

BEFORE THE ALABAMA COURT OF THE JUDICIARY

FILED

JUL 29 2022

ALABAMA COURT OF THE JUDICIARY
Nathan P. Wilson
Secretary

IN THE MATTER OF:

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 #
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**REPLY TO RESPONSE TO OBJECTION TO COMMISSION'S
MOTION TO QUASH SUBPOENA OF JENNY GARRETT**

The Respondent appreciates the Commission's clarifying the timeline of Ms. Garrett's employment with the Commission. Regardless, the information and knowledge that Ms. Garrett can provide is not privileged under the Alabama Rules of the Judicial Inquiry Commission. Furthermore, Ms. Garrett submitted a *factual* complaint. In doing so, she was not acting as counsel to the Commission but as a complaining party. The factual allegations were, presumably, based in good faith following initial communications with Chief Deputy District Attorney Joe Roberts.

Judge Todd is entitled to investigate the allegations, which includes deposing witnesses to factual allegations. Ms. Garrett is just such a witness.

Under the Alabama Rules of Procedure for the Judicial Inquiry Commission, “Every six weeks after serving the judge pursuant to Rule 6.C., the commission shall serve on the judge being investigated copies of all materials of any nature whatsoever not already served upon him or her tending to establish that the conduct either did or did not occur or that the investigation is or is not still appropriate, and shall serve upon the judge a full statement of whether the commission intends to continue the investigation and any modification of the previous advice as to aspects of the complaint that it then deems worthy of some investigation.” RPJIC. Rule 6. Rule 6 gives blanket access to “all materials of any nature whatsoever.” Ms. Garrett’s involvement in filing the complaint and in conducting the investigation was not served on Judge Todd during the Commission’s investigation. And critically, the only protections afforded information gathered during a Commission investigation relates only to an action of defamation. “All papers filed with and proceedings before the commission shall be privileged in any action for defamation.” RPJIC. Rule 4. The Commission cannot claim privilege or work product. Ms. Garrett

does not possess attorney-client privilege. As for deliberative process privilege, that privilege too does not apply. In any event, to the extent that the Court concludes that either privilege *might* apply, they would apply to the answers to particular questions, properly invoked only when a question is presented at the deposition itself. Neither privilege wholesale blocks the event of the deposition. The Commission can object to questions at the deposition, and this Court can subsequently resolve any disputes – just as in any other depositions.

Ms. Garrett *is* a fact witness. She is a witness to the facts that were reported to her by other alleged witnesses. She acted in the role of a fact investigator, not an attorney. Just as a party's fact investigator can be deposed to be questioned about information obtained as part of the investigation - for example, to impeach the accounts of such persons who provided the information - so too can a party's fact investigator be deposed about bias in the course of the fact investigation itself.

The Commission's complaints about Judge Todd's notice to Ms. Garrett of her anticipated deposition are non-serious. The Commission acknowledges that Ms. Garrett received the email from a person working on behalf of Judge Todd in early July. *See* Response at 7, para. 15. Judge

Todd's notice arguments are not "disingenuous," *id.* at 6, para. 14, and the Commission's personal attack is unbecoming and disappointing.

This Court should deny the motion to quash and allow Judge Todd to develop evidence to defend herself against the Commission's inaccurate, inflammatory charges initiated by Ms. Garrett in a complaint.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have had on this 29th day of July, 2022 electronically filed the foregoing with the Court of the Judiciary, and that I have had further served a copy by sending the same via email, and properly addressed as follows:

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