

IN THE ALABAMA COURT OF THE JUDICIARY

IN THE MATTER OF:	*	
	*	
TRACIE TODD	*	CASE NO. 61
CIRCUIT COURT JUDGE	*	
BIRMINGHAM DIVISION	*	
CRIMINAL DIVISION	*	
JEFFERSON COUNTY, AL	*	

**JUDICIAL INQUIRY COMMISSION’S OBJECTION
TO JUDGE TRACIE A. TODD’S MOTION FOR A
2-MONTH CONTINUANCE OF TRIAL**

COMES NOW, the Judicial Inquiry Commission (hereinafter “the Commission”) and hereby files this Objection to Judge Tracie A. Todd’s (hereinafter “Judge Todd”) Motion for 2-Month Continuance of Trial. The Commission objects to Judge Todd’s Motion and moves this Court to deny it. As grounds for its objection to Judge Todd’s Motion for 2-Month Continuance of Trial, the Commission states as follows:

1. “Dilatory motions will be treated with disfavor. Any action, which, in the opinion of the Court, would interfere with the prompt disposition of the proceedings pending before the Court shall be discouraged.” Rule 7, R. P. Ala. Ct. Jud.; see also Rule 8, R. P. Ala. Ct. Jud. (“The Court shall fix a date for hearing upon the complaint as expeditiously as possible.”).

2. The Complaint in this case was filed on March 16, 2022. Judge Todd has had five months to engage in discovery and prepare for trial. See generally Rules 26 and 30 of the Alabama Rules of Civil Procedure concerning Depositions and Discovery, as the Rules neither limit nor restrain commencement of discovery by Judge Todd.

3. “Continuances are not favored and the trial court’s denial of a motion for continuance will be upset only when palpable or gross abuse of discretion is shown.” C.O. v. Jefferson Cnty. Dep’t of Hum. Res., 206 So. 3d 621, 630 (Ala. Civ. App. 2016) (cleaned up).

4. When “considering the propriety of a continuance,” this Court should consider “the length of the continuance, the inconvenience to witnesses, counsel, and the court,” and whether Judge Todd had “other competent counsel.” Flowers v. State, 799 So. 2d 966, 990 (Ala. Crim. App. 1999) (cleaned up).

5. The Commission is opposed to any continuance.

6. The inconvenience to witnesses, counsel, and this Court of any continuance this close to trial would be extreme. The nine members of this Court have undoubtedly rearranged schedules to be available for trial on August 15 and 16, 2022. Many witnesses, including numerous

judges, have been subpoenaed and have rearranged their schedules, including their trial schedules, to be available for trial on August 15 and 16. Especially as this motion is coming a mere three business days before trial, the inconvenience for everyone involved is immense.

7. Judge Todd has had other competent counsel of record, Richard Rice, Esq., since April 6, 2022.

8. Moreover, under the Alabama Rules of Civil Procedure, discovery could have commenced at the latest on April 6, 2022, when Judge Todd was represented. There is neither a requirement nor a limitation under the Rules to wait for a scheduling order.

9. This Court should also consider “whether the requested delay is for legitimate reasons, or whether it is dilatory, purposeful, or contrived.” Moody v. State, 888 So. 2d 532, 553 (Ala. Crim. App. 2003) (cleaned up).

10. The Commission asks that this motion be treated as dilatory.

11. The Commission served discovery responses in compliance with the Alabama Rules of Civil Procedure. R. 33 and 34, Ala. R. Civ. P. Moreover, discovery requests could have been served on the Commission at any time after Judge Todd was served with the Complaint in this

matter. Furthermore, Judge Todd did not file a motion with this Court to shorten the time allowed to the Commission to complete discovery.

12. Judge Todd's counsel served deposition notices without confirming the availability of Commission's counsel. Without notice to Commission counsel, deposition notices were served on deponents with depositions to be held on July 27 and 28, 2022. After discussion and informing Judge Todd's counsel of Commission's counsel's unavailability on those two dates, Commission counsel provided six additional dates in July for Judge Todd's counsel to hold depositions. See Ex. A.

13. Judge Todd has explained that she did not have time to depose witnesses. Three of the witnesses listed are Judge Todd's staff members (her confidential judicial assistant, her bailiff, and her court reporter), who Judge Todd should have access to and not need to depose.

14. The Commission supplied its witness list on July 8, 2022, within the first deadline per the scheduling order of June 23, 2022.

15. Moreover, eight of the nine named witnesses listed that Judge Todd was "unable to depose," were mentioned in the Complaint filed March 16, 2022. Judge Todd has been on notice of them and could have sought their depositions beginning, at the latest, on April 6, 2022.

16. Regarding the depositions, unless waived, deponents are allowed 30 days to read and sign their testimony transcript. Instead of filing this motion, Judge Todd could have requested a shortened time for a deponent to read and sign or agreed to stipulate to waive that.

17. Regarding why Judge Todd would want to depose her own physician as opposed to subpoena the physician to testify at trial, the Commission does not have a response.

