



AlaFile E-Notice

03-CV-2016-900538.00

Judge: GREG GRIFFIN

To: John C. Neiman JR.
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NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

JACK SPENCER COLLIER V. ROBERT BENTLEY ET AL
03-CV-2016-900538.00

The following matter was FILED on 4/30/2018 4:05:28 PM

D002 STABLER STAN

STATE'S BRIEF IN OPPOSITION TO MOTION TO COMPEL

[Filer: NEIMAN JOHN COWLES JR.]

Notice Date: 4/30/2018 4:05:28 PM

TIFFANY B. MCCORD
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MONTGOMERY COUNTY, ALABAMA
251 S. LAWRENCE STREET
MONTGOMERY, AL, 36104

334-832-1260



IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

SPENCER COLLIER,

Plaintiff,

v.

ROBERT BENTLEY, et al.,

Defendants.

Civil Action No: 03-CV-2016-900538

DEFENDANT STAN STABLER'S REPLY TO STATE IN SUPPORT OF MOTION TO COMPEL DEPOSITION TESTIMONY

Defendant Stan Stabler continues to have no objection to a hearing on his pending motion to compel Collier's deposition testimony, *see* Doc. 347, but the Court also can grant the motion without a hearing. In its brief filed on April 27, *see* Doc. 363, the State has offered no persuasive defense of Collier's refusal to answer deposition questions concerning the numerous discussions he claims he had with the Attorney General's Office, outside the presence of the grand jury, relating to the grand-jury investigation of Collier whose publicly announced conclusions Collier relies upon as evidence to support his complaint. Stabler makes the following specific observations about the State's response:

1. First, the State appears to concede that Collier had no basis in the Grand Jury Secrecy Act, ALA. CODE §§12-16-215 & -216, to refuse to testify. As Stabler has explained in his motion to compel and reply to Collier's response, the Grand Jury Secrecy Act has no relevance to these questions because Stabler is not asking Collier about his testimony in the grand jury itself. *See* Doc. 347 at 3, ¶6.

2. Second, the State has expressed no objection to Collier testifying about what *Collier himself* has told the Attorney General's Office. The State's sole objection appears to be to

testimony Collier might offer about what *officials from the Attorney General's Office* said to him. Therefore, the State has articulated no reason why Collier should not be compelled to testify about the things *he* told the Attorney General's Office outside the presence of the grand jury.

3. Third and in any event, the State is wrong when it asserts that Section 12-21-3.1 of the Alabama Code gives Collier a basis for refusing to testify about what members of the Attorney General's Office said *to* him outside the presence of the grand jury. That is so for several reasons:

- a. Subsection (a) of Section 12-21-3.1 regulates the testimony that can be obtained from "a law enforcement officer," not a private citizen. ALA. CODE §12-21-3.1(a). Collier has brought this lawsuit in his personal capacity, not in his capacity as Selma Police Chief. Moreover, at the times he had the discussions with the Attorney General's Office, Collier was not a law-enforcement officer.
- b. Subsection (b) of Section 12-21-3.1 applies only to the discovery of certain categories of written documents or recordings, none of which Stabler is seeking here. *See id.* §12-21-3.1(b) (referring to "law enforcement investigative reports, records, field notes, witness statements, and other investigative writings or recordings"). Stabler is seeking Collier's testimony about verbal conversations with the Attorney General's Office, not written documents or recordings about those things.
- c. Subsection (c) of Section 12-21-3.1 similarly applies only to certain categories of documents and tangible evidence, none of which Stabler is seeking here. *See id.* §12-21-3.1(c) (referring to "photographs, documents and tangible evidence"). Moreover, even if Section (c) applied to the testimony Collier is refusing to give, Stabler would

