



IN THE CIRCUIT COURT OF WALKER COUNTY, ALABAMA

**MICHELLE E. PATE and
MIRIAM S. TIDWELL,**)
)
 Plaintiffs,)
)
 vs.) **CIVIL ACTION NO.: CV-20-900347**
)
 MATTHEW OWEN COMBS, ALFA)
 MUTUAL INSURANCE COMPANY,)
 COMBS BROADCASTING, INC., et al.,)
)
 Defendants.)

**DEFENDANT'S MOTION FOR DISQUALIFICATION OF PLAINTIFF
MICHELLE PATE AS COUNSEL**

COMES NOW, Defendant Matthew Owen Combs, by and through undersigned counsel, and respectfully requests that this Court disqualify Michelle Pate from representing the plaintiffs in this matter. As grounds therefore, Defendant states as follows:

1. The subject case involves a disputed automobile accident involving a limb from a tree landing in the roadway. There is a dispute as to when the limb fell, either before or after the accident at issue. It is anticipated that the parties will offer disputing testimony during trial as to when the tree limb fell and therefore, the cause of this accident.
2. Currently, both plaintiffs are represented by Michelle Pate, who is also a plaintiff in this case and was involved in the motor vehicle accident.
3. Alabama Rule of Professional Rule 3.7 states that "A lawyer shall not act as an advocate at a trial in which the lawyer is likely to be a necessary witness, except where: (1) the testimony relates to an uncontested issue; (2) the testimony relates to the nature and value of legal services rendered in the case; or (3) disqualification of the lawyer would work substantial hardship on the client."

4. Plaintiff Michelle Pate's testimony is not uncontested. Therefore, per Rule 3.7, she should not act as an advocate in this case.
5. Alabama Pattern Jury Instruction 1.04, of which undersigned has already requested be read to the jury during the trial of this case, is also reflective of the need for Ms. Pate's disqualification – “What the lawyers . . . say to you is not evidence.”
6. Comments on Rule 3.7 from the Alabama Bar Association mirror the issue presented in the previous paragraph. “The opposing party has proper objection where the combination of roles may prejudice that party’s rights in the litigation. A witness is required to testify on the basis of personal knowledge, while an advocate is expected to explain and comment on evidence given by others. It may not be clear whether a statement by an advocate-witness should be taken as proof or as an analysis of that proof.” As both opening statements and closing arguments reflect explanation and comments on evidence, versus actual evidence, it might not be clear to the jury in this case whether Ms. Pate is stating what the evidence is, which is what her testimony might have been while on the witness stand, versus what she understood said evidence to portray or conclude.
7. The only other applicable part of Rule 3.7 in this case is subsection (3) regarding substantial hardship on the client. This aspect should be a non-issue, as Ms. Pate has already presented before this Court that she has another lawyer, “the attorney who intends to represent me in this matter.” *See email submitted to this Court’s Judicial Assistant on November 5, 2023, attached as Exhibit A.* Defendant simply asks that such representation be made official since the parties are on the eve of trial.

For all of the foregoing reasons, Defendant respectfully requests that this Honorable Court make official Ms. Pate's suggested other representation in this case, and disqualify her as counsel for the upcoming trial of this matter.

/s/ Amanda Graham
Amanda Graham (KIS007)
Attorney for Defendant
Matthew Owen Combs

OF COUNSEL:

GAINES GAULT HENDRIX, P.C.
361 Summit Blvd. Suite 200
Birmingham, Alabama 35243
Phone: (205) 980-5888
agraham@ggh-law.com

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served electronically upon the following counsel of record via AlaFile or mailed to any of the following pro se individuals on this the 6th day of November, 2023.

Michele Pate
P.O. Box 3391
Jasper, AL 335502

Michael L. Haggard
Kevin J. Simpson
SMITH, TYRA, HAGGARD & SIMPSON, LLC
132 First Street South
Alabaster, Alabama 35007

/s/ Amanda Graham
OF COUNSEL

EXHIBIT A

From: [Michele Pate](#)
To: [April Allen](#); [Amanda Graham](#); [Michele Pate](#)
Subject: Re: Case Number: 64-CV-2020-900347.00
Date: Sunday, November 5, 2023 5:08:33 PM

Additionally, the attorney who intends to represent me in this matter has a conflict and is scheduled to attend a Board of Equalization hearing on November 13th.

Michele

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Michele E. Pate
Attorney at Law
P.O. Box 3391
Jasper, AL 35502
Phone 205.275-1700
[*mpatelaw@gmail.com*](mailto:mpatelaw@gmail.com)

On Sun, Nov 5, 2023 at 9:36 AM Michele Pate <mpatelaw@gmail.com> wrote:

(I did not mean to send that last email unfinished)

April,

I am so sorry, I HAVE MADE A MISTAKE. The case (oral arguments) I have before the 11th Circuit Court of Appeals in Atlanta is set for November 14th, not November 13th, as I originally thought. The first notice we received from the 11th Circuit stated that we were set for the WEEK of November 13th. Somehow, the date of the actual setting (November 14th), which was received months later, did not make it onto my calendar.

I am hopeful that you can move our trial to another day the week of November 13th? Again, I am so sorry for any inconvenience!!

Michele

--

Michele E. Pate
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Phone 205.275-1700
[*mpatelaw@gmail.com*](mailto:mpatelaw@gmail.com)

On Sun, Nov 5, 2023 at 9:29 AM Michele Pate <mpatelaw@gmail.com> wrote:

April,

I am so sorry, . The case (oral arguments) I have before the 11th Circuit Court of Appeals is set for November 14th, not November 13th as I originally thought. The first notice we received from the 11th Circuit stated that we were set the WEEK of November 13th. Somehow, the date of the actual setting (November 14th), did not make it on to my calendar.

On Wed, Nov 1, 2023 at 9:04 AM April Allen <april.allen@alacourt.gov> wrote:

Good morning,

RE: Pate V. Combs CV-2020-900347

This matter is currently the second case out on our jury trial week. On November 13, 2023 we will be handling criminal matters. We expect the parties ready on Tuesday November 14, 2023 at 9:00 am in courtroom 303.

Thank you,

April Allen

Judicial Assistant

Circuit Court Judge Gregory M. Williams

1803 3rd Ave, Suite 305, Jasper, AL 35501

(205) 384-7263

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*Michele E. Pate
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