

**BEFORE THE ALABAMA COURT OF THE JUDICIARY**

**FILED**

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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AUG 10 2022

ALABAMA COURT OF THE JUDICIARY  
Nathan P. Wilson  
Secretary

**Case 61**

**MOTION TO DISMISS AND FOR SUMMARY JUDGMENT**

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 moves this Court to dismiss, or in the alternative, to grant summary judgment on each of the four charges in the Complaint. The charges are baseless, and the Commission’s evidence does not support them. In making this motion, Judge Todd respectfully adopts and incorporates the facts and arguments presented in her Answer and, for brevity’s sake, will therefore not repeat them in this document. The Commission bears the burdens of production and proof as to each charge and must prove each by clear and convincing evidence. This the Commission has failed to do in its charging decision and as evidence through discovery.

This Court should dismiss each of the charges now, in advance of trial. At minimum, this Court should review each of the charges to determine whether the charge should go forward. While the first two charges are serious, they are premised in false assumptions. Judge Todd did return to work. She did not lie about that. The final two charges were seemingly made when the Commission had a limited, inaccurate of Judge Todd’s interactions with other charges. These charges should not go forward. While the Court should dismiss the charges on the papers now, if the Court is not inclined to dismiss

in advance of the trial date, Judge Todd, through counsel, respectfully requests an opportunity to be heard on this Motion upon hearing at oral argument prior to the trial's start on August 15, 2022, or as soon thereafter as counsel can be heard.

**ARGUMENT**

**I. THIS COURT SHOULD DISMISS, OR IN THE ALTERNATIVE GRANT SUMMARY JUDGMENT, AS TO CHARGE 1: "REFUSAL AND/ORE APPEARANCE OF REFUSAL TO FOLLOW AN ORDER FROM A SUPERVISORY COURT."**

The complaint charges that Judge Todd refused to comply with this Court's December 3, 2021 Final Judgment ordering her to return to work on December 6, 2021 and "serve . . . from that date." Judge Todd did not refuse to comply with the Order. Judge Todd did return to work. Judge Todd did serve from that date – until the Complaint was filed in March and she was suspended. There is no evidence that she willfully or intentionally did not follow the Order. She did follow it.

The Commission recognizes that paucity of its charge that Judge Todd willfully refused to follow this Court's Order. The Commission posits the alternative that there was an appearance of refusal. First, appearance of refusal is not a violation of any judicial canon. Second, to the extent that the Commission is alleging that there was a reasonable appearance of noncompliance, that standard does not establish a violation of a judicial canon. Finally, no evidence supports that alternative theory – any "appearance" was an unreasonable one at most. Judge Todd violated no canon concerning this charge.

**II. THIS COURT SHOULD DISMISS, OR IN THE ALTERNATIVE, GRANT SUMMARY JUDGMENT AS TO CHARGE 2: "MAKING FALSE AND/OR MISLEADING STATEMENTS TO OTHERS, INCLUDING FELLOW JUDGES AND THIS COURT."**

The complaint charges that Judge Todd made false and/or misleading statements to others, including fellow judges and this Court. Judge Todd did report to work and she

was working. Judge Todd was honest. Judge Todd made no false statements to others. She made no intentionally misleading statements to others. She made no misleading statements to others. This includes fellow judges and members of this Court. Evidence does not support this charge. Judge Todd violated no canon concerning this charge.

**III. THIS COURT SHOULD DISMISS, OR IN THE ALTERNATIVE, GRANT SUMMARY JUDGMENT AS TO CHARGE 3: “FAILING TO MAKE PROVISIONS FOR CASES DURING PURPORTED ILLNESS.”**

Judge Todd did not fail to make provisions for cases during purported illness. First, she *was* ill, as were family members; there is nothing “purported” about it. Second, she made provisions for cases. For example, Judge Streety handled urgent, in-person matters. Other cases alleged in the complaint that Judge Todd did not handle turned out to be cases that had not been transferred to Judge Todd. Evidence does not support this charge. Judge Todd violated no canon concerning this charge.

**IV. THIS COURT SHOULD DISMISS, OR IN THE ALTERNATIVE GRANT SUMMARY JUDGMENT, AS TO CHARGE 4: “DISRESPECTING AND REFUSING TO COOPERATE WITH FELLOW JUDGES IN THE PERFORMANCE OF THEIR ADMINISTRATIVE DUTIES.”**

This charge – specious makeweight – is vague at best. Judge Todd did not fail to cooperate with her fellow judges. She did not disrespect her fellow judges. There is zero evidence of this charge. Judge Streety, the Presiding Judge of the Criminal Division, testified at deposition that Judge Todd did not fail to cooperate. There is no evidence of disrespect. Even if there were disrespect of fellow judges, disrespect is not a violation of the judicial canons. And even if there were a failure to cooperate – which there is not – a failure to cooperate is not a violate of the judicial canons. If it were, the Commission would be charging those judges who refused to address urgent cases through duty judge when

Judge Todd was unable to appear in person to address the matters – as typically done in Jefferson County’s criminal division and as Judge Streety testified he did in a cooperative manner. Instead, the Commission has identified those judges as witnesses against Judge Todd. Evidence does not support this charge. The charge does not make out a violation of any judicial canon. Not only does this charge on its face not make out the violation of any canon, but Judge Todd also specifically violated no canon concerning this charge.

**CONCLUSION**

For these reasons, Judge Todd respectfully moves that this Court GRANT this Motion to Dismiss, or, in the alternative, for summary judgment as to each of the four charges.

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  
421 King Street, Suite 505  
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 we have on this 10<sup>th</sup> day of August, 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:

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

John Selden  
Attorney for the Commission  
Alabama Judicial Inquiry Commission  
P. O. Box 303400  
Montgomery, Alabama 36130-3400  
john.selden@jic.alabama.gov

Jacob Jackson  
Attorney for the Commission  
Alabama Judicial Inquiry Commission  
P. O. Box 303400  
Montgomery, Alabama 36130-3400  
jacob.jackson@jic.alabama.gov

/s/ Edward J. Ungvarsky  
Edward J. Ungvarsky, Esq.  
VSB No. 83014; DC Bar 45934, *Pro Hac Vice*  
Ungvarsky Law, PLLC  
421 King Street, Suite 505  
Alexandria, VA 22314  
Office: (571) 207-9710  
Cellular: (202) 409-2084  
Fax (571) 777-9933  
ed@ungvarskylaw.com  
Counsel for Judge Tracie A. Todd