have shown that the Court should issue an order requiring Collier to testify to these matters under subsection (c). Stabler is a “noncriminal part[y]” in this case. *Id.* And contrary to the State’s conclusory assertion, Stabler has provided “substantial evidence” that he will “suffer undue hardship” if he does not able to obtain this testimony from Collier. *Id.* As Stabler noted in his motion to compel, Collier’s complaint relies heavily on the reported outcome of the grand-jury investigation to support his claims in this case. *See* Doc. 347 at 1-2, ¶2. Stabler has a right to obtain discovery from Collier into the process that led to the reported outcome of the grand-jury investigation on which Collier so heavily relies. Collier was the person being investigated by that grand jury. Yet Collier also has testified that at the same time, he was providing the Attorney General’s Office with information about Governor Bentley. *See* Doc. 348 at tr. 311:1-5. The numerous discussions Collier admits that he had with the Attorney General’s Office during this process could call the grand jury’s reported conclusions about Collier into question in any number of ways. As long as Collier refuses to testify about those discussions, Stabler and the other Defendants will not know what those conversations were or how they bear on this important issue. Stabler and the other Defendants will be forced to defend themselves against a conclusion they cannot gather any underlying information about. Furthermore, testimony about those discussions is “unavailable from other reasonable sources.” ALA. CODE §12-21-3.1(c). The only persons who apparently are aware of the substance of the conversations between Collier and the Attorney General’s Office are Collier and the Attorney General’s Office.

- d. Subsection (d) of Section 12-21-3.1 likewise has no bearing here because Stabler is not seeking this order “*prior to* the disposition of the criminal matter under investigation.” *Id.* §12-21-3.1(d) (emphasis added). The report from the Attorney General on which Collier relies in his complaint stated that “the investigation of former Secretary Collier is now closed.” Exh. A. More recently, Judge Hardwick dissolved the entire grand jury at issue. Exh. B. The State has no basis for suggesting that the confidentiality concerns that normally surround ongoing law-enforcement investigations must preclude all discovery now relating to these closed matters.

4. Fourth, the State is fundamentally mistaken when it asserts that Collier’s testimony on these matters is not needed to ensure a fair trial. The gravamen of Collier’s complaint is that Defendants made public statements that defamed him and put him in a false light. Collier, in his complaint and otherwise, repeatedly has pointed to the Attorney General’s press release about the grand jury’s conclusions as evidence of the falsity of the Defendants’ statements. *See, e.g.*, Exh. C. To respond to Collier’s claims, it is critical for Defendants to be able to determine whether Collier provided full and accurate information to the Attorney General’s Office. It is critical for Defendants to be able to determine all the facts relating to the relationship between Collier and the Attorney General’s Office. It is critical for Defendants to determine whether Collier had conversations with that Office about his willingness or desire to provide testimony against any the Defendants. Due process guarantees that the Defendants be allowed to defend themselves against Collier’s claims and the evidence Collier uses to support his claims. If Collier refuses to testify about the process that led to the Attorney General’s report about the grand jury’s conclusions, due process at the very least would estop Collier from relying

on the Attorney General's report about the grand jury's conclusions in any way to support his claims.

5. Fifth, the State has not denied Stabler's observation that the State waived any objection it may otherwise have had when it chose to issue public statements about the grand jury's conclusions. *See* Doc. 347 at 4-5, ¶8. In those statements, the Attorney General's Office commented on the information it submitted to the grand jury. Having chosen to take that public path, the State cannot now persuasively argue that Collier's conversations with the Attorney General's Office outside of the grand jury's presence should nevertheless remain protected from disclosure.

The Court therefore should grant Stabler's motion to compel and require Collier to testify about these matters.

Respectfully submitted,

s/ John C. Neiman, Jr.

John C. Neiman, Jr.

Stephanie H. Mays

Mark D. Foley, Jr.

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CERTIFICATE OF SERVICE

I certify that on April 30, 2018, a copy of the foregoing has been served on all counsel of record via the Court's Alafile system. I also emailed a copy to the Attorney General Office personnel who filed the State's brief in opposition.

Respectfully submitted,

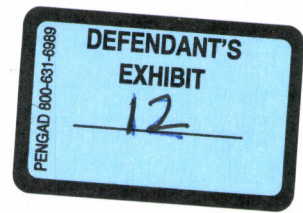
/s/ John C. Neiman, Jr.

OF COUNSEL

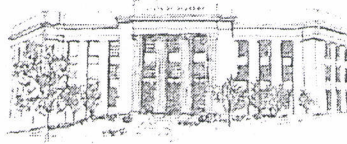


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EXHIBIT A



NEWS RELEASE
Luther Strange
 Alabama Attorney General



FOR IMMEDIATE RELEASE
 October 20, 2016

For More Information, contact:
 Mike Lewis (334) 353-2199
 Joy Patterson (334) 242-7491
 Page 1 of 1

**STATEMENT OF ATTORNEY GENERAL LUTHER STRANGE
 REGARDING FORMER ALEA SECRETARY SPENCER COLLIER**

(MONTGOMERY) -This statement is being issued because substantial information related to the Attorney General's investigation has been put in the public domain.

