

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION

IN RE:	)	
	)	
JEFFERSON COUNTY,	)	Case No.:11-05736-TBB9
ALABAMA,	)	Chapter 9 Proceeding
	)	
Debtor.	)	

**WORKING OPPOSITION TO**  
**MOTION FOR AN ORDER TO SHOW CAUSE, ETC. (DOC. 2898)**

Respondents-- the Plaintiffs in the state court case of *Working v. Jefferson County Election Commission, et al.*, No. CV-2008-900316, and their counsel Albert L. Jordan and the law firm of Wallace Jordan Ratliff & Brandt, LLC-- hereby oppose the issuance of an order to show cause as requested by Jefferson County Circuit Clerk Anne-Marie Adams in Doc. 2898 (“the Motion”). Respondents were affirmatively authorized by this Court in 2012 to go forward with the *Working* case (Doc. 588 (“the 2012 Order”)), and they have not exceeded the scope of that authorization. Indeed, they have not even obtained a judgment, the collection of which is restricted by the 2012 Order. Even if there were a judgment, that itself would not amount to a violation of this Court’s 2012 Order, or the discharge injunction. As further grounds, Respondents show as follows:

1. Adams has not alleged, except in cursory fashion, that Respondents have violated any order of this Court. She has made reference to the November 2013 order of discharge for Jefferson County (Doc. 2248), and the automatic stay as applied by this Court (*see* Doc. 588). But in those orders, this Court affirmatively modified the stay “to allow the



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Working Parties to continue that certain lawsuit styled *Working v. Jefferson County Election Commission, et al.* . . . ,” where the attorneys fee dispute was pending. (Doc. 588 at ¶ 6). To this day, the *Working* fee dispute remains pending, and there is no judgment awarding fees. Even *after* judgment, this Court’s orders also affirmatively allow Working “to collect from the State of Alabama . . . any judgment entered in the Working Proceeding.” (*Id.*).

2. Despite these affirmative authorizations to proceed with the *Working* suit, despite the absence of any judgment yet, and despite Adams’s own failure to object to the proceedings for two years, Adams now urges that Respondents have violated this Court’s order. She focuses on the Court’s prohibition in Doc. 588 against “any effort . . . to liquidate, assert, assess, recover or collect a claim with respect to any funds or other property of the County, including funds derived from or allocated or budgeted by the County. . . ,” (Doc. 588 at ¶ 7). But, in paragraph 15 of her Motion, Adams acknowledged the statutes that provide for her office to receive money that does not come from Jefferson County, or from money under its control. Thus, efforts to recover attorney fees from Adams should not be presumed to be efforts against funds of the County, as Adams implies.

3. Since the 2012 Order was issued, the debtor, Jefferson County, has taken the position that Adams has money separate from Jefferson County funds. (*See* Ex. 1 (Brief of Appellee Jefferson County (April 10, 2012)) at 6; *id.* at 6 n.3). Adams is the circuit clerk, an officer of the State of Alabama, and does not allege that she is an agent of the debtor, Jefferson County. Nor does she allege that she is a creditor who is injured by Respondents.

4. The opening paragraph of the Motion indicates that the U.S. District Court affirmed the 2012 Order, citing *Working, et al. v. Jefferson County*, No. 2:12-cv-00787-IPJ, Docs 11, 12 (dated 04/30/12). But the District Court did not, in fact, affirm. The 2012 Order (Doc. 588), authorized Working to collect funds of the State of Alabama, but not funds of Jefferson County or its Commissioners, or funds “derived from or allocated or budgeted by” Jefferson County to the members of the Election Commission, “in their official capacities.” (Doc. 588). As Adams notes later in her motion, at page 4 ¶ 9, the District Court in fact found the issue of the source of funding to be not yet justiciable.

