

BEFORE THE JUDICIAL INQUIRY COMMISSION OF ALABAMA

Inquiry Concerning a Judge, No. ____.

COMPLAINT AGAINST JUDGE MARVIN WIGGINS

I. INTRODUCTION

1. On September 17, 2015, in front of hundreds of people who were ordered to appear in court because of unpaid fines and fees, Judge Wiggins threatened everyone in attendance that if they did not have money that day, they would have to choose between jail or a forced blood “donation.” He also told people that, when making their decision of whether to donate blood, they should know that the sheriff “had enough handcuffs” for everyone in the room.

2. These threats, as well as the insufficient notice and process provided to defendants when seeking payment of old fines and costs—especially for unfounded costs that were previously assessed against them—constitute flagrant violations of the U.S. Constitution and Alabama law.

3. These actions violated Canons 1, 2, and 3 of the Canons of Judicial Ethics, and merit appropriate sanctions under article 157 of the Alabama Constitution.

II. FACTUAL BACKGROUND

4. Defendants in over 500 cases were mailed notices to appear at the Perry County Courthouse for its “Restitution Recovery Initiative for Victims in Alabama” (RRIVA) docket on September 17, 2015, also referred to as the “pay docket” on some court documents.

5. This hearing was for those whose criminal cases had been previously adjudicated in the Perry County Circuit or District courts, and who owed fines, costs, fees, or restitution in those cases. Judge Marvin Wiggins presided over this docket.

6. The notice to appear did not inform defendants that their ability to pay was a critical issue in the hearing.

7. Before the hearing, the circuit clerk's office informed at least one defendant who called that he did not need an attorney at this hearing.

8. Judge Wiggins took the bench on September 17 and made an announcement directed at those who did not have any money:

"There's a blood drive outside and if you don't have any money and you don't want to go to jail, as an option to pay it, you can give blood today. If you don't have any money, go out there and give blood and bring in a receipt indicating you gave blood. Consider that as a discount rather than putting you in jail, if you do not have any money. If you do not have any money and you don't want to go to jail, consider giving blood today and bring me your receipt back, or the sheriff has enough handcuffs for those who do not have money."

9. This threat was made to every defendant who appeared in court without any process to determine their ability to pay beforehand, forcing many indigent defendants to give blood because they feared going to jail. Many of these individuals who gave blood never spoke to the judge on September 17.

10. Defendants were told to fill out a "Pay Docket Information" form from a table in the courtroom. This form asked only for contact information for the defendant, family members, and the defendant's employer, presumably to aid in future collection efforts. It did not inform defendants that their ability to pay was a critical issue in the hearing or elicit relevant financial information. *See Ex. A.*

11. Most individuals on the docket that day still owed thousands of dollars to the court, even after making payments for years. Almost every case included substantial fees that

the court charged of defendants who had been explicitly found to be indigent, in order to recoup all money paid for appointed counsel. In reviewing AlaCourt filings, it is evident that these fees were applied routinely by Judge Wiggins (as well as by the other judges of the court), without any documented consideration of the defendant's financial status except for the original Affidavit of Substantial Hardship—under which the court determined that they were indigent.

12. Many who gave blood did not obtain any credit towards what they owe and still have outstanding debts to the court. They will likely be forced to attend RRIVA or pay docket hearings in the future, and fear being subjected to jail or being forced to give blood.

III. ALLEGATIONS

A. Forcing indigent defendants to choose between going to jail or giving blood is an unconstitutional order that violates Canons 1, 2, and 3.

13. Jail is appropriate only when an individual willfully violates an order to pay despite having the resources to do so, and the U.S. Constitution and Alabama law do not allow indigent persons to be jailed because they cannot pay. *See Bearden v. Georgia*, 461 U.S. 660, 672–73 (1983); *Tate v. Short*, 401 U.S. 395, 398 (1971); Ala. R. Crim. P. 26.11(i)(2).

14. Neither is forced blood “donation” an acceptable remedy for nonpayment. Alabama law does not provide for it as a punishment for any offense or for nonpayment, *see* Ala. R. Crim. P. 26.11(h), and it is a violation of bodily integrity to force individuals to submit to such an intrusion of their bodies. *See, e.g., Union Pacific Railway Co. v. Botsford*, 141 U.S. 250, 251 (1890); *United States v. Charters*, 829 F.2d 479, 491 (4th Cir. 1987); *McFall v. Shimp*, 10 Pa. D. & C.3d 90, 91 (Pa. Com. Pl. 1978).

15. In giving these orders, Judge Wiggins did not “respect and comply with the law,” was not “faithful to the law,” and did not demonstrate professional competence in the law, in violation of Canons 2A and 3A.

16. He also violated his responsibility to “uphold the integrity and independence of the judiciary” and has not “avoid[ed] conduct prejudicial to the administration of justice which brings the judicial office into disrepute.” Canons 1, 2B. By forcing indigent defendants to choose between giving blood and jail—neither of which is an appropriate remedy for inability to pay—Judge Wiggins has undermined public confidence in the judiciary and especially in future RRIVA or pay docket hearings for those who still owe money.

B. Imposing these punishments without proper process violates Canons 1, 2, and 3.

17. Judge Wiggins also violated the Fourteenth Amendment and Alabama law by failing to provide proper process to those individuals who appeared at the RRIVA hearings.

18. The Due Process Clause and Rule 26.11 of the Rules of Criminal Procedure require hearings to determine whether a failure to pay is willful, either because the defendant refused to pay or failed to make bona fide efforts to obtain the resources, or whether that failure to pay was due to indigency. *See Bearden*, 461 U.S. at 672–73; Ala. R. Crim. P. 26.11(g).

