

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS  
CIVIL DIVISION

COURTNEY RAE HUDSON

PLAINTIFF

VS. Case No. \_\_\_\_\_

ARKANSAS ADMINISTRATIVE OFFICE OF THE COURTS;  
SUPREME COURT OFFICE OF PROFESSIONAL CONDUCT;  
MARTY SULLIVAN, EXECUTIVE DIRECTOR OF THE ADMINISTRATIVE  
OFFICE OF THE COURTS; and  
CHARLENE FLEETWOOD, ACTING DIRECTOR OF THE OFFICE  
OF PROFESSIONAL CONDUCT DEFENDANTS

**COMPLAINT FOR INJUNCTION AND PRELIMINARY INJUNCTIVE RELIEF  
PURSUANT TO ARKANSAS RULE OF CIVIL PROCEDURE 65**

COMES NOW, Plaintiff, Courtney Rae Hudson, by and through her attorneys,  
DENTON, ZACHARY & NORWOOD, PLLC and for her Complaint and Request for  
Preliminary Injunction states as follows:

1. Courtney Rae Hudson (hereafter “Justice Hudson”) is an Associate Justice of the Arkansas Supreme Court.
2. The Arkansas Administrative Office of the Courts (hereafter “AR-AOC”) is an agency within the judicial branch of the Arkansas State Government that holds some public records solely for the purposes of storage, safekeeping, or data processing for others.

3. The Supreme Court Office of Professional Conduct (hereafter “OPC”) was created by the Court to carry out the Court’s constitutional obligations on disciplining attorneys. OPC was not created by statute and is not governed by statute.

4. Marty Sullivan (hereafter “Sullivan”) is Executive Director of the Administrative of the Courts.

5. Charlene Fleetwood (hereafter “Fleetwood”) is Acting Director of the Office of Professional Conduct.

6. On August 23, 2024 the Director of the Administrative Office of the Courts and the Acting Director of the Office of Professional Conduct received a Freedom of Information Act Request from Mark Friedman, Senior Editor of *Arkansas Business* for “[a]ny and all communications” sent after January 1, 2023 between Lisa Ballard and the following individuals: (1) Allison Hatfield; (2) Ann Laidlaw; (3) Doug Smith; (4) Linda Napper; and (5) Justice Courtney Hudson.

7. The only potentially responsive records to this request are emails between Justice Hudson and Lisa Ballard, the former director of OPC. The custodian of these records is Justice Hudson. The request is an individualized, targeted request for correspondence of Justice Hudson. As such, the Arkansas Freedom of Information Act dictates that the request must be directed to Justice Hudson so she, and she alone, can respond as appropriate under the Arkansas Freedom of Information Act.

8. Sullivan, as AR-AOC Director, is not the custodian of the records requested under the August 23, 2024 freedom of information request. The FOIA

allows Arkansas citizens to “make a request to the custodian” of the public records to “inspect, copy, ... or receive copies of public records.” The custodian is “the person having administrative control of [the requested] record.” A person is not the custodian if he or she “holds public records solely for the purposes of storage, safekeeping, or data processing for others.” Ark. Code Ann. 25-19-103(1)(B).

9. To the extent Sullivan or AR-AOC is in possession of any responsive records it is only because AR-AOC stores data for the Court.

10. Similarly, as Director of the Office of Professional Conduct, Fleetwood is not the custodian of Justice Hudson’s emails because neither the Office of Professional Conduct nor Fleetwood have administrative control over the records.

11. OPC was created to carry out the Court’s constitutional obligations regarding attorney discipline. OPC simply stands in the Court’s shoes to carry out a portion of the Court’s constitutional duties. The exemptions to the Freedom of Information Act not only apply to the officeholder, but also “applies across-the-board to staff members and private consultants for all officials listed in the states, *i.e.*, the ... Supreme Court Justices.” John J. Watkins et al, *The Arkansas Freedom of Information Act* 159 (6<sup>th</sup> ed. 2017). *See also, Bryant v. Mars*, 309 Ark. 480, 830 S.W.2d 869 (1992) (finding the exemptions to FOIA are applicable to not just the Attorney General but also include staff members).

12. Based on the language contained in Section 25-19-105(b)(7) any unpublished memoranda, working papers, or correspondence by Supreme Court Justices, employees retained by the court, and by any committee members appointed

to perform functions required or authorized by the Arkansas Supreme Court are exempt from disclosure under FOIA. This language would clearly exempt any communications by or to a Justice and his or her staff, as well as correspondence by or to other employees or appointees of the boards and committees under the Arkansas Supreme Court's umbrella, such as the staff as OPC.

13. Further, at no time has Justice Hudson delegated custodian duties to Fleetwood. Even if custodian duties had been delegated, the requested materials are exempt under FOIA as they are "unpublished memoranda, working papers, and correspondence of the ... Supreme Court Justice." Indeed, the subject request specifically states that it is not seeking "unpublished memoranda, working papers, and correspondence of the Governor, members of the General Assembly, Supreme Court Justices, Court of Appeals Judges, and the Attorney General. Section 25-19-105(b)(7) clearly exempts requests for correspondence between a Justice and a third-party, including a court employee.

