

BEFORE THE JUDICIAL INQUIRY COMMISSION OF ALABAMA

Inquiry Concerning a Judge, No. ____.

**SUPPLEMENT IN SUPPORT OF COMPLAINT AGAINST CHIEF
JUSTICE ROY S. MOORE**

On January 28, 2015, we lodged a Complaint against Chief Justice Roy S. Moore regarding the January 27, 2015, letter he sent to Governor Robert Bentley and his related public statements. We write to supplement that Complaint based on the Chief Justice's subsequent public comments. In statements seemingly calculated to undermine the integrity of our judicial system, Chief Justice Moore has stated that it is an open question whether he would comply with a decision of the United States Supreme Court. Furthermore, he has offered a rationale for his earlier public comments about pending and impending cases that he surely knows is specious and completely at odds with Alabama law. Chief Justice Moore has once before behaved so unethically as to merit his removal from office. Neither this body nor the Court of the Judiciary should wait to see what Chief Justice Moore does next before sanctioning him again in light of his most recent outrageous and unethical conduct.

On January 29, 2015, in an interview on The Matt Murphy Show on 1070 WAPI radio, Chief Justice Moore commented on the appeal of the gay marriage

decision of the Sixth Circuit Court of Appeals pending before the United States Supreme Court. Specifically, the Chief Justice was asked “if the United States Supreme Court should determine that the ban on same sex marriage is unconstitutional, where would that leave you as Chief Justice?” Chief Justice Moore responded: “That’s a very hard decision” whether to follow the decision of the United States Supreme Court because he

know[s] there’s nothing in the U.S. Constitution that authorizes the Supreme Court of the United States or any federal court anywhere to misinterpret the word “marriage” to include something outside that. Whether it’s by the Equal Protection Clause, or the Due Process Clause, or the Full Faith and Credit Clause. They are making these things up and they’re ruling on social matters.

See Transcript of radio interview attached hereto as Exhibit D at 15:20. The radio host and Chief Justice Moore then engaged in the following colloquy about whether the Chief Justice would comply with a decision legalizing gay marriage which he would characterize as an “unlawful” order of the United States Supreme Court:

Matt Murphy: When you say you’d have a difficult decision to make, does that mean whether or not [18:00] you could continue your duties under those rulings should they rule in that manner?

Roy Moore: [18:07] Well, it would be whether or not I could comply with an unlawful order of the United States Supreme Court.

Matt Murphy: [18:13] Yeah, but you just said the United States Supreme Court ... they rule on the Constitutional question, and ...

Roy Moore: [18:20] It binds state courts, yes.

Matt Murphy: [18:22] And you would be bound to honor the decision that they made, would you not?

Roy Moore: [18:27] Well we'll cross that bridge Matt. [Matt laughing] [18:30] You talk about a hypothetical. Yes, that's definitely a hypothetical. [crosstalk] I'm telling you in my opinion right now, in the opinion of anybody that's got any knowledge of Constitutions, there's nothing in the Constitution that allows the United States Supreme Court or federal district courts to redefine marriage.

Id.

Whether or not the Chief Justice or any Alabama court must follow a decision of the United States Supreme Court does not involve a “very hard decision.” It involves no decision at all. Chief Justice Moore’s suggestion that there might be any doubt about whether to follow such a decision demonstrates a total lack of understanding and appreciation for the fundamental workings of the judicial system at best and complete contempt for the highest court in the land, at worst.

Chief Justice Moore’s inappropriate comments impugning the integrity and independence of the judiciary in breach of the Canons of Judicial Ethics have clearly begun to shake the confidence of other professionals in the Alabama legal

community and public opinion leaders here at home and across the nation. *See, e.g., “Roy Moore’s Indefensible Actions Disgrace Our State,” Montgomery Advertiser, January 30, 2015*

(<http://www.montgomeryadvertiser.com/story/opinion/editorials/2015/01/30/roy-moores-indefensible-actions-disgrace-state/22601487/>); “Alabama Judge Can’t Flout Gay Marriage Law,” *USA Today, January 31, 2015*

(<http://www.usatoday.com/story/opinion/2015/01/31/alabama-same-sex-david-person/22548383/>); “Alabama’s Renegade Judge Defies Gay Marriage Order,” *Bloomberg View, January 28, 2015*

(<http://www.bloombergvew.com/articles/2015-01-28/renegade-alabama-judge-roy-moore-defies-gay-marriage-order>).

