that counsel for the Commission were served the “11th day of July.” Ex. C at 2, 5.

4. Ms. Garrett has not been served with her subpoena in person or by certified mail. See Ala. R. Civ. P. 4(i). Judge Todd’s counsel has not communicated with Ms. Garrett at all about the subpoena or deposition schedule. The subpoena commands Ms. Garrett to appear on August 2, 2022, at 9:00 a.m. See Ex. C at 7. Because the Commission was not provided with the notices until today, and because Ms. Garrett has not been served at all, the subpoena obviously does not “allow reasonable time for compliance.” Ala. R. Civ. P. 45(c)(3)(A)(i).

5. Also, Ms. Garrett’s subpoena did not issue from this Court. See Ala. R. Civ. P. 45(a)(2). The subpoena commands Ms. Garrett’s appearance but was not signed by the Clerk for the Court of the Judiciary. See Ex. C at 7.

6. Moreover, counsel for Judge Todd cannot compel Ms. Garrett to breach confidentiality owed to her client, or similarly any other Rule of Professional Conduct; the Commission does not waive its attorney-client privilege or deliberative process privilege in this matter. See Ala. R. Prof. Cond. R. 1.6 and 3.7; Ala. R. Civ. P. 45(c)(3)(A)(iii); Ala. Const. art. VI, § 156(b) (“All proceedings of the commission shall be confidential except the filing of a complaint with the Court of the Judiciary.”).

7. While the subpoena does not specify the testimony sought, Judge Todd would presumably attempt to question Ms. Garrett about the verified complaint, signed by Ms. Garrett, that led to the opening of the investigation that led to the filing of the Complaint in COJ No. 61.<sup>1</sup>

8. However, the initial complaint, the investigation letters, and all documents supporting the complaint and investigation letters have either already been timely provided to Judge Todd or will be timely served tomorrow as part of discovery. Likewise, all communications between the Commission staff and anyone at the Jefferson County District Attorney’s Office or any Jefferson County judge have already

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<sup>1</sup> See R. P. Jud. Inq. Comm’n 6A (“Proceedings may be instituted by the commission only upon a verified complaint filed either by a member of the public or by a member of the commission or the commission’s staff.”).

been timely disclosed or provided to Judge Todd or will be timely disclosed or served tomorrow as part of discovery.

9. Any other pertinent questions that Judge Todd could ask Ms. Garrett would be about the investigative process or internal Commission deliberations, all of which would seek information that is privileged and protected. The Alabama Rules of Civil Procedure require a subpoena to be quashed or modified if the subpoena “requires disclosure of privileged or other protected matter and no exception or waiver applies.” Ala. R. Civ. P. 45(c)(3)(A)(iii).

10. If not about the investigation and verified complaint, the questions would necessarily seek information that is “patently irrelevant.” Ex parte Newby, 194 So. 3d 913, 918 (Ala. 2015). “Evidence that is not relevant is not discoverable.” Ex parte Crawford Broad. Co., 904 So. 2d 221, 224 (Ala. 2004). When deposition subpoenas seek information that is “not relevant to any issue in the cause,” they may be quashed. Ex parte Durbin, 723 So. 2d 1283, 1283 (Ala. Civ. App. 1998).

11. Because Judge Todd has been or will imminently be provided all non-privileged information regarding the initial complaint and investigation, because all other information that Ms. Garrett could testify

about would be either privileged and protected or irrelevant, because Ms. Garrett has not been properly served with a subpoena, and because requiring her testimony would set a detrimental precedent and could force Ms. Garrett to violate the Alabama Rules of Professional of Conduct, the Commission moves that this Court quash Ms. Garrett's subpoena.

**WHEREFORE**, premises considered, the Commission respectfully requests that this Court quash the subpoena for Jenny Garrett for the reasons set out herein.

Respectfully submitted this the 25th day July, 2022.