5. The issue raised by Adams in her Motion remains premature in light of the history of the *Working* case after this Court’s 2012 proceedings. There has been no decision on any entitlement of the Respondents to attorneys fees in the *Working* case. Moreover, the circuit court there has explicitly deferred any decision on the amount of any attorneys fees to which Working may be entitled. (Ex. 2 (Sept. 18, 2014 Scheduling Order) at 2). It is true that Adams receives funds in her official capacity, but those funds are not owned, derived from, allocated, or budgeted by Jefferson County. Thus, if Working is entitled to fees, and after an amount is determined, then Working’s collection efforts should be against funds provided by statute directly to Adams as circuit clerk in her official capacity, rather than pursuant to allocation from the County. (See Doc. 588 at ¶¶ 6-7). Also, Adams’s portrays subsequent proceedings in the *Working* case to imply that her official funds, which are not provided by the County, are immune from attachment to satisfy any attorneys fee judgment. Adams is wrong; her official funds are not immune.

6. Paragraphs 1 through 13 accurately portray the proceedings in the *Working* case, except for a few very significant omissions. For instance, Adams does not mention that the original pleadings indicated that Working also sought attorneys fees pursuant to 42 U.S.C. § 1988. Adams does not mention that the December 2013 decision of the Alabama Supreme Court remanded with instructions to the circuit court to render a complete disposition of the immunity question, and comply with the previous 2011 ruling of the Supreme Court. *See Working v. Jefferson County Election Commission*, 2013 WL 6360938 at \*6 (Ala. Dec. 6, 2013) (“We are again compelled to remand this cause with instructions . . .”). In January 2014, the circuit court complied with the instructions, and ruled that there is no immunity for Adams for the attorneys fee claims made under § 1988. *Working v. Jefferson County Election Commission*, 2014 WL 1082656 (Ala. Cir. Ct., Jan. 8, 2014). Moreover, Adams also does not mention that the circuit court made this January 2014 ruling with the concurrence of Adams’s counsel. *Id.*

7. Paragraph 14 is accurate to the extent it indicates that Working has sought to establish an entitlement to attorneys fees. She has done so as provided in 42 U.S.C. § 1988, and has engaged in mediation with Adams, the Sheriff and the Probate Judge in their official capacities throughout early and mid-2014. Paragraph 14 is not accurate to the extent it implies that Working is authorized by a judgment to attach, collect, enforce, levy, or recover any award of attorneys fees in the *Working* case, or that Working has attempted to do so without a judgment.

8. Paragraph 15 is accurate to the extent it indicates that funds are provided by the State of Alabama for Adams in her official capacity as circuit clerk. For instance, the circuit clerk is employed and paid by the State. *See* Ala. Code § 12-17-80. It is not accurate that the funds identified by the statutes listed in paragraph 15 are provided by taxpayers. Each of the listed statutes in fact provides for monies paid by parties to court proceedings conducted in the courts of the State of Alabama, without regard for whether they are taxpayers.<sup>1</sup> Once received by the circuit clerk, these monies are available to spend for performing the functions of, or for the operation of, the office. *See* Ala. Code § 12-17-225.4(2); § 12-19-312(b). One of these functions is election administration. *See id.* §§ 17-11-2, 17-11-10, 17-11-11. One of the statutes Adams cites prohibits the monies provided from affecting amounts received under any other statute, or from affecting the allocation provided by the State’s Administrative Office of Courts to the clerk’s budget. *Id.* § 12-17-225.4(2).<sup>2</sup> Further, these funds are considered State funds, to the extent they must be audited “as all other state funds.” *Id.*

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<sup>1</sup>*See* Ala. Code § 12-17-225.4 (portion of collection on “any bail bond forfeitures, court costs, fines, penalty payments, crime victims’ restitution, or victims’ compensation assessments or like payments in any civil or criminal proceeding ordered by the court to be paid to the state . . .” in Ala. Code § 12-17-225.2); § 12-19-311 (portion of fees levied by law on bail bonds).

