

SUPREME COURT
OF GEORGIA
FILED
2009 NOV -9 AM 8:25

BEFORE THE COMMISSION ON JUDICIAL QUALIFICATIONS

STATE OF GEORGIA

)	
)	Supreme Court No. _____
<i>In re:</i> An Inquiry Concerning)	
a Judge Oliver Harris)	JQC Docket Nos. 09-25, 09-27, 09-35
Doss, Jr.)	
_____)	

NOTICE OF FORMAL PROCEEDINGS

TO: The Honorable Oliver Harris Doss, Jr.
Superior Court, Appalachian Judicial Circuit

This is to notify you that the Judicial Qualifications Commission (the "Commission"), after conducting an investigation of complaints against you, and considering your response to those complaints, has concluded that formal proceedings should be instituted for the purpose of determining whether you are guilty of violations of the Code of Judicial Conduct, violations of law, willful misconduct in office, and other conduct prejudicial to the administration of justice, which brings your judicial office into disrepute. The purpose of these proceedings is to determine whether:

COUNT ONE

1.

You violated Canon 2 of the Code of Judicial Conduct when you improperly misused, and allowed to be misused and converted to your personal use, and that of others, property of the State of Georgia.

2.

You caused four laptop computers to be purchased with government funds for use by you, your family members, and persons under your supervision.

3.

You allowed three of these laptop computers to be used for non-official purposes. These computers were not maintained in the possession or control of either you or your official judicial staff. Additionally, one laptop computer, delivered to your office in Fannin County on May 30, 2008, remains missing.

4.

Your wife, Lynn Dillard Doss, and employees of her law practice, used a State-owned laptop computer for her private law practice. Your son, Maxwell Albert Doss, used a State-owned laptop computer for his college studies. Your former law clerk, Jennifer A. Certonio, used a State-owned laptop computer for her private law practice. You knew, or should have known, that these computers were not being used for official state business.

5.

You admit, in your sworn response to questions submitted to you by the Commission on May 4, 2009, that you converted this property to your own use as compensation ["comp"] to the above-listed persons. [Attachment A]. You state:

The utilization of the lap top [sic] "issued to me" for non judicial matters was treated by me as "comp" for the hours of work done by my spouse and her staff and the use of my spouse's professional equipment for the benefit of the Appalachian Judicial Circuit.

COUNT TWO

6.

You violated Canon 2 of the Code of Judicial Conduct when you caused official government funds to be used for purposes that were not authorized by law. This was done without the consent or knowledge of the county governing authorities in the Appalachian Judicial Circuit. Examples of this conduct include, but are not limited to the various checks signed by you and paid from an official government fund account for the following:

- a. Check # 1251, dated December 22, 2007; \$500 paid to Rebecca A. Schulz for "Christmas Bonus;"
- b. Check # 1252, dated December 22, 2007; \$500 paid to Jennifer A. Certonio for "Christmas Bonus;"
- c. Check #1321, dated September 25, 2008; \$500 paid to Rebecca A. Schulz for "Christmas Bonus;"

- d. Check #1347, dated October 3, 2008; \$500 paid to Jennifer Certonio for "Appreciation bonus for Law Clerk position for Oliver Harris Doss, Jr. Superior Court Judge;"
- e. Check #1350, dated October 6, 2008; \$125 paid to Jennifer Certonio for "Payment of cost of legal research in *Salyers vs. Gentry* in Gilmer County;"
- f. Check #1367, dated November 26, 2008; \$315 paid to Jennifer Certonio for "Payment of cost of Legal Research and drafting legal opinions for Oliver Harris Doss, Jr. for 12.60 hours at the rate of \$25.00 per hour;"
- g. Check #1369, dated December 17, 2008; \$227.50 paid to Jennifer Certonio for "Payment of cost of Legal Research and drafting of legal opinions for Oliver Harris Doss, Jr. at the rate of \$25.00 per hour;"
- h. Check #1370, dated December 24, 2008; \$200 paid to Sheree Bradburn for "Payment of cost of Christmas Bonus for legal secretary for the office of Judge Oliver Harris Doss, Jr.;"
- i. Check #1384, dated January 26, 2009; \$250 paid to Jennifer Certonio for "Payment of cost of legal research and drafting

legal opinion for Oliver Harris Doss, Jr. for 10 hours at the rate of 25.00 per hour.”

