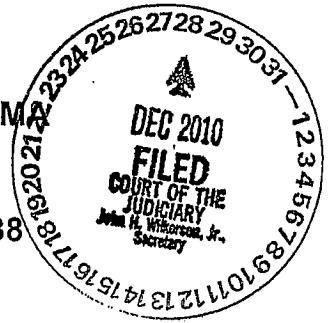


BEFORE THE COURT OF THE JUDICIARY OF ALABAMA

In the Matter of DAN C. KING, III
Circuit Judge of the Tenth Judicial
Circuit of Alabama

*
*
*

Case No. 38



MOTION TO ALTER, AMEND OR VACATE JUDGMENT

COMES NOW Judge Dan C. King, III, Circuit Judge of the Tenth Judicial Circuit of Alabama, and, pursuant to Ala. R. Civ. P. 59(e), asks this Honorable Court to alter, amend or vacate its judgment of November 29, 2010 granting the motion to tax costs of the Alabama Judicial Inquiry Commission, and for grounds would show the Court as follows:

1. An order granting costs is a final, appealable order. Dozier v. Payne, 14 So. 2d 476, 478 (Ala. 1943) ("The order taxing costs is a final order, although incident to, and part of, the final decretal orders making disposition of the cause."). See also, Niezer v. Southtrust Bank, 887 So. 2d 919, 922 (Ala. Civ. App. 2004) (interpreting an unpublished decision by the Alabama Supreme Court to "require" "the conclusion" that an order denying a request for attorney's fees was a final, appealable order.).

2. The taxation of costs is governed by Alabama Rule of Civil Procedure 54(d), which states in pertinent part that "...costs shall be allowed as of course to the prevailing party unless the court otherwise directs, and this provision is applicable in all cases in which the state is a party plaintiff in civil actions..."

3. A decision on whether to tax costs or not rests solely in the trial

1/3/11

court's discretion. Ex parte Strickland, 401 So. 2d 33, 34-35 (Ala. 1981); Miller v. Thompson, 844 So. 2d 1229, 1233 (Ala. Civ. App. 2002) ("The taxation of costs under Rule 54(d) rests in the discretion of the trial court, and its decision will not be reversed in the absence of a clear abuse of discretion.") Where both parties win in part, and lose in part "neither one is a prevailing party entitled to costs as a matter of course under ARCP 54(d)." Collier v. Collier, 326 So. 2d 769 (Ala. Civ. App. 1976).

4. Because this Court's judgment of September 30, 2010 was more favorable to Judge King than any offer proffered to him in settlement discussions by the Alabama Judicial Inquiry Commission,¹ Judge King is the prevailing party, or, at worst, this action is one where both parties won in part and lost in part, making neither party a prevailing party. Collier v. Collier, 326 So. 2d 769 (Ala. Civ. App. 1976).

5. The costs of Judge King's defense in this action, to date, have exceeded \$30,000. The counsel providing the defense does not expect that he will be reimbursed for these costs. Ex. A. To add an additional \$6000 in costs to that amount is unnecessarily punitive toward the defendant, who has already accepted the judgment of this Court against him.


Therefore, these premises considered, Judge King respectfully requests that this Honorable Court alter its order of November 29, 2010, to either provide

¹ See Exhibit A, Affidavit of Larry Morris, attached hereto.

that the costs of this action are taxed as paid or that it vacate its November 29, 2010 order to permit a hearing to be held on the matter of costs and the correct apportionment thereof.

Respectfully submitted on this the 28th day of December, 2010.

MORRIS, HAYNES & HORNSBY


Larry W. Morris
Attorney for Judge King
MOR007

Post Office Box 1660
Alexander City, Alabama 35011-1660
Telephone: (256) 329-2000
Telefax: (256) 329-2015

Certificate of Service

I hereby certify that I have served a copy of the foregoing upon the Chairman of the Alabama Judicial Inquiry Commission by placing a copy of the same, properly addressed and postage pre-paid, in the United States Mail on this the 28th day of December, 2010.


Of Counsel