<sup>2</sup>The State Administrative Office of Courts is headed by an administrative director who directs a department of court management. *See* Ala. Code §§ 12-5-1, -6, -8, -10, -13; *Stegmaier v. Trammell*, 597 So. 2d 1027, 1035-37 (11th Cir. 1979)(discussing statutes); *id.* at 1037-38 (listing authority of circuit clerks, including “such other powers as are, or may be, conferred by law” in Ala. Code § 12-17-93).

9. As for paragraph 16, Working lacks knowledge of any bank account titled in the name of the “Jefferson County Election Commission.” However, Paragraph 16 is not accurate to the extent it implies that the constituent members of the Jefferson County Election Commission (“JCEC”) lack funds or bank accounts which are provided by anyone other than Jefferson County (i.e., the State of Alabama), and which are to be used for the performance of official duties, including the administration of elections.

10. Paragraph 17 is not accurate. Respondents have identified “non-county” sources of funds from which Adams could pay any attorneys fee judgment. Adams herself listed two statues providing for such funds in paragraph 15 of her Motion.

11. Paragraph 18 identifies no “actual injury” caused by any of the proceedings in the *Working* case. In fact, after the circuit court found no immunity for § 1998 claims, with Adams’s concurrence, Adams herself has participated in the litigation throughout 2014 without objection. Only at oral argument on December 4, 2014, on whether Working is entitled to attorneys fees under § 1988 did Adams object, over two years after this Court authorized Working to proceed with the litigation on a limited basis. Nothing has occurred in the *Working* proceeding since the filing of that objection, and nothing is threatened to occur.

12. Paragraph 19 is accurate.

13. Paragraphs 20 to 22 purport to describe “applicable law.” Working denies that the cited rules of law or statute apply here, in light of the allegations of the Motion. Adams is not a “debtor,” nor an “individual” allowed to seek monetary relief for a violation of the

stay, as provided in 11 U.S.C. § 362(k). Moreover, Adams has not shown any act by Working that would constitute a violation of the stay, for which working has not been given relief from the stay.

14. In exercising any authority available under 11 U.S.C. § 105, the Court should require more specificity from Adams than she has provided. Her allegations fall far short of indicating a basis for finding any violation of the Court's orders, and certainly they do not provide the "clear and convincing evidence" required for exercising the Court's contempt sanctions. To the extent Adams invokes, in un-particularized fashion, the proceedings in the *Working* case, in the name of judicial notice, the Motion should be denied. The Court should not base any decision to issue an order to show cause on Adams's mere general request to take judicial notice of any fact about the *Working* case not specified in the Motion.

For these reasons, Working urges this Court to overrule the Motion for an Order to Show Cause, etc. filed by Adams.

Respectfully submitted this 2nd day of January, 2015.

***s/ Albert L. Jordan***

Albert L. Jordan  
Alabama Bar No. ASB-5222-D51A

***s/ Susan E. McPherson***

Susan E. McPherson  
Alabama Bar No. ASB-9277-A59M

***s/ Clark R. Hammond***

Clark R. Hammond  
Alabama Bar No. ASB-1550-D44C

OF COUNSEL:

Wallace Jordan Ratliff & Brandt, L.L.C.  
Post Office Box 530910  
Birmingham, Alabama 35253  
Telephone: 205-870-05555  
Facsimile: 205-871-7534  
E-mail: [bjordan@wallacejordan.com](mailto:bjordan@wallacejordan.com)

Attorneys for Patricia Working, Rick Erdemir, and Floyd McGinnis



**CERTIFICATE OF SERVICE**

I hereby certify that on January 2, 2015, I served a copy of the *Working Opposition to Motion for an Order to Show Cause, Etc. (Doc. 2898)* by e-mail on the following as well as all counsel registered with the CM/ECF system:

Jefferson County, Alabama  
c/o J. Patrick Darby  
Bradley, Arant, Boult, Cummings, LLP  
1819 Fifth Avenue North  
Birmingham, Alabama 35203  
pdarby@babbc.com