- j. Check #1387, dated February 5, 2009; An amount unknown to the Commission for “Payment of purchase price of baby car seat as a gift of appreciation to Rebecca Hammontree, Deputy Clerk for Criminal Cases in Pickens County.”

COUNT THREE

7.

You violated Canon 1, Canon 2 and Canon 3 of the Code of Judicial Conduct when you have failed to be patient, dignified and courteous to litigants, lawyers, court personnel, and members of the public. By and through your actions you have failed to uphold and maintain high personal standards of ethical conduct. These actions have eroded public confidence in both the independence and impartiality of you personally and the judiciary as a whole. Examples of this misconduct include but are not limited to the following:

8.

On or about February 18, 2009, in the Pickens County Courthouse Annex, you intentionally made physical contact of an insulting and threatening nature to the person of Ms. Cami Fowler, a law clerk for the Appalachian Judicial Circuit.

9.

On or about September 30, 2007, while at the Cherry Log Christian Church, in Gilmer County, you angrily and in a loud manner and tone confronted Mr. Franklin D. Gardin about an ongoing State investigation into the actions of Ms. Lena Early. During this confrontation you attempted to further intimidate Mr. Gardin by physically confronting and harassing him as you continued to state your position concerning the State investigation of Ms. Early. Your actions at the church were perceived by Mr. Gardin as an attempt to both intimidate and threaten him.

10.

During the fall of 2008, while in Fannin County, you shouted and yelled at Ms. Rebecca Schulz, your assistant and an employee of the State of Georgia, in a public place, and in the course of this heated lecture, touched her in an insulting and provoking manner. During this public reprimand and scolding of Ms. Schulz you stated to her in a loud voice, "don't you ever talk back to a superior court judge."

11.

On or about October 1, 2009, in Gilmer County, in the courtroom during the case of *State v. Doyle Hall*, you threw documents at the Clerk of Court, Glenda Sue Johnson.

12.

On or about August 2009, while in conference with two attorneys about a matter pending before you, you stated that George W. Weaver, an attorney practicing before you and other judges in the Appalachian Circuit, needed to be more circumspect in Weaver's complaints about the way in which you handle court. In that conversation with the two attorneys, you alluded to the fact that your position as judge would allow you to affect Mr. Weaver's practice of law by saying "[Mr. Weaver]... has been running his mouth about me in public. He needs to understand that a superior court judge can ruin his . . ." You did not complete your thought; however the implication is obvious.

13.

On or about April 11, 2008, after scheduling a hearing in the case of *Stancil v. Stancil*, to discuss and determine the actions of an attorney, Mr. Robert Ray, you approached your fellow Superior Court Judge Roger Bradley and invited him to attend the hearing that you were about have concerning the actions of Mr. Ray, who was handling a domestic matter before you. After finding Judge Bradley in his office in the Gilmer County Courthouse you stated: "Why don't you come into my courtroom and watch. I am going to barbeque [local attorney] Rob Ray."

14.

On or about April 30, 2008, you stated to Towns County Superior Court Judge Lynn Akeley-Alderman that attorney Michelle Vaughn "had continuously

manipulated” a case to “avoid bringing it to trial.” You further stated in court on May 1, 2008, that Ms. Vaughn had her “judge buddy” (Judge Akeley-Alderman) call you in order to improperly delay the trial of a civil case.

COUNT FOUR

15.

You violated Canon 2 and Canon 3 of the Code of Judicial Conduct when on June 1, 2007, you unlawfully and without authority, ordered, directed, and demanded that the prosecutor for the State of Georgia agree to allow a criminal defendant, Krista Ann Southern, to be sentenced to “pretrial diversion.”

16.

When Assistant District Attorney Michael Baird informed you that the State would not agree to “pretrial diversion” you stated: “I want you to consent. If you don’t, I’ll dismiss the charge. I will have a bench trial and find her not guilty. I expect the State to cooperate with the Court, Mr. Baird.”

17.

When Mr. Baird suggested a first offender sentence for the defendant, you stated “I’m not going to do that. I’ve told you what I want to do and if the State does not cooperate with this court immediately, we will be in a hostile situation. If you want that, that’s fine with me.”

18.

When ADA Baird would not acquiesce to your improper demands, you left the bench and came within inches of Mr. Baird and continued yelling and screaming. You angrily stated that Mr. Baird would “regret ever having come to the Appalachian Judicial Circuit”

19.