In particular, on January 29, 2015, in response to Chief Justice Moore’s repeated public comment on Judge Granade’s decision, the members of the Alabama State Committee of the American College of Trial Lawyers issued a statement in which they expressed deep concern for the attack by Chief Justice Moore on the independence of the judiciary, stating

We believe that it is improper and unfair for Chief Justice Moore to threaten the judicial independence of Judge Granade in the manner in which he has done, particularly where Judge Granade is forbidden by judicial canons from responding to the accusations made by Chief Justice Moore.

See Statement of the Alabama State Committee of the American College of Trial Lawyers attached hereto as Exhibit E;

<http://www.wsfa.com/story/27976280/professional-organization-of-trial-lawyers-concerned-with-moore-statements>.

It is becoming clearer every day that the damage to the integrity of and public confidence in the judiciary that the Canons of Judicial Ethics are intended to guard against is manifesting itself in the legal profession and public consciousness with every additional statement by Chief Justice Moore.

Chief Justice Moore has attempted to justify his unethical conduct, particularly his advice to the state's probate judges, by suggesting that it is his "duty as chief justice and administrative head of the court system . . . to enlighten those courts under my authority as to what the law is in this matter." See http://www.al.com/news/index.ssf/2015/01/alabama_chief_justice_roy_moor_2.html; Exhibit D at 13:01 ("That's why I wrote the letter to the Governor. I'm not just a justice or a judge on the Court, I'm the chief administrative officer of the judicial system. That's a . . . I have a duty to protect and defend the integrity and jurisdiction of the courts of this state."); see also Exhibit A at 3 ("However, I am dismayed by those judges in our state who have stated they will recognize and unilaterally enforce a federal court decision which does not bind them. I would advise them that the issuance of such licenses would be in defiance of the laws and

Constitution of Alabama.”). But, as Chief Justice Moore surely knows, Alabama law gives him no authority to issue advisory opinions to the state’s probate judges by virtue of his role as Chief Justice or his role as the head of the Alabama Administrative Office of Courts. *See* Ala. Code § 12-2-30 (enumerating Chief Justice’s powers and duties as to supervision and administration of courts generally). Instead, the Alabama legislature specifically reserves this authority to the Attorney General. *See* Ala. Code § 36-15-1(1)(b) (“The Attorney General shall give his or her opinion, in writing or otherwise, as to any question of law connected with the duties of the following county or city officers when requested so to do in writing: Judge of probate”).

But even if there were the slightest merit to Chief Justice Moore’s contention, his comments denigrating the federal courts and threatening defiance and a confrontation would surely be beyond the pale. In short, Chief Justice Moore’s disingenuous attempt to rationalize his actions demonstrates once again that he has violated his responsibility “to be faithful to the law and maintain professional competence,” *see* Canons of Judicial Ethics 3(A)(1), by not properly understanding and executing his responsibilities and duties and usurping the role of the Attorney General.

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For these additional reasons and for the reasons set forth in the Complaint, Chief Justice Roy Moore has improperly commented on pending and impending cases; demonstrated faithlessness to foundational principles of law; and taken affirmative steps to undermine public confidence in the integrity of the judiciary. We respectfully request that this Judicial Inquiry Commission investigate the allegations in the Complaint and recommend that Chief Justice Moore face charges in the Court of the Judiciary.

Dated: February 3, 2015

SOUTHERN POVERTY LAW CENTER


By: J. Richard Cohen, President
Ala. Bar No. ASB-1092-N73J

Subscribed and Sworn to or affirmed before me this 3rd day of February, 2015.

My commission expires: 9.19.18


Notary Public