18. Regarding why Judge Todd would need to depose her own witnesses rather than conduct interviews, again the Commission does not have a response.

19. Regarding the two witnesses, Adam Danneman and Sam Shaw, about whom the Commission was notified on August 8 and August 3, respectively, the Commission explicitly denies needing additional time. The Commission merely pointed out that it is prejudiced by the late subpoenas as the time to conduct depositions has run.

20. This case takes priority over all other matters, including criminal matters, as Judge Todd has been temporarily suspended and her criminal cases have been reassigned to other judges, causing a strain on that judicial circuit's criminal division and burdening judges,

defendants, witnesses, and victims.

21. Judge Todd is incorrect that “there is a pending petition for mandamus before the Alabama Supreme Court.” The Alabama Supreme Court denied Judge Todd’s Petition for Writ of Mandamus. See Ex. B.

22. Judge Todd has cited no case law or other authority indicating that a continuance would be appropriate in analogous circumstances.

WHEREFORE, premises considered, the Commission objects to Judge Todd’s Motion for 2-Month Continuance of Trial and moves this Honorable Court to deny this late motion for the reasons stated above.

Respectfully submitted this the 10th day August, 2022.

/s/ John A. Selden

John A. Selden

/s/ Elizabeth C. Bern

Elizabeth C. Bern

/s/ Jacob D. Jackson

Jacob D. Jackson

/s/ Jenny Garrett

Jenny Garrett

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(334) 242-4089

CERTIFICATE OF SERVICE

I hereby certify that I have, on this 10th day of August, 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:

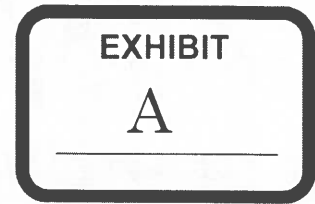
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/s/ John A. Selden
John A. Selden
Attorney for the Commission

Selden, John

From: Selden, John
Sent: Friday, July 8, 2022 9:30 AM
To: Richard Rice; Bern, Elizabeth; Edward Ungvasky
Subject: RE: Depositions - Deadline Extensions



Good morning,

Are you asking to provide your witness list on Monday, July 11? If so, that's fine with us. We will still be getting you our witness list later today.

We would be amenable to taking depositions on August 1st/2nd, moving the deadline for discovery to end of day August 2nd, and filing a joint motion requesting approval of the August 2nd and July 11th extensions.

We are also available July 18, 19, 20, 22, 25 and 26. Feel free to schedule depositions for any of those dates.

Please let us know how you would like to proceed.

Thank you,
John

-----Original Message-----

From: Richard Rice <rrice@rice-lawfirm.com>
Sent: Friday, July 8, 2022 9:01 AM
To: Selden, John <john.selden@JIC.alabama.gov>; Bern, Elizabeth <elizabeth.bern@JIC.alabama.gov>; Edward Ungvasky <ed@ungvaskylaw.com>
Subject: Depositions - Deadline Extensions

Good morning John and Beth,

I am writing to follow up on our discussions over the phone yesterday regarding rescheduling Judge Todd's witness depositions.

I spoke to Ed (cc'd) here and we would be agreeable to taking the witness depositions on August 1st/2nd and extending the deadline for discovery to August 3rd. I am also requesting an extension of 3 days for the deadline to provide witness statements.

As of now Judge Todd intended to complete depositions on July 27-28 but I understand you both will be attending a conference in D.C. on those dates.

We believe the forgoing to be a suitable accommodation given our collective scheduling demands.

Lastly, I would ask that we file a joint motion requesting approval of the proposed extensions.

Thank you,
Richard

Sent from my iPhone



IN THE SUPREME COURT OF ALABAMA

July 27, 2022

EXHIBIT

B

SC-2022-0678

Ex parte Honorable Tracie A. Todd. PETITION FOR WRIT OF MANDAMUS: CIVIL (In re: Honorable Tracie A. Todd v. State of Alabama Judicial Inquiry Commission) (Alabama Court of the Judiciary: No. 61).

ORDER

The Petition for Writ of Mandamus filed by the Honorable Tracie A. Todd on July 1, 2022, directed to the Court of the Judiciary, having been submitted to this Court,

IT IS ORDERED that the Petition is DENIED.

IT IS FURTHER ORDERED that the "Motion for Stay of Proceedings Pending Petition for Writ of Mandamus" filed by the Honorable Tracie A. Todd on July 18, 2022, is DISMISSED as MOOT.

Bolin, Shaw, Wise, Bryan, Sellers, Mendheim, Stewart, and Mitchell, JJ., concur.

Parker, C.J., dissents.

Witness my hand and seal this 27th day of July, 2022.

A handwritten signature in cursive script that reads "Julia Jordan Miller".

**Clerk of Court,
Supreme Court of Alabama**

**FILED
July 27, 2022**

**Clerk of Court
Supreme Court of Alabama**