

BEFORE THE COURT OF THE JUDICIARY OF ALABAMA

IN THE MATTER OF:)	
ROY S. MOORE,)	COURT OF THE JUDICIARY
CHIEF JUSTICE OF THE)	CASE NO. 33
SUPREME COURT)	
OF ALABAMA)	

MOTION TO RECUSE / DISQUALIFY MEMBERS
OF THE COURT OF JUDICIARY

COMES NOW CHIEF JUSTICE ROY S. MOORE, Defendant, and moves for the recusal / disqualification of Court of Judiciary laymembers Sue McInnish and Sam Jones, respectively, as well as Circuit Judge Robert Kendall, Circuit Judge Scott Vowel, and attorney James North, respectively and as grounds therefore shows unto the Court as follows:

1. On January 31, 2000, former Governor Don Siegelman appointed and recommended to the Alabama State Senate for confirmation the nomination of Sam Jones to serve on the Alabama Court of the Judiciary. In that letter of appointment, former Governor Don Siegelman specifically stated that “the term of office will expire January 31, 2003.” The Alabama State Senate confirmed Sam Jones’ appointment to serve on the Court of the Judiciary on February 24, 2000, exactly as former Governor Don Siegelman requested: a term of office expiring “January 31, 2003.” (See Siegelman letter and confirmation letter attached hereto and made a part hereof by reference).
2. On February 7, 2000, former Governor Don Siegelman appointed and recommended to the Alabama State Senate for confirmation the nomination of Sue McInnish to serve on the Alabama Court of the Judiciary. In that letter of appointment, former Governor Don Siegelman specifically stated (in reference to Sue McInnish) “your term will expire February 7, 2003.” The Alabama State Senate confirmed Sue McInnish’s appointment to serve on the Court of the Judiciary on February 24, 2000 exactly as former Governor Don Siegelman requested: a term of office for three (3) years. (See Siegelman letter and confirmation letter attached hereto and made a part hereof by

reference).

3. While the Constitution of the State of Alabama is specific that members of the Judicial Inquiry Commission are appointed to four-year terms, the Constitution of the State of Alabama is conspicuously silent as to the number of years comprising a term of office for a member of the Court of the Judiciary. While Attorney General Pryor opines that the number of years comprising a term of office for a member of the Court of the Judiciary is six (6) years; this opinion self-serves the prosecution by attempting to define who may qualifiedly sit in a case in which the Attorney General is the prosecuting authority. Additionally, the exact opposite argument can be made against the Attorney General's opinion in support of laymembers Sue McInnish and Sam Jones. Since the Alabama Constitution is silent on the number of years for a term of a member of the Court of the Judiciary, then the appointing authority (in this case former Governor Siegelman) may well prescribe the appointed number of years for the term. Also, when the Attorney General opines that the Alabama Constitution provides that "the judicial power of the State shall be vested in a unified judicial system," that "unified judicial system" referred to in the Constitution provides for six (6) year terms for ELECTED judges and not APPOINTED judges as is the case in the Court of the Judiciary.
4. Sam Jones is a prior member of the Judicial Inquiry Commission, leaving the Judicial Inquiry Commission to be appointed to the Court of the Judiciary. In a hearing before the Supreme Court Standing Advisory Committee on Rules of Procedure of the Court of the Judiciary and the Judicial Inquiry Commission, Mr. Jones made an appearance to protest and to object the promulgation of new rules issued by the Alabama Supreme Court as to the Judicial Inquiry Commission and the Court of the Judiciary. In protesting and in objecting to the rule changes, Mr. Sam Jones stated: "Once JIC has charged someone, then it is all over anyway when it gets to COJ." This suggests a prejudiced and biased predisposition of any proceeding in which Sam Jones sits as a member of the Court of the Judiciary.

5. It is believed that Sue McInnish has previously expressed an opinion as to Chief Justice Moore which is biased and prejudicial.
6. Additionally, (without conceding that laymembers, Sue McInnish and Sam Jones, are lawfully sitting as proper members of the Court of the Judiciary) laymembers, Sue McInnish and Sam Jones, Circuit Judge Robert Kendall and attorney James North, should individually and / or collectively recuse / disqualify themselves in view of Canons 1, 2 and 3 of the *Alabama Canons of Judicial Ethics*. As to laymembers, Sue McInnish and Sam Jones, each should recuse / disqualify (in addition to all the forgoing reasons previously stated) because their respective impartiality might reasonably be questioned, including but not limited to instances where “he (they have) has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceedings.”
7. Additionally, Circuit Judge Robert Kendall and attorney James North (in addition to all the forgoing reasons previously stated) should recuse / disqualify in light of the admonition of Canon 3, that “a judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom he deals in his official capacity.” Additionally, Circuit Judge Robert Kendall and attorney James North should disqualify / recuse themselves in light of the admonition of Canon 2 of the Canons of Judicial Ethics wherein it states:

“B. A judge should at all times maintain the decorum and temperance befitting his office and should avoid conduct prejudicial to the administration of justice which brings the judicial office into disrepute.”
8. Further, in a hearing before the Court of the Judiciary on September 25, 2003, Circuit Judge Robert Kendall and attorney James North were openly hostile, red-faced, and obviously angry, with many “side bar” and other “under the breath” exclamations creating violations precisely such as the standards set out for judges in Canons 1, 2, and 3 are designed to prevent.

9. Additionally, Terry L. Butts calls to the Court's attention an incident involving Court of the Judiciary panel member attorney James North. While the incident is unrelated to the proceedings pending before the Court of the Judiciary, when taken collectively with all other recusal / disqualification grounds herein, such could lead "a person of ordinary prudence" to question the impartiality of panel member James North.