On February 17, Governor Robert Bentley placed then-ALEA Secretary Spencer Collier on sick leave for allegedly disobeying his instructions regarding Collier's interaction with State prosecutors.¹ Shortly after the Governor's action, ALEA initiated a broad internal inquiry into Collier's conduct as ALEA Secretary.

On March 22, Governor Bentley fired Collier, stating publicly that he relied on the ALEA inquiry in doing so.² Governor Bentley and ALEA issued public statements that the results of the ALEA investigation indicated possible "misuse of state funds" and were being referred to the Office of Attorney General Luther Strange.³ That day, the Office of the Attorney General received the complaint and other information from ALEA.

To determine the facts with certainty, the Special Prosecutions Division of the Attorney General's Office conducted a complete investigation of the ALEA allegations against Collier. For efficiency, and to ensure public confidence in the investigation, all of the information from ALEA was presented to the Montgomery County Special Grand Jury. Numerous witnesses, including senior ALEA leadership, were called to testify before the Special Grand Jury.

The investigation conducted by Attorney General Strange before the Special Grand Jury was a criminal investigative proceeding. In the course of the investigation, no witness provided credible evidence of criminal "misuse of state funds." No witness provided credible evidence of any other criminal violation on the part of former Secretary Collier. Finally, no witness established a credible basis for the initiation of a criminal inquiry in the first place.

After receiving all of the information provided by ALEA to the Attorney General, and after receiving substantial additional evidence, the Montgomery County Special Grand Jury declined to act on the allegations against former Secretary Collier. For these reasons, the investigation of former Secretary Collier is now closed.

¹ http://www.al.com/news/index.ssf/2016/02/states_top_cop_placed_on_leave.html

² <http://governor.alabama.gov/newsroom/2016/03/governor-bentley-announces-termination-spencer-coller-alabama-law-enforcement->

³ <http://www.montgomeryadvertiser.com/story/news/politics/southunionstreet/2016/03/22/alea-review-finds-possible-misuse-state-funds/82122208/>



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EXHIBIT B

**IN THE CIRCUIT COURT FOR THE FIFTEENTH JUDICIAL CIRCUIT
OF ALABAMA**

**FINAL REPORT OF THE SPECIAL GRAND JURY
EMPANELED JULY 11, 2016**



To the Honorable Judge Johnny Hardwick:

We were empaneled by the Honorable Eugene W. Reese, Circuit Judge, on July 11, 2016, as a Special Grand Jury, on motion of the Attorney General and Order of the Circuit Court.

During our term as Special Grand Jury members, we reviewed complaints relating to alleged violations of the Alabama Ethics Law (Sections 36-25-1 through 36-25-30 of the Code of Alabama) and the Alabama Fair Campaign Practices Act (Sections 17-5-1 through 17-5-21 of the Code of Alabama). The allegations we reviewed included the following:

1. Ethics violations, misappropriation of funds and state property, and abuse of power by then-Secretary of Law Enforcement Spencer Collier;
2. Ethics violations, misuse of state equipment and law enforcement personnel, and abuse of power at the Office of the Governor;
3. Obstruction of justice and witness tampering at the Office of the Governor;
4. Personal use of campaign funds and violations of the Fair Campaign Practices Act, including failure to timely file reports and receiving funds outside the open contribution period by former Governor Robert J. Bentley;
5. Ethics violations at the Office of the Governor concerning the inappropriate direction of state funding or jobs on particular projects to specific people; and
6. Nonprofit abuse and ethics violations involving ACEGOV and economic development projects.

After receiving complaints in spring 2016, the Special Prosecutions Division of the Office of the Alabama Attorney General conducted a thorough investigation of these complaints, reviewing over 100,000 documents, more than 100 witness statements, and files from other investigative agencies and legislative committees. This

investigation included a detailed financial analysis of 35 separate sets of financial records, as well as a comparative analysis and review of the financial investigations conducted by other state and federal agencies.

Over the past two years, the Special Prosecutions Division presented the results of its investigation. We heard from 53 witnesses and received dozens of exhibits. We have thoroughly investigated without any outside interference.