/s/ John A. Selden

John A. Selden

/s/ Elizabeth C. Bern

Elizabeth C. Bern

/s/ Jacob D. Jackson

Jacob D. Jackson

Attorneys for the Commission

Alabama Judicial Inquiry Commission

P.O. Box 303400

Montgomery, AL 36130-3400

[john.selden@jic.alabama.gov](mailto:john.selden@jic.alabama.gov)

[elizabeth.bern@jic.alabama.gov](mailto:elizabeth.bern@jic.alabama.gov)

[jacob.jackson@jic.alabama.gov](mailto:jacob.jackson@jic.alabama.gov)

(334) 242-4089

**CERTIFICATE OF SERVICE**

I hereby certify that I have, on this 25th day of July, 2022, electronically filed the foregoing with the Court of the Judiciary, and that I have further served a copy upon the following via email as follows:

Richard A. Rice, Esq.  
The Rice Firm, LLC  
115 Richard Arrington Jr. Blvd. N.  
Birmingham, AL 35203  
[rrice@rice-lawfirm.com](mailto:rrice@rice-lawfirm.com)  
(205) 618-8733, ext. 101

Edward J. Ungvarsky, Esq.  
Ungvarsky Law, PLLC  
114 North Alfred Street  
Alexandria, VA 22314  
[ed@ungvarskylaw.com](mailto:ed@ungvarskylaw.com)  
(571) 207-9710

/s/ John A. Selden  
John A. Selden  
Attorney for the Commission

IN THE ALABAMA COURT OF THE JUDICIARY

IN THE MATTER OF:

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

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CASE NO. 61

**FILED**

JUL 20 2022

ALABAMA COURT OF THE JUDICIARY  
Nathan P. Wilson  
Secretary

NOTICE OF APPEARANCE

COMES NOW the undersigned attorney, Jenny Garrett, and hereby gives notice of appearance as counsel for the Judicial Inquiry Commission in this matter.

RESPECTFULLY submitted this 20th day of July, 2022.

/s/ Jenny Garrett  
Jenny Garrett  
Attorney for the Commission  
Alabama Judicial Inquiry  
Commission  
P.O. Box 303400  
Montgomery, AL 36130-3400  
(334) 242-4089  
[jenny.garrett@jic.alabama.gov](mailto:jenny.garrett@jic.alabama.gov)



CERTIFICATE OF SERVICE

I hereby certify that I have on this 20th day of July, 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, postageprepaid and properly addressed and/or via email as follows:

Richard A. Rice, Esq.  
The Rice Firm, LLC  
115 Richard Arrington Jr. Blvd. N.  
Birmingham, AL 35203  
[rrice@rice-lawfirm.com](mailto:rrice@rice-lawfirm.com)  
(205) 618-8733, ext. 101

Edward J. Ungvarsky, Esq.  
Ungvarsky Law, PLLC  
114 North Alfred Street  
Alexandria, VA 22314  
[ed@ungvarskylaw.com](mailto:ed@ungvarskylaw.com)  
(571) 207-9710

/s/ Jenny Garrett  
OF COUNSEL



**Selden, John**

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**From:** Monique Okoye <MOkoye@msn.com>  
**Sent:** Monday, July 25, 2022 8:46 AM  
**To:** Selden, John  
**Subject:** RE: Judge Tracie Todd - Deposition Notices  
**Attachments:** 8Alaric May - Deposition Notices and Subpoena.pdf; 8Ashley Patterson Mims - Deposition Notices and Subpoena.pdf; 8Bonita Conley - Deposition Notices and Subpoena.pdf; 8Elisabeth French - Deposition Notices and Subpoena.pdf; 8Ellie Friedman - Deposition Notices and Subpoena.pdf; 8Jason Wilson - Deposition Notices and Subpoena.pdf; 8Jenny Garrett - Deposition Notices and Subpoena.pdf; 8Joe Roberts - Deposition Notices and Subpoena.pdf; 8Julie Makin - Deposition Notices and Subpoena.pdf; 8Kechia Davis - Deposition Notices and Subpoena.pdf; 8LaurenBreland - Deposition Notices and Subpoena.pdf; 8Michael Streety - Deposition Notices and Subpoena.pdf; 8Stephen Wallace - Deposition Notices and Subpoena.pdf

Attached please find a copy of the Deposition Notices issued on behalf of Judge Todd.