Attached hereto (and made part hereof by reference) are attorney appearance pages from transcript of a court hearing held in Jefferson County Circuit Court on June 16, 2003. Both attorney Terry L. Butts and attorney James North (along with other listed attorneys) were present for the court hearing.

Subsequent to the hearing, but outside the judge's presence, attorney North became extremely agitated, hostile, and angry with the attorneys (including Terry L. Butts) opposing him in the court hearing. Ultimately, attorney North used extreme profanity toward opposing counsel, including taking the Lord's name in vain, and at one point raising his walking stick in a threatening manner while stating: "I ought to take this walking stick to you son-of-a-bitches." Further, attorney North in a most descriptive vein, suggested where he would like to put his walking stick in the anatomy of opposing counsel.

While perhaps idle and meaningless threats, given the context of attorney North's sitting as a panel member of the Court of the Judiciary in the trial of Chief Justice Roy S.

Moore for alleged ethical violations, the language of the threats and the ethical issues before the Court, certainly create an appearance of bias, prejudice, impropriety, and a lack of impartiality by attorney North toward one member of Chief Justice Moore's legal team. As described, such a level of bias, prejudice, impropriety, and lack of impartiality toward a member of Chief Justice Moore's legal team, may subjectively bleed over into the trial of the legal team's client, Chief Justice Roy S. Moore.

For all the grounds previously stated herein and in order to avoid "even the appearance of impropriety", Circuit Judge Robert Kendall and attorney James North should recuse

or the Court should disqualify them.

10. Circuit Judge Robert Kendall and Circuit Judge Scott Vowel should recuse / disqualify themselves (in addition to all the forgoing reasons previously stated) in that on Wednesday, October 8, 2003, they met with employees of the Administrative Office of Courts in which individuals specifically, legally hired and employed by Chief Justice Roy S. Moore were discussed. Additional discussions were held by, among, and between these named judges, other judges, other employees of the Administrative Office of Courts, and Acting Chief Justice Gorman Houston, again discussing employees specifically, legally hired by Chief Justice Roy S. Moore. In light of the fact that Acting Chief Justice Gorman Houston has fired or reassigned members of Chief Justice Roy S. Moore's staff, as well as the discussions involving Chief Justice Roy S. Moore's employees, such meetings and conversations raise the possibility of ex parte communications by the mentioned Court of the Judiciary panel members, involving pending charges against Chief Justice Roy S. Moore and / or the appearance of bias, prejudice, and / or impropriety, in being a member of the Court of the Judiciary and participating in such conversations / meetings. Additionally, if opinions were expressed by any of the members of the Court of the Judiciary concerning any members of Chief Justice Roy S. Moore's previously hired personnel, such comments could also present a serious issue of prejudice, bias, or the appearance of impropriety by members of the Court of the Judiciary in conjunction with employees of the Administrative Office of Courts directly under the control and supervision of Acting Chief Justice Gorman Houston.
11. In addition to all the foregoing reasons for recusal / disqualification of members of the Court of the Judiciary, Chief Justice Roy S. Moore further states as grounds: (1) an objection to non-elected attorneys and laypersons wearing judicial robes, (2) an objection to non-elected attorneys and laypersons displaying their names as "judges" on large plaques displayed on the judicial bench in the courtroom of the Alabama Supreme

Court, and (3) an objection to non-elected attorneys and laypersons sitting as “judges” in the same courtroom and in the same chairs as do elected members of the Alabama Supreme Court.

Such imperial trappings by non-elected attorneys and laypersons as members of the Court of the Judiciary merely promotes a public perception that unelected individuals can usurp the will of the majority of Alabama citizens in attempting to remove the duly elected Chief Justice Roy S. Moore from public office.

12. “The test that remains applicable at all times, the answer to which always depends upon the ‘totality of circumstances’ of each case, is whether a person of ordinary prudence in the judge’s position, knowing all of the facts known to the judge, would find that there is a reasonable bias for questioning the judge’s impartiality.” *See in re Sheffield*, 465 So. 2nd 350, 536 (Ala. 1984). Additionally, the question under the canons is not whether the judge is impartial in fact, but rather whether another person, knowing all of the circumstances, might reasonably question the judge’s impartiality.” *See ex parte Duncan*, 638 So. 2nd 1332, 1334 (Ala. 1994).

The United States Supreme Court, relying upon its earlier decision in *Tumey v. Ohio*, 273 US 510 at 523 (1927) concluded:

We conclude that Justice Embry’s participation in this case violated appellant’s due process rights as explicated in *Tumey*, *Murchison*, and *Ward*. We make clear that we are not required to decide whether in fact Justice Embry was influenced, but only whether sitting on the case then before the Supreme Court of Alabama “would offer a possible temptation to the average...judge to...lead him not to hold the balance nice, clear and true.” (Citations omitted) The Due Process Clause “may sometimes bar trial by judges who have no actual bias and who would do their very best to weight the scales of justice equally between contending parties. But to perform its high function in the best way, justice may satisfy the appearance of justice.” *Murchison*, 349 US, at 136, 99 L.Ed. 942, 75 S.Ct. 623 (citation omitted).

For the foregoing reasons, including the appearance of impropriety, Court of the Judiciary panel

laymembers Sue McInnish and Sam Jones, Circuit Judge Robert Kendall, Circuit Judge Scott Vowel, and attorney James North should recuse / disqualify themselves in the instant case or the Court should disqualify them.

Respectfully submitted this ____ day of October, 2003.

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CERTIFICATE OF SERVICE

I hereby certify that a properly addressed copy of the foregoing has been served upon the following parties by placing a copy thereof in the United States Mail, postage paid and properly addressed to them on this the ____ day of October, 2003.

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