You violated Canon 2 and Canon 3 when you failed to be dignified and patient while presiding over the trial of *Espirit Log and Timber Frame Homes, Inc. vs. Rick Wilcox* [Fannin County case #2005-CV-411]. Instead of presiding with decorum and restraint, as is required by the Code of Judicial Conduct, you expressed your displeasure with the lawyers and litigants appearing before you by speaking in an argumentative tone and manner and throwing papers and pens to emphasize your points.

20.

You also violated Canon 3 when you had improper *ex parte* contact and communications with Mr. Jeb Chatham, one of the attorneys representing a party before you in the *Espirit Log* case. During the trial, and with the jury present, you left the bench at various times and embraced Mr. Chatham. You also met privately Mr. Chatham and his client, a party, without the consent of the opposing party.

COUNT SIX

21.

On or about May 29, 2007, you violated Canon 1 and Canon 2, of the Code of Judicial Conduct when you improperly asked Gilmer County Probation Officer Alan Morris to change the sentence of criminal defendant Jerry Head, who had been convicted of an act of family violence battery and given a sentence of probation, to pre-trial diversion. You also failed to notify the District Attorney or the victim of your improper communication with the probation officer.

COUNT SEVEN

22.

You violated Canon 2 of the Code of Judicial Conduct when you lent the prestige of your judicial office to advance the private interests of others. You also violated Canon 7 of the Code of Judicial Conduct concerning political activity. Examples of this misconduct include but are not limited to the following:

23.

On or about June 22, 2007, you wrote a letter, on your official State of Georgia letterhead, and in your capacity as Judge of the Superior Court of the Appalachian Judicial Circuit, to United States District Court Judge Julie Carnes requesting and suggesting that a federal prisoner should be allowed to serve his prison time in the Fannin County Jail.

24.

You endorsed and allowed your name to be used by Dr. Mary Jones in her campaign materials for 9th District Chairman of the state Republican Party.

COUNT EIGHT

25.

You violated Canon 3 of the Code of Judicial Conduct and O.C.G.A. § 15-6-21 when you have repeatedly and persistently failed and refused to rule on various motions, demurrers, injunctions, and other matters within the 30-day time period required by law. Examples of this misconduct include, but are not limited to, the following:

- a. You improperly failed to rule on a Motion to Suppress in the case of *State v. Randell Earl Parker* [Fannin County case #2004R-166]. A hearing on this Motion was heard on March 9, 2006. The State of Georgia filed a Motion for Order on August 7, 2008, requesting that you rule on the Motion to Suppress. You did not rule on this Motion until March 10, 2009.
- b. You improperly failed to file an Order on a Motion to Suppress in the case of *State v. Douglas Hollifield* [Pickens County case #2002-SU-CR-442]. A hearing on the Motion was held on April 10, 2006. You did not file the Order until July 9, 2008.

- c. You have improperly failed to rule on a motion submitted to you on January, 2008, in the case of *Prince v. Henry* [Fannin County case #07-V-339].
- d. You have improperly failed to rule on a Motion for Summary Judgment submitted to you on July 6, 2007, in the case of *Tina T. Holt v. Theda Hall, et al.* [Gilmer County case #2007-CV-119 HD].
- e. You have improperly failed to rule on a motion submitted to you on September 15, 2008, in the case of *Demicher v. Peagler* [Pickens County case #5-SU-CV-380].
- f. You improperly failed to rule on a motion in the case of *Mary Abernathy v. Gregory Layne Abernathy* [Fannin County case #06-V-468]. A temporary order was entered in this case on August 24, 2006. Plaintiff's counsel filed *rules nisi* on September 11, 2006, January 17, 2007 and June 2, 2008. The final order of divorce was entered on June 19, 2008.
- g. You improperly failed to rule on a motion in the case of *Ashley McClure v. Bennie McClure* [Fannin County case #08-V-879]. This *pro se* divorce case had a *rule nisi* hearing on December 11, 2008. The final order and supporting documents were

entered by the Court on May 15, 2009. The order was signed *nunc pro tunc* December 11, 2008.