Shawna Smith  
Brent G. Grainger  
Jefferson County Attorneys Office  
280 Jefferson County Courthouse  
716 Richard Arrington Jr. Blvd. N.  
Birmingham, Alabama 35203  
smithsha@jccal.org  
graingerb@jccal.org

French A. McMillan  
Sewell & Sewell, LLC  
1841 2nd Avenue, Suite 241  
Jasper, Alabama 35501-5359  
french@sewellandsewell.com

James E. Murrill, Jr.  
Riley & Jackson, PC  
3530 Independence Drive  
Birmingham, Alabama 35209-5710  
jay@rileyjacksonlaw.com

U.W. Clemon  
White, Arnold & Dowd, P.C.  
2025 Third Avenue North, Suite 500  
Birmingham, Alabama 35203  
uwclemon@waadlaw.com  
hcthompson@whitearnolddowd.com

**s/ Albert L. Jordan**

Of Counsel

# Exhibit 1

**No. 2:12-CV-00787-IPJ**

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

—◆—  
**Patricia Working, Rick Erdemir, and Floyd McGinnis,**  
*Appellants*

v.

**Jefferson County, Alabama,**  
*Appellee.*

—◆—  
On Appeal from the United States Bankruptcy Court  
for the Northern District of Alabama, No. 11-05736-TBB

—◆—  
**BRIEF OF APPELLEE JEFFERSON COUNTY, ALABAMA**

—◆—  
Matthew H. Lembke  
Patrick Darby  
BRADLEY ARANT BOULT CUMMINGS LLP  
1819 Fifth Avenue North  
Birmingham, AL 35203-2104  
Telephone (205) 521-8560  
Facsimile (205) 488-6560

COUNSEL FOR APPELLEE JEFFERSON COUNTY, ALABAMA

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**TABLE OF CONTENTS**

TABLE OF AUTHORITIES ..... ii  
STATEMENT OF THE ISSUES PRESENTED ..... 1  
STANDARD OF REVIEW ..... 1  
STATEMENT OF THE CASE ..... 2  
ARGUMENT ..... 6  
CONCLUSION ..... 7  
CERTIFICATE OF FILING AND SERVICE ..... 8

**TABLE OF AUTHORITIES**

**Cases**

*In re Dixie Broadcasting, Inc.*  
871 F.2d 1023 (11th Cir. 1989) .....1

*Selman v. Cobb Cnty. Sch. Dist.*  
449 F.3d 1320 (11th Cir. 2006) .....4

*Working v. Jefferson Cnty. Election Comm’n*  
2 So. 3d 827 (Ala. 2008).....3

*Working v. Jefferson Cnty. Election Comm’n*  
72 So. 3d 18 (Ala. 2011).....3

**Statutes**

11 U.S.C. § 362 .....2

11 U.S.C. § 922 .....2

Ala. Code § 6-6-20.....3

**STATEMENT OF THE ISSUES PRESENTED**

The County does not object to the Appellants' Statement of the Issues because neither of the identified issues pertains to the County.

**STANDARD OF REVIEW**

The Bankruptcy Court's Order granting relief from the automatic stays is reviewed under an abuse-of-discretion standard. *In re Dixie Broadcasting, Inc.*, 871 F.2d 1023, 1026 (11th Cir. 1989).

## STATEMENT OF THE CASE

The County filed a petition for Chapter 9 bankruptcy on November 9, 2011 (the “Bankruptcy Case”). [Doc. 1-7].<sup>1</sup> Filing the petition triggered the automatic stays of 11 U.S.C. §§ 362 and 922, which, among other things, bar “the commencement or continuation [of an] action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title,” 11 U.S.C. § 362(a), “or other action or proceeding against an officer or inhabitant of the debtor that seeks to enforce a claim against the debtor.” *Id.* § 922(a)(1).