Pursuant to this investigation, former Governor Robert J. Bentley pleaded guilty to one count of knowingly converting campaign contributions to personal use (in violation of Section 36-25-6 of the Code of Alabama), and one count of failing to file a major contribution report (in violation of Section 17-5-8.1(c)), and resigned his office. We did not pursue charges of use of office for personal gain (under Section 36-25-5(a)) or use of state resources for private benefit (under Section 36-25-5(c)) because there was no evidence that former Governor Bentley or any of the other individuals we investigated actually received any illegal financial gain or were covered by the law. Both of these facts must be proved to obtain a conviction.

Further, we determined that no other charges were warranted. Many of the allegations we investigated were not supported by the facts. With respect to the other allegations, the facts did not constitute a crime.

We found a number of serious concerns about current state law that hinder successful prosecution:

- The Ethics Act does not cover non-spousal intimate or romantic relationships.
- The law authorizes the Governor to appoint the Secretary of Law Enforcement and does not prohibit the Governor from initiating, directing, or receiving reports on criminal investigations for illegitimate political purposes.
- State law does not prohibit non-government personnel from performing the functions of a public employee while receiving payment from a private entity for that work (so-called loaned executives), and there is a question whether the Ethics Act clearly covers such individuals.

While this list is not exhaustive, the issues are sufficiently serious as to warrant the Alabama Legislature to revisit the Alabama Ethics Law and the Alabama Fair Campaign Practices Act as soon as possible. In that light, we ask the Special Assistant Attorney General heading this investigation to deliver a copy of this report to the appropriate state and local officials for their consideration.

At this time, we respectfully request to be dissolved by order of the Circuit Court.

Respectfully submitted this 4th day of April, 2018.

Lauri Platt
Foreperson

ORDER

This report of the Special Grand Jury empaneled July 11, 2016 is hereby accepted, and the Special Grand Jury is hereby dissolved.

Done this 4th day of April, 2018.

J. L. Hardwick
Circuit Judge



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CIRCUIT COURT OF
MONTGOMERY COUNTY, ALABAMA
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EXHIBIT C

For Immediate Release

Oct. 21, 2016

Contact: Kenny Mendelsohn

kenny@jmfirm.com

COLLIER'S RESPONSE TO GRAND JURY DECISION

(MONTGOMERY, AL) On October 20, 2016, a Special Grand Jury convened by the Alabama Attorney General declined to act on Governor Robert Bentley's and ALEA Secretary Stan Stabler's allegations against Spencer Collier. Attorney General Luther Strange issued a press release stating no witnesses provided credible evidence of misuse of state funds or any other criminal violations on the part of Collier. Most importantly, Attorney General Strange also stated that "no witness established a credible basis for the initiation of a criminal inquiry in the first place."

Collier says that while he feels vindicated this is really a sad day for the State of Alabama and in particular ALEA. It is now abundantly clear that the Governor and Secretary Stabler used substantial state law enforcement resources as a political tool. The ALEA investigation was based on conjecture, rumors and false information. As a result, this investigation has called into serious question the integrity of the ALEA Integrity Unit. Collier stated that he is very disappointed in the manner in which Secretary Stabler and the Integrity Unit conducted this

investigation because it was not consistent with the high quality and procedures used by ALEA. It is unbelievable that Governor Bentley continues to support the ALEA investigation given the poor quality of the investigation, lack of first hand witnesses, and the Attorney General's determination that there was no credible basis for the initiation of a criminal inquiry in the first place. This further shows that the investigation was not a bona fide investigation but rather a personal attack on Spencer to deflect attention away from the Governor's own behavior.

Collier's lawyer, Kenny Mendelsohn, stated that the Governor has given so many conflicting statements about Spencer that it is hard to know where the Governor really stands. In the Governor's State of the State Address on February 2, 2016, the Governor stated that under Spencer's direction, "ALEA has become one of the most efficient and effective agencies in the state." 15 days later, the Governor stated that Collier was being punished because he disobeyed the Governor's order to not give an affidavit in the Mike Hubbard Ethics Case, which was an unlawful order. Then on March 22, 2016 Governor Bentley fired Spencer stating it was because of a "possible misuse of state funds." On April 19, 2016, the Governor issued a Press Statement saying Spencer was "terminated for cause." Then yesterday, he issued a statement to WSFA saying he terminated Spencer because he just "felt a new direction in our state law enforcement agency was needed."

Mendelsohn also stated that he anticipates amending the complaint to add additional defendants and claims in Spencer's lawsuit. Collier stated that he looks forward to the witnesses being questioned under oath and to having his day in court.