- h. You improperly failed to rule on a Motion for Contempt with regard to a child support matter in the case of *Dusty D. Vanison f/k/a Dusty D. Banks v. Gary Neal Banks* [Pickens County case #2006-SU-CV-35-13]. A hearing was held on this motion on September 11, 2006. You did not rule on this until March 11, 2008, *nunc pro tunc* to September 11, 2006.
- i. You failed to rule on the matter of *Elizabeth Nugent f/k/a Elizabeth Grant and Michael Nugent v. James L. Bass and James L. Bass, PC* [Fannin County case #2008-V-588]. The defendant in this legal malpractice case is Attorney James Bass, of Fannin County. You have failed to decide on several discovery disputes, including Plaintiffs' Response to Defendant James Bass and James L. Bass, P.C.'s Discovery Motions, filed on May 11, 2009. There have been no orders filed in this case by you. This matter has been pending since July 10, 2008.
- j. You have failed to rule on various motions in the case of *Walter Gould and Janet Gould v. Sassafras Mountain Estates Property*

Owners Association, Inc. [Pickens County case #2007-SUCV-775]. Oral argument took place in April of 2008.

- k. You have failed to rule in the case of *Charles Croom v. Theodosia Stewart a/k/a Theodosia Croom* [Pickens County case #2005-V-1030]. Oral argument on a Motion to Terminate Alimony was heard by you on January 25, 2006.
- l. You failed to rule in a timely manner in the case of *Robert L. Ferguson and Susan A. Ferguson v. Toccoa Riverside Restaurant, et al.* [Fannin County case #2007-V-1015]. You held a hearing on a Temporary Order on December 13, 2007. You did not file this Order until October 3, 2008.
- m. You failed to rule in a timely manner in the case of *Erin Capital Management, LLC v. Chris C. Collis* [Fannin County case #2007-V-697]. You signed the Judgment by Default order on March 6, 2008, but did not file that Order with the Clerk until June 13, 2008.
- n. You failed to rule on a Motion for New Trial in a timely manner in the case of *Esprit Log and Timber Frame Homes, Inc., d/b/a Fireside Log Homes v. Rick & Sherry Wilcox v. Don Mahaffey, d/b/a Fireside Log Homes* [Fannin County case

#2005-V-411]. This failure allowed defendant Don Mahaffey to dispose of assets that could have been used to satisfy the judgment in which Mr. Mahaffey was to pay Rick and Sherry Wilcox a jury award of \$670,000 in damages, plus attorney's fees and interest.

- o. You failed to rule in a timely manner in the case of *Herman Ernest Brown v. Penny Renee Brown* [Fannin County case #2007-V-249]. A Petition for Modification of Custody and Child Support was filed on March 21, 2007. You did not rule on this matter until April 9, 2008, *nunc pro tunc* to August 2, 2007.
- p. You failed to rule in a timely manner in the case of *Randy Mitchell Abernathy v. Nicole Barnes* [Fannin County case #2007-V-118]. An emergency Child Custody, Visitation and Support Petition was filed on February 8, 2007. Although, the welfare of the child was an issue due to alleged illegal drug use in the home of the custodial parent, you did not rule in the case until June 14, 2007, *nunc pro tunc* to March 8, 2007.
- q. You have failed to rule on a Temporary Injunction and Restraining Order in the case of *Jordan Partners, LLP, v.*

Michael Westmoreland [Pickens County case #2008-SU-CV-649]. This motion was heard on January 27, 2009. You further have failed to rule on Defendants Motion to Dismiss and Defendants Motion to Transfer, which were filed March 17, 2009.

- r. You failed to rule in a timely manner in the case of *Donna Gunther v. Theodore Gunther* [Pickens County case #06-SU-CV-1088]. A hearing was held on April 30, 2008, on Plaintiff's Petition to Modify Child Support. You did not rule on the Consent Final Order until April 21, 2009.
- s. You failed to rule in a timely manner in the case of *Green Tree Servicing, LLC v. J.W. Edward Young and Vennie F. Young* [Pickens County case #2008-SUCV-1116]. The plaintiff filed a Motion for Judgment on the Pleadings on January 5, 2009. You did not rule on this matter until July 21, 2009.
- t. You failed to rule in a timely manner in the case of *Linda Gail Duckett v. Danny Don Duckett* [Pickens County case # 2008-SU-CV-650]. A hearing on Plaintiff's Complaint for Attachment for Contempt was held on August 20, 2008. You

did not file your ruling with the Clerk of Court until April 3, 2009.