On December 9, 2011, Patricia Working, Rick Erdemir, and Floyd McGinnis (“Appellants”) filed their *Objection to Automatic Stay of Civil Rights Action Against Multiple Defendants, Including Sheriff Mike Hale, Probate Judge Alan King, and Circuit Clerk Anne-Marie Adams, or in Alternative, Motion for Relief from Automatic Stay* (the “Motion for Relief”) in the Bankruptcy Case. [Doc. 1-12]. In the Motion for Relief, Appellants objected to any operation of the automatic stays as they applied to the Appellants’ litigation against the Jefferson County Election Commission (the “JCEC”) and its individual members: Sheriff Mike Hale, Jefferson County Circuit Clerk Anne-Marie Adams, and Jefferson

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<sup>1</sup> All citations are to the Record as set forth in Docket No. 1. The format is “Doc. [docket number]:[page number]”.

County Probate Judge Alan King. Appellants' litigation against the JCEC and its members is pending in the Jefferson County Circuit Court, Case No. CV-2008-900316.00 (the "Working Proceeding"). [Doc. 1-12:1].

Appellants prevailed on an issue of state-law statutory construction in the Working Proceeding before the Alabama Supreme Court. *See Working v. Jefferson Cnty. Election Comm'n*, 2 So. 3d 827 (Ala. 2008). Subsequently, Appellants sought recovery of attorneys' fees from the JCEC, Sheriff Hale, Adams, and King. This dispute also made its way to the Alabama Supreme Court. *See Working v. Jefferson Cnty. Election Comm'n*, 72 So. 3d 18 (Ala. 2011). As a result of the most recent Alabama Supreme Court decision, the pending dispute in the Working Proceeding is whether the JCEC and its members are entitled to sovereign immunity and, therefore, not subject to court-ordered mediation on the issue of attorneys' fees. *See id.* at 21; *see also* Ala. Code § 6-6-20(g) (requiring resolution of immunity issues before ordering mediation).

Appellants filed the Motion for Relief to obtain an order from the Bankruptcy Court that "the automatic stay does not apply to [the Working Proceeding]" or, in the alternative, for "relief from the stay and [to] allow the attorneys fee claim in [the Working Proceeding] to proceed in the Jefferson County Circuit Court, and otherwise as permitted by state law in the Alabama Supreme



Court if again needed, and for such other relief as may be just and proper ....”<sup>2</sup>  
[Doc. 1-12:3-4].

The County responded to the Motion for Relief on January 3, 2012. [Doc. 1-16] (the “Response”). The County argued in the Response that “to the extent the County is required to satisfy any judgment entered against Sheriff Hale and the JCEC, such actions are stayed by Sections 362 and 922 of the Bankruptcy Code.” [Doc. 1-16:5-11]. The County also argued that Appellants had not shown cause for relief from the automatic stays. [Doc. 1-16:11-13].

The Bankruptcy Court heard arguments on the Motion for Relief and the Response on January 5, 2012. [Doc. 1-21]. On January 24, 2012, the Bankruptcy Court issued its an order granting the Motion for Relief in part and denying it in part. [Doc. 1-17] (the “Order”). The Bankruptcy Court ruled that the automatic stays were “modified to the extent necessary to allow the [Appellants] to continue

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<sup>2</sup> Appellants filed several exhibits in support of their Motion for Relief, including documents purporting to show the sources of funding for the Jefferson County Office of District and Circuit Courts, Birmingham Division, and Jefferson County Sheriff Mike Hale. [See Docs. 1-14 and 1-15]. These documents were not authenticated and constitute inadmissible hearsay if used to prove the truth of their contents. They were not admitted by the Bankruptcy Court during the hearing on the Appellants’ Motion for Relief, [Doc. 1-21:31-33], and thus were not considered by the Bankruptcy Court in reaching its judgment. Accordingly, they cannot be relied upon on appeal. See *Selman v. Cobb Cnty. Sch. Dist.*, 449 F.3d 1320, 1332 (11th Cir. 2006). Any portion of Appellants’ Brief relying upon or referring to the unadmitted evidence should be disregarded.