19. The due process clause also requires minimum safeguards at such hearings, especially where, as here, no attorneys are appointed to represent individuals who owe money and face penalties for nonpayment. The court must provide notice to defendants that their ability to pay is a critical issue in the proceeding, must provide a form to elicit relevant financial information, must provide an opportunity to respond to questions and evidence, and, finally, must make a determination of whether the individual had the ability to pay or not. *See Turner v. Rogers*, 131 S. Ct. 2507, 2519 (2011). This did not happen on September 17.

20. Those who were summoned because they owed debts to the court were also not afforded the process or exemption rights that are afforded to civil judgment debtors, as required by the Equal Protection Clause. *See James v. Strange*, 407 U.S. 128, 138 (1972) (states may not

“impose unduly harsh or discriminatory terms” on debtors whose “obligation is to the public treasury rather than to a private creditor.”).

21. None of these procedural safeguards were in place for the hearing on September 17. Instead, after Judge Wiggins’ original order directing individuals to give blood or face jail, many who went to give blood had no further contact with the judge. The only forms provided asked not for financial information but for contact information for the defendant, family members, and the defendant’s employer, presumably to aid in future collection efforts.

22. By disregarding the law in this way, and by failing to “accord to every person who is legally interested in a proceeding . . . full right to be heard according to law,” Judge Wiggins violated Canons 2A and 3A.

23. The lack of process provided also failed to uphold the integrity of the judiciary under Canons 1 and 2B.

C. Routinely requiring indigent defendants to pay for the cost of their court-appointed attorney, without documented consideration of their ability to pay, violates Canons 1, 2, and 3.

24. Most individuals who owe money on criminal cases in Perry County, and therefore were called into the RRIVA docket hearing on September 17, have debt related to fees for their appointed counsel, typically involving over a thousand dollars in costs.

25. A court may lawfully order a defendant to pay the fees for appointed counsel only if the court determines that “the defendant is or will be able to pay them.” Ala. Code § 15-12-25(2). The court must consider “the financial resources of the defendant and the nature of the burden that payment of the fees will impose” when determining both whether a defendant should incur this cost and also in determining how much of the fees should be paid by the defendant. *Id.*

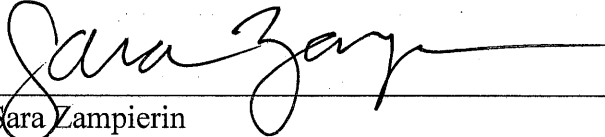
26. Failure to consider the financial status of the individual when imposing these fees not only violates § 15-12-25(2), it also chills defendants' Sixth Amendment rights to appointed counsel, as indigent defendants are being routinely told that they have to pay for having exercised this right. *Cf. Fuller v. Oregon*, 417 U.S. 40, 54 (1974) (finding that Sixth Amendment rights were not chilled only because the obligation to pay was imposed "upon those with a foreseeable ability to meet it," and enforced only against those who actually become able to meet it without hardship.)

27. The AlaCourt files for the cases docketed on September 17 show that these court-appointed attorney fees were applied routinely by Judge Wiggins and other judges in Perry County without any documented consideration of the defendant's financial status. In fact, the only documented consideration of defendants' financial status in most cases was the original Affidavit of Substantial Hardship—under which the court ruled that they were indigent.

28. In routinely assessing these costs to persons without determining whether they could pay, and enforcing those orders with punishment in RRIVA hearings, Judge Wiggins did not "respect and comply with the law," was not "faithful to the law," and did not demonstrate professional competence in the law, in violation of Canons 2A and 3A.

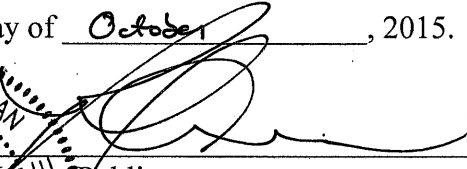
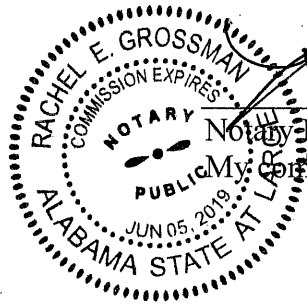
29. He also violated his responsibility to "uphold the integrity and independence of the judiciary" and has not "avoid[ed] conduct prejudicial to the administration of justice which brings the judicial office into disrepute." Canons 1, 2B. By forcing indigent defendants to pay for the costs of their appointed attorneys, Judge Wiggins has undermined public confidence in the judiciary and caused a chilling effect on defendants exercising their right to counsel in the future.

The allegations and statements of fact set forth above and in any additional attached pages are true and correct to the best of my knowledge, information, and belief, and I understand that a copy of this complaint and all supporting materials will be provided by the Commission to the judge against whom the complaint is made.



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Subscribed and affirmed before me this 19th day of October, 2015.

Notary Public
My Commission expires: 06/05/19

EXHIBIT A:

“Pay Docket Information” Form

Exhibit A

PAY DOCKET INFORMATION

Date: 9-17-2015

Name: [REDACTED]

Case Number(s) _____

Date of Birth: [REDACTED]

Mailing Address: [REDACTED]

Physical Address: Same as above? Y N

If the answer is "no", list the address of the residence where you live:

FAMILY MEMBER'S INFORMATION

Family Member's Address: [REDACTED]

Name of Family Member: [REDACTED]

Relation: (Mother, Father, Sibling, Grandparent, Aunt, Uncle, Cousin, Other ([REDACTED])

Address of Family Member: [REDACTED]

Phone Number(s) [REDACTED]

EMPLOYMENT INFORMATION

Place of Employment: [REDACTED]

Employment Address: [REDACTED]

How Long at Current Employer: _____

PHONE NUMBERS

Home: _____

Cell(s): _____

Work: _____

Completed By: _____

Address and Phone Number (if different from information listed above):

