

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

|  |   |                               |
|--|---|-------------------------------|
| <b>In re:</b>                                  | ) |                               |
|  | ) |                               |
| <b>JEFFERSON COUNTY, ALABAMA,</b>              | ) | <b>Case No. 11-05736-TBB9</b> |
| <b>a political subdivision of the State of</b> | ) |                               |
| <b>Alabama,</b>                                | ) | <b>Chapter 9 Proceeding</b>   |
|  | ) |                               |
| <b>Debtor.</b>                                 | ) |                               |

**MOTION FOR AN ORDER TO SHOW CAUSE WHY  
THE WORKING PLAINTIFFS AND THEIR COUNSEL  
SHOULD NOT BE SANCTIONED FOR WILFUL VIOLATIONS  
OF THE DISCHARGE INJUNCTION AND OTHER COURT ORDERS**

Comes now Petitioner Jefferson County Circuit Clerk ANNE-MARIE ADAMS (hereinafter "Petitioner Adams"), a defendant in the case of *Patricia Working, Rick Erdemir, and Floyd McGinnis, Plaintiffs, v. Jefferson County Election Commission, Alan King, Mike Hale, and Anne-Marie Adams, Defendants*, Jefferson County Circuit Court Civil Division No. CV-2008-900316, and moves this Court for an order requiring the said Plaintiffs and their counsel, Albert Jordan, and the law firm of Wallace, Jordan, Ratliff & Brandt, (hereinafter "Respondents") to show cause why they should not be sanctioned for their willful violations of the Discharge Injunction of this Court dated November 22, 2013 (Doc. 2248), the automatic stay embodied in 11 U.S.C. §§ 362(a)(1), 922(a), as well as their contumacious disregard of ¶ 7 of the Order of this Court dated January 24, 2012 (Doc. 588), affirmed, *Working et al. v. Jefferson County*, No. 2:12-cv-00787-IPJ, Docs 11, 12 (dated 04/30/12).

In support of this motion, pursuant to F.R.Evid 201 (b) and Bankr.R. 9017, Petitioner Adams respectfully requests the Court to judicially notice the proceedings in *Working et al. v.*



*Jefferson County Election Commission et al.*, Jefferson County Circuit Court No. CC-2008-900316. Petitioner would show unto the Court the following facts and applicable law.

**A. The Relevant Facts**

1. On January 31, 2008, Patricia Working (“Working”) and Rick Erdemir (“Erdemir”) commenced a civil action in the Circuit Court of Jefferson County against the Jefferson County Election Commission, Alan King, Mike Hale, and Petitioner Adams.<sup>1</sup> In their complaint, the Respondents alleged that

Defendant Jefferson County Commission is an agency of the State of Alabama, and is responsible for canvassing and declaring the results of elections for voters on non-municipal matters. The individual defendants are Alan King, probate judge No. 1 for Jefferson County, Anne-Marie Adams, the circuit clerk for Jefferson County, and Mike Hale, sheriff for Jefferson County. Collectively, these defendants, by virtue of their offices, comprise the Jefferson County Election Commission. *They are named as individual defendants solely for the purpose of securing any needed relief in the nature of a writ of mandamus.*

*Working et al. v. Jefferson County Election Commission*, Jefferson County Circuit Court No. CV-2008-900316 (Verified Complaint, ¶ 2, p. 2.). (Emphasis added.) The principal cause of action was an allegedly unconstitutional election for District One of the Jefferson County Commission. The complaint also alleged claims of denial of freedom of speech under the First and Fourteenth Amendments to the United States Constitution. *Id.*, p. 10).

2. The Circuit Court dismissed the case on March 18, 2008, finding that the Respondents lacked standing; and that in any event, the election was authorized by law.

3. The Alabama Supreme Court reversed the Circuit Court on June 30, 2008. In finding that Respondents Working and Erdemir had standing to bring the action, the Alabama Supreme Court noted that *Jefferson County incurs costs* in holding elections; and that the State of Alabama

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<sup>1</sup> Floyd McGinnis was subsequently added as a plaintiff in the case.

is required to reimburse the County for some of those costs. *Working et al v. Jefferson County Election Commission*, 2 So.3d 827, 834-836 (Ala.2008).

4. On remand, counsel for the other Respondents sought an award of attorney's fees. They also sought mediation on the issue. The Circuit Court denied the motion for attorney's fees and did not address the mediation request. On April 22, 2011, the Alabama Supreme Court held that the Circuit Court erred by denying mediation; vacated the denial of attorney's fees, and remanded the case for mediation. *Working v. Jefferson County Election Commission*, 72 So.3d 18, 21 (Ala.2011).

5. Jefferson County filed this Chapter 9 Involuntary Bankruptcy Petition on November 9, 2011.

6. On December 9, 2011, the Respondents filed in this Bankruptcy Court a document entitled "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 the Alternative, Motion for Relief from Automatic Stay." (Doc. 386.)

7. On January 24, 2012, this Court entered an order which provides in relevant part:

.....

2. The George Objection, Swindle Objection, and Working Objection are **GRANTED IN PART**, to the extent set forth in this Order, and otherwise **DENIED**.