Thank You



BEFORE THE ALABAMA COURT OF THE JUDICIARY

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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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**Case 61**

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NOTICE OF DEPOSITION

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TO: Jenny Garrett  
Alabama Judicial Inquiry Commission  
401 Adams Ave # 720  
Montgomery, AL 36104  
Phone: (334) 242-4089

Please take notice that the Honorable Tracie A. Todd will take the testimony by deposition upon oral examination of Jenny Garrett in accordance with the provisions of Rule 30 of the Alabama Rules of Civil Procedure. Such testimony will be taken at the offices of Attorney Richard A. Rice, at the day and time indicated below:

Date: August 2, 2022

Time: 9:00 a.m.

Place: 115 Richard Arrington Boulevard North, Birmingham, AL 35203

This deposition will be taken upon oral examination before a court reporter or such other authorized person. The deposition shall continue from time to time until completed.

Respectfully submitted,

/s/ Richard A. Rice (RICO86)

Richard A. Rice  
The Rice Firm, LLC  
115 Richard Arrington Boulevard North,  
Birmingham, AL 35203  
Post Office Box 453  
Birmingham, AL 35201  
(205) 618-8733 ext 101  
(256)529-0462 cellular  
888.391.7193 facsimile  
Counsel for Judge Tracie A. Todd

/s/ Edward J. Ungvarsky

Edward J. Ungvarsky, Esq.  
VSB No. 83014; DC Bar 45934  
*Pro Hac Vice*  
Ungvarsky Law, PLLC  
114 North Alfred Street  
Alexandria, VA 22314  
Office: (571) 207-9710  
Cellular: (202) 409-2084  
Fax (571) 777-9933  
ed@ungvarskylaw.com  
Counsel for Judge Tracie A. Todd

### **CERTIFICATE OF SERVICE**

I hereby certify that I have on this 11<sup>th</sup> day of July, 2022 electronically filed the foregoing with the Court of the Judiciary, and that I have further served a copy by delivering the same via email, and/or certified mail and properly addressed as follows:

Jenny Garrett  
401 Adams Ave # 720  
Montgomery, AL 36104  
Phone: (334) 242-4089  
Jenny.Garrett@jic.alabama.gov

Elisabeth Bern  
Attorney for the Commission  
Alabama Judicial Inquiry Commission  
P. O. Box 303400  
Montgomery, Alabama 36130-3400  
elisabeth.bern@jic.alabama.gov

John Seldon  
Attorney for the Commission  
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Jacob Jackson  
Attorney for the Commission  
Alabama Judicial Inquiry Commission  
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jacob.jackson@jic.alabama.gov

/s/ Richard A. Rice (RICO86)  
Richard A. Rice  
The Rice Firm, LLC  
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Birmingham, AL 35203  
Post Office Box 453  
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(205) 618-8733 ext 101  
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BEFORE THE ALABAMA COURT OF THE JUDICIARY

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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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**Case 61**

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NOTICE OF SUBPOENA

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Take notice that upon the expiration of fifteen (15) days from the date of service of this notice, Judge Tracie A. Todd, by and through counsel, will apply to the Clerk of this Court for issuance of the attached subpoena directed to **Jenny Garrett** who is not a party and whose address is **401 Adams Avenue #720 Montgomery, Alabama 36104**, to appear at the time and place specified in the subpoena.

Respectfully submitted,

/s/ Richard A. Rice (RICO86)

Richard A. Rice  
The Rice Firm, LLC  
115 Richard Arrington Boulevard North,  
Birmingham, AL 35203  
Post Office Box 453  
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Counsel for Judge Tracie A. Todd

*/s/ Edward J. Ungvarsky*  
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Fax (571) 777-9933  
ed@ungvarskylaw.com  
Counsel for Judge Tracie A. Todd

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Jenny Garrett  
Alabama Judicial Inquiry Commission  
401 Adams Ave # 720  
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Phone: (334) 242-4089  
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/s/ Richard A. Rice (RICO86)

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888.391.7193 facsimile





**RETURN ON SERVICE**

Received this subpoena at \_\_\_\_\_ on \_\_\_\_\_ and on \_\_\_\_\_ at \_\_\_\_\_ I served it  
on the within named \_\_\_\_\_.

Dated \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_

**Process Server**