

**Complaint to Judicial Inquiry & Review Commission**  
**Re: Supreme Court of Virginia Justice William C. Mims, Attachment #1**

The Supreme Court of Virginia hearing on Elizabeth River Crossings OPCO, LLC, v. Record No. 130954 Danny Meeks, et al., and Virginia Department of Transportation v. Record No