.....

6. Subject to the terms and conditions of this Order, the automatic stay imposed by Sections 362 and 922 is modified to the extent necessary to allow the Working Parties to continue that certain lawsuit styled *Working v. Jefferson County Election Commission, et al.* in the Jefferson County Circuit Court Case No. CV-2008-900316 ("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.

7. Notwithstanding any other term or provision of this Order, any action to liquidate, assert, assess, recover or collect a claim from the County, the County Commission (the "Commission") or its Commissioners (the "Commissioners"), including without limitation,

the County as a political subdivision of the State of Alabama, hereby remained stayed. Without limitation of the foregoing, **the stay applies to any effort by George Swindle or the Working Parties 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 “JCEA”) or the constituent members of the JCEA in their official capacities, under applicable State law.”**

Doc. 588. (Emphasis added.)

8. Respondents appealed to the United States District Court for the Northern District of Alabama this Court’s denial of their objection and motion for relief from the automatic stay. Northern District Judge Inge Johnson (“Judge Johnson”) noted that the Respondents “seek reversal of [the Order of this Court] so that they may proceed to mediation on the issue of attorney fees and, assuming a decision in their favor, may collect on the same from funds of the Sheriff, the Probate Judge, and/or the Circuit Clerk not appropriated by Jefferson County.” *Patricia Working, Rick Erdemir, and Floyd McGinnis v. Jefferson County, Alabama*, Case No. 2:12-cv-00787-IPJ (Northern District of Alabama), Doc, 11, p. 5.

9. For lack of justiciability, Judge Johnson dismissed the Respondents’ appeal on April 30, 2012, “finding nothing on appeal appropriate for this court to affirm or reverse the bankruptcy court[.]” *Id.*, p. 13.

10. The Respondents did not appeal Judge Johnson’s decision to the United States Court of Court of Appeals for the Eleventh Circuit; nor did they seek reconsideration of the decision.

11. On November 22, 2013, this Court entered its Findings of Fact, Conclusions of Law, And Order Confirming the Chapter 9 Plan of Adjustment for Jefferson County, Alabama (“Confirmation Order”). Doc. 2248. The Confirmation Order embodies a Permanent Injunction (“Discharge Injunction”):

(c) ... all Persons who have held, or may hold a Claim that is based on any act or omission, transaction, or other activity of any kind or nature that occurred prior to the

Effective Date, that otherwise arose or accrued prior to the Effective Date, or that is otherwise discharged pursuant to the Plan, are **permanently and completely enjoined from taking any of the following actions** on account of any such discharged Claim (the Permanent Injunction”): (1) commencing, conducting, or **continuing in any manner any suit action or proceeding of any kind against or affecting the County**, its property, its obligations, or any of its Related Parties that is inconsistent with the Plan or this Confirmation Order; (ii) attaching, **collecting, enforcing, levying, or otherwise recovering in any manner any award, decree, judgment, or order against or affecting the County, its property**, its obligations, or any of its Related Parties other than expressing permitted under the Plan, .....

*Id.*, p. 71 (Emphasis added.)

12. The Discharge Injunction specifically continues in effect “all injunctions of stays in effect in the Case under Bankruptcy Code sections 105, 362(a), or 922(a). *Id.*, ¶ 29 (c), p. 71; ¶ 30, p, 72.

13. The Alabama Supreme Court held, on December 6, 2013, that “the JCEC’s powers, its function, and its relationship to the State identify the JCEA as an ‘immediate and strictly governmental agency’ of the State” for purposes of immunity; and it agreed with the Circuit Court that “the Jefferson County Election Commission, Probate Judge Alan King, Circuit Clerk Anne-Marie Adams, and Jefferson County Sheriff Mike Hale are immune from liabilities for [the *Working* plaintiffs’] attorney fees and expenses under state law.” *Working v. Jefferson County Elections Commission*, \_\_\_ So.3d \_\_\_; 2013 WL 6360938, \*5, 6 (Ala.2013).

14. At all material times prior and subsequent to the entry of this Court’s Discharge Injunction and the 2013 Alabama Supreme Court decision immunizing Petitioner from liability for attorneys’ fees under Alabama law, the Respondents and their counsel have continued their efforts to collect attorney’s fees from the JCEC, Petitioner, and other JCEA members.

15. The only taxpayer funds available to Petitioner in her official capacity are provided solely by the State of Alabama or Jefferson County. *See, e.g.*, Ala. Code §§ 12-17-225.4, 12-19-311, and 12-19-312.

16. The Jefferson County Election Commission has no budget, operating funds, offices, property, or staff. It does not dispense, and has no funds to dispense, to anyone.

17. The Respondents have never designated or suggested any non-state or non-county source of funds from which Petitioner could pay their attorney fees.

18. Petitioner has been actually injured by Respondent's willful violations of the Discharge Injunction and the automatic stay. Petitioner has been diverted from her work as the elected Circuit Clerk by being required to participate in mediation proceedings and to respond to the Respondent's attorney fee proceedings in the Circuit Court of Jefferson County. Moreover, Petitioner has incurred attorney fees in her preparing and presenting a defense in the Respondents' Circuit Court proceedings. She is also obligated to pay the stenographer's fee for a hearing before Judge Scott Vowell on December 4, 2014.