Similarly, Appellants rely on the contents of a proposed Order they submitted to the Bankruptcy Court for disposing of their Motion for Relief. See Appellants’ Brief at 14-15. This Court denied the Appellants’ motion to supplement the Record to include the proposed Order. See Order, Docket No. 5, at 1 (Mar. 23, 2012). The portions of Appellants’ Brief referring to the proposed Order should likewise be disregarded.

that certain lawsuit styled *Working v. Jefferson County Election Commission, et al.*, No. CV -2008-0900316 (the “Working Proceeding”), and to collect from the State of Alabama (to the extent, if any allowed by applicable non-bankruptcy law) any judgment entered in the Working Proceeding.” [Doc. 1-17:3]. Pursuant to the Order, the automatic stays continued to bar “any effort by . . . [Appellants] . . . to liquidate, assert, assess, recover or collect a claim with respect to any funds or other property of the County, including, without limitation, funds derived from or allocated or budgeted by the County to Sheriff Hale, the Jefferson County Election Commission (the “JCEC”), or the constituent members of the JCEC in their official capacities, under applicable State law.” [Doc. 1-17:3].

Appellants filed a notice of appeal from the Order on February 3, 2012. [Doc. 1-2].

## ARGUMENT

The Bankruptcy Court's Order should be affirmed because there is no remaining dispute between the Appellants and the County. The County's sole interest vis-à-vis the Appellants is to ensure that any judgment obtained by the Appellants in the Working Proceeding could not be executed against funds held by the County or allocated or budgeted by the County. The Bankruptcy Court's Order protects the County's interest by barring Appellants from "liquidat[ing], assert[ing], assess[ing], recover[ing] or collect[ing] a claim with respect to any funds or other property of the County." [Doc. 1-17:3]. **Appellants do not challenge the Bankruptcy Court's Order as it concerns the County.** Because Appellants raise no argument on appeal that concerns the County's interests, the Bankruptcy Court's Order should be affirmed insofar as it pertains to the County.

The County has no stake in the relief Appellants seek against the JCEC and its members, none of whom are parties to this appeal. Accordingly, the County takes no position on the arguments made in Section II of Appellants' Brief concerning Appellants' claims against the individual members of the JCEC.<sup>3</sup>

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<sup>3</sup> The County maintains that it is not liable for the actions of those parties and that its funds cannot be accessed to satisfy any judgment against those parties, and the County reserves its rights on those issues should they arise in some future proceeding.

**CONCLUSION**

For the foregoing reasons, the County respectfully asks the Court to affirm the Order of the Bankruptcy Court insofar as it pertains to the County.

Respectfully submitted this 10th day of April, 2012.

By:           /s Matthew H. Lembke            
BRADLEY ARANT BOULT CUMMINGS LLP  
Matthew H. Lembke  
Patrick Darby  
1819 Fifth Avenue North  
Birmingham, AL 35203-2104  
Telephone: (205) 521-8000  
Facsimile: (205) 521-8500  
mlembke@babco.com  
pdarby@babco.com

*Counsel for Jefferson County, Alabama*

**CERTIFICATE OF FILING AND SERVICE**

I certify that on April 10, 2012, I served a copy of the foregoing Brief with the Clerk of the Court and registered parties using the CM/ECF system. I further certify on that April 10, 2012 I served a copy of the Brief on the following parties via email:

Albert L. Jordan  
Jay H. Clark  
WALLACE JORDAN RATLIFF & BRANDT, L.L.C.  
Post Office Box 530910  
Birmingham, Alabama 35253  
Telephone: 205-870-05555  
Facsimile: 205-871-7534  
bjordan@wallacejordan.com

French A. McMillan  
Assistant County Attorney  
280 Jefferson Co. Courthouse  
716 R. Arrington Jr. Blvd. N.  
Birmingham, Alabama 35203  
mcmillanf@jccal.org

Robert R. Riley, Jr.  
1744 Oxmoor Road  
Homewood, Alabama 35206  
rob@rileyjacksonlaw.com