- u. You failed to rule in a timely manner in the case of *Benny Charles West, Jr. and Estate of Benny Carter West, Sr., v. Casey Nicole Tatum* [Pickens County case #2007-SUCV-991]. The Defendant filed a Motion to Dismiss the Estate of Benny Carter West, Sr. on October 3, 2008. You did not rule on this Motion until May 27, 2009.
- v. You have failed to rule in a timely manner in the case of *Esperanza Ray v. Robert Earl Ray* [Pickens County case #2002-SU-CV-721].
- w. You have failed to rule on a Motion to Dismiss for Lack of Proper Venue in the case of *Hopson Murfee v. Stephens Mill, LLC, et al.* [Gilmer County case #2008-CV-180]. This Motion was heard on December 8, 2008.
- x. You have failed to sign an Order for Service by Publication in the case of *Mankin v. Hayes* [Gilmer County case #2009-CV-501-HD]. This Order was presented to you on May 22, 2009.
- y. You have failed to rule in the matter of *Jennie Yates v. Christopher A. Yates* [Pickens County case #2008-SUCV-966].

COUNT NINE

26.

You violated Canon 3 of the Code of Judicial Conduct, and the 14th Amendment of the United States Constitution, when you told the Sheriff of Pickens County that you did not want any female bailiffs or female deputy sheriffs assigned to court when you are presiding as judge.

COUNT TEN

27.

You violated Canon 2 of the Code of Judicial Conduct when you failed to follow the mandate that your judicial duties take precedence over all other activities. You also failed to promptly and efficiently dispose and handle matters assigned to your court. Examples of your misconduct include, but are not limited to, the following:

- a. You routinely and improperly took the original and official clerk's file of pending cases from each of the courthouses in the Appalachian Judicial Circuit.
- b. You are often more than an hour late to Court sessions in which you were presiding and do not provide guidance or information to court personnel in how to handle your absence.

COUNT ELEVEN

28.

On or about November 10, 2008, you violated Canon 2 when you required a jury pool to report and remain at the Pickens County Superior Court when you knew, or should have known, that no such action was needed.

29.

This improper conduct caused seventy (70) citizens to report to Superior Court of Pickens County for jury duty when there no cases scheduled for trial. This summoning of jurors resulted in Pickens County paying over \$2100 in juror fees for.

COUNT TWELVE

30.

On or about October 1, 2009, you violated Canon 2 and Canon 3 of the Code of Judicial Conduct when you improperly instructed a deadlocked jury in the case of *State v. Doyle Hall* that they would be required to remain in deliberations and would not be allowed to leave until a verdict was reached in this case.

WHEREFORE, pursuant to Rule 5(b) of the Rules of the Judicial Qualifications Commission, you are hereby notified that you have a right to file a verified answer with the Commission to these charges. Your answer shall be filed

within thirty (30) days after service of these proceedings and shall consist of an original and six (6) copies.

Respectfully submitted this 8th day of November, 2009.

Benjamin F. Easterlin by
BFE

Benjamin F. Easterlin, IV
Chairperson
Judicial Qualifications Commission
Georgia Bar Number: 237650

Cheryl Fisher Custer

Cheryl Fisher Custer
Executive Director
Judicial Qualifications Commission
Georgia Bar Number: 261695

Judicial Qualifications Commission
8206 Hazelbrand Road
Suite C
Covington, Georgia 30014

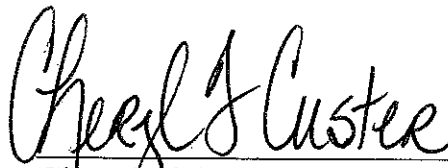
CERTIFICATE OF SERVICE

This is to certify that I have this day served a copy of the foregoing Notice
Formal Proceedings via hand delivery, US Mail and email to:

Mr. Norman L. Underwood
Troutman and Sanders, LLP
600 Peachtree Street, NE
Suite 5200
Atlanta, GA 30308-2216
norman.underwood@troutmansanders.com

Mr. Michael J. Bowers
Balch & Bingham, LLP
30 Ivan Allen, Jr. Blvd
Suite 700
Atlanta, GA 30308
Fax: 404-261-9656
mbowers@balch.com

This 8th day of November, 2009



Cheryl Fisher Custer
Executive Director
Georgia Bar No. 261695

Judicial Qualifications Commission
8206 Hazelbrand Road, Suite C
Covington, GA 300014