19. In the Confirmation Order of November 22, 2013, this Court retained jurisdiction of this action, and "reserve[d] all powers as are necessary or appropriate to enforce or to give effect to the Court's retained jurisdiction under the Plan and this Confirmation Order, including by way of injunction." Doc. 2248, ¶ 38, pp. 77, 78.

### **The Applicable Law**

20. Under the Bankruptcy Code: "... an individual injured by any willful violation of the stay provided in this section shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages." 11 U.S. C. § 362 (k)(1)." *See. Lodge v. Kondaur Capital Corp.*, 750 F.3d 1263, 1268, 1271 (11<sup>th</sup> Cir.2014); *Justice Cometh, Ltd. v. Lambert*, 426 F.3d 1342, 1343(11<sup>th</sup> Cir. 2005).

21. A violation of the bankruptcy stay is "willful" "if a creditor's conduct was intentional

(as distinguished from inadvertent), and committed with knowledge of the pendency of the bankruptcy case.” *Vasquez Laboy v. Doral Mortgage Corp.*, 647 F.3d 367, 374 (1<sup>st</sup> Cir.2011).

22. Violation of a bankruptcy Discharge Injunction is punishable by contempt. *Matthews v. United States*, 184 B.R. 594, 599 (Bankr.S.D.Ala.1995); *Burke v. State of Georgia*, 258 B.R. 310, 414 (Bankr.S.D.Ga.2001); 3A Bankr.Serv.L.Ed. § 28:102.

### **Prayer for Relief**

WHEREFORE, the premises considered, Petitioner Adams moves this Court for entry of an order requiring Respondents Patricia Working, Rick Erdemir, Floyd McGinnis, Albert L. Jordan, and the law firm of Wallace, Jordan, Ratliff & Brandt to show cause if any there be, why they should not be sanctioned for their willful violations of the automatic stay imposed by 11 U.S.C. §§ 362(a)(1), 922(a); their willful disregard of ¶ 7 of the Order of this Court dated January 24, 2012 (Doc. 588); as well as their obvious violation of ¶ 29 of this Court’s Discharge Injunction.

After a hearing on the show cause motion, Petitioner respectfully prays for an award of actual damages, punitive damages, and attorney fees as provided in 11 U.S. C. § 362(k)(1).

Petitioner prays for such other, further, and different relief as to which she may be entitled.

Respectfully submitted,

**/s/U.W. Clemon**

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**Certificate of Service**

I hereby certify that on this 19<sup>th</sup> day of December 2014, I electronically filed a copy electronically served a copy of same on counsel for all parties: J. Patrick Darby at [pdarby@babco.com](mailto:pdarby@babco.com) for Jefferson County; Albert L. Jordan [bjordan@wallacejordan.com](mailto:bjordan@wallacejordan.com) for the *Working* Plaintiffs, himself, and his law firm; Shawna Smith at [smithsha@jccal.org](mailto:smithsha@jccal.org) for the Jefferson County Election Commission; French McMillan at [French@sewellmcmillan.com](mailto:French@sewellmcmillan.com) for Jefferson County Probate Judge Alan King; and James E. Murrill at [jay@rileyjacksonlaw.com](mailto:jay@rileyjacksonlaw.com) for Jefferson County Sheriff Mike Hale.

/s/U.W. Clemon \_\_\_\_\_  
OF COUNSEL



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| <b>a political subdivision of the State of</b> | ) |                               |
| <b>Alabama,</b>                                | ) | <b>Chapter 9 Proceeding</b>   |
|  | ) |                               |
| <b>Debtor.</b>                                 | ) |                               |

**ORDER REQUIRING THE *WORKING* PLAINTIFFS  
AND THEIR COUNSEL TO SHOW CAUSE WHY  
THEY SHOULD NOT BE SANCTIONED**

Based on the motion of Petitioner Anne-Marie Adams, and the judicially noticed on-going state court proceedings in *Patricia Working, Rick Erdemir, and Floyd McGinnis, Plaintiffs, v. Jefferson County Election Commission, Alan King, Mike Hale, and Anne-Marie Adams*, Case No. CV-2008-900316 (Circuit Court of Jefferson County), Respondents Patricia Working, Rick Erdemir, Floyd McGinnis, Albert L. Jordan, and the law firm of Wallace, Jordan, Ratliff & Brandt, L.L.C., are hereby ORDERED to appear before this Court at \_\_\_ a.m., on the \_\_\_\_\_ day of \_\_\_\_\_, 2015, and SHOW CAUSE, if any there be, why they should not be sanctioned for violation of the Discharge Injunction in this case, the automatic stay imposed by 11 U.S.C. §§ 362, 922, and the January 24, 2013, Order of this Court.

**DONE AND ORDERED** this \_\_\_\_\_ day of December, 2014.

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UNITED STATES BANKRUPTCY JUDGE