\_\_\_\_\_  
/s Matthew H. Lembke  
Of Counsel

# Exhibit 2



## AlaFile E-Notice

01-CV-2008-900316.00

Judge: J SCOTT VOWELL

To: JORDAN ALBERT LINCH  
alj@wallacejordan.com

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# NOTICE OF ELECTRONIC FILING

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IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

PATRICIA WORKING ET AL V. JEFFERSON COUNTY ELECTION COMMISSION ET AL  
01-CV-2008-900316.00

The following matter was FILED on 9/18/2014 3:23:08 PM

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CIRCUIT COURT CLERK  
JEFFERSON COUNTY, ALABAMA  
JEFFERSON COUNTY, ALABAMA  
716 N. RICHARD ARRINGTON BLVD.  
BIRMINGHAM, AL 35203

205-325-5355  
anne-marie.adams@alacourt.gov

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ANNE-MARIE ADAMS, CLERK

**IN THE CIRCUIT COURT FOR THE TENTH JUDICIAL CIRCUIT  
JEFFERSON COUNTY, ALABAMA**

**MATRICIA WORKING, et al.,** )

**PLAINTIFFS,** )

**No. CV-08-900316**

**JEFFERSON COUNTY ELECTION )  
COMMISSION, et al.,** )

**DEFENDANTS.** )

**SCHEDULING ORDER**

This matter remains pending in this court after a remand from the Alabama Supreme Court. That Court affirmed this court's judgment that the defendants are immune from liability for plaintiffs' attorney fees and expenses to the extent that their claims were based upon state-law claims. However, the Court remanded the case to this court with instructions that the court address the plaintiffs' federal law claims under Ala. Code (1975) § 6-6-20 and the Supreme Court's mandate in *Working II*, 72 So.3d 18 (Ala 2011).

Upon remand this court entered an order on January 8, 2014, ruling that the defendants are not immune from liability for plaintiffs' attorney fees and expenses to the extent that defendants' liability was based upon federal law, namely, 42 U.S.C. § 1988. The Court thereupon granted plaintiffs' motion for mandatory mediation.

The parties participated in mediation on the attorney fee issue with an agreed-upon mediator, but on August 26, 2014, the mediator notified this court that the mediation had concluded and that the parties had reached an impasse.



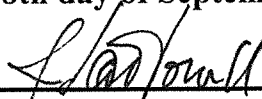
Thus, with mandatory mediation having failed, the Court conducted a status conference on this date. Present were: Bert Jordan, counsel for plaintiffs; Shawna Smith and Brent Grainger, counsel for the defendant, the Election Commission; French McMillan, counsel for defendant Probate Judge Alan King; Jay Murrill, counsel for the defendant Sheriff Mike Hale; Anne Marie Adams, Circuit Clerk and her Deputy Clerk, David Sawyer; and Jim Davis, Deputy Attorney General, appearing on behalf of the Governor.

The issue before the Court at this time is whether the defendants are liable to the plaintiffs for an award of attorney fees and expenses. If the Court concludes that an award of such fees and expenses is due to be made, the parties will be granted additional time to address the issue of the reasonable amount of such an award.

Upon consideration, it is **Ordered and Adjudged** as follows:

1. Plaintiffs will file briefs or other supporting material in support of their claim for fees and expenses on or before **October 31, 2014**.
2. Defendants will respond to plaintiffs' submissions and will file briefs or other supporting material on or before **November 14, 2014**.
3. Plaintiffs may file any rebuttal to defendants' filings on or before **November 26, 2014**.
4. The court will hear oral arguments and accept proposed Orders at **9 a.m. on December 4, 2014, in Courtroom 660, Jefferson County Courthouse in Birmingham**.

**DONE AND ORDERED, this the 18th day of September, 2014.**

  
\_\_\_\_\_  
**J. SCOTT VOWELL, SPECIAL CIRCUIT JUDGE**