14. Indeed, Fleetwood intended to respond to the August 23, 2024 freedom of information request by stating that the requested communications were exempt from disclosure.

15. Upon learning of Fleetwood's position that the information requested was exempt from disclosure, five Supreme Court Justices voted to overrule Fleetwood's position and have any materials found be produced including correspondence of Justice Hudson. Like Fleetwood, these five Supreme Court justices

are not custodians of the requested documents and do not have authority to turn them over pursuant to FOIA.

16. Instead of allowing Justice Hudson to respond to the FOIA request herself and assert any exemptions she may wish to assert, the Court has bypassed her rights under FOIA and attempted to unilaterally mandate production of documents over which Justice Hudson is the custodian. Just as the General Assembly cannot mandate production of correspondence materials requested of one legislator under the Freedom of Information Act, the Supreme Court cannot attempt to assert FOIA authority over the individual emails of one Justice.

17. Additionally, the “vote” of the Justices was wholly improper because, in essence, the Court acted to determine an issue of statutory construction without jurisdiction and without any pending appeal. Worse, because the Court does not have any pending appeal before it on this issues the Court’s “decision” will not be memorialized in any Court opinion.

18. In short, the Court lacks any authority whatsoever under which to order Defendants to respond to the request in a particular way or to order Justice Hudson to turn over documents.

19. The Arkansas Attorney General’s Office has written a memo on this matter agreeing with Justice Hudson’s position that Fleetwood and Sullivan are not the custodian of the requested records and that the records are exempt from being produced under the Arkansas Freedom of Information Act. The Arkansas Attorney General’s memo is attached to this Complaint as Exhibit A.

20. These five Supreme Court Justices, nevertheless, have instructed Defendants to produce these materials despite not having jurisdiction, allowing briefing or issuing an opinion. As of the preparation of this Motion, Defendants intend to follow the orders of the five Supreme Court Justices and disclose the materials. As such, Justice Hudson is forced to file this Complaint and move for preliminary injunctive relief so that merits of the issue can be adequately heard and irreparable harm avoided.

21. The actions of the Defendants, or any one of them, as described above, if implemented, will violate the Arkansas Freedom of Information Act, the Arkansas Constitution, due process and constitutional rights of Justice Hudson and cause her immediate, substantial and irreparable harm. Additionally, the actions of Defendants will create dangerous precedent wherein a group of government officials can force a single individual to respond to a FOIA request in a specific way bypassing any protections that individual may have under the Arkansas Freedom of Information Act or the Arkansas Constitution.

22. As detailed above, Justice Hudson can show a substantial likelihood of prevailing on the merits at a final hearing. The Defendants will suffer no harm from delay pending review of this matter on the merits. The public interest will be served in the issuance of a preliminary injunction so that issues can be heard fully on the merits and not secretly decided by five Arkansas Supreme Court Justices with no guidance given by them on future requests under the Freedom of Information Act.

23. To avoid any prejudice or further injury, Justice Hudson requests that preliminary temporary injunctive relief be issued until the time the Court can set a hearing on the merits. Plaintiff is notifying all Defendants of this motion. As such, all Defendants will have actual notice of this request.


WHEREFORE, Plaintiff, Courtney Rae Hudson hereby requests that the Court issue a preliminary injunction prohibiting Defendants from producing materials in response to the August 23, 2024 Freedom of Information of Act Request by Mark Friedman, a trial on the merits of the action, and for all other relief to which Plaintiff is entitled.

Respectfully submitted,

By:   
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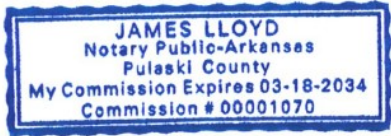
VERIFICATION

I, Courtney Rae Hudson, Associate Justice of the Arkansas Supreme Court, do hereby state on oath that I have read the above pleading and the facts contained therein are true and correct to the best of my knowledge and belief, and that without a preliminary injunction irreparable harm will be suffered as described herein.

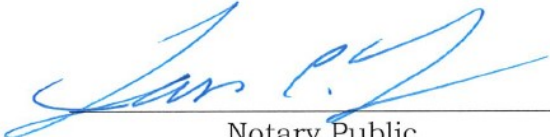
  
\_\_\_\_\_  
Courtney Rae Goodson

STATE OF ARKANSAS            )  
  )ss  
COUNTY OF PULASKI        )

SUBSCRIBED AND SWORN to before me, a Notary Public for the Court and State aforesaid, this 6<sup>th</sup> day of September, 2024.



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SEAL

  
\_\_\_\_\_  
Notary Public

3/18/34  
\_\_\_\_\_  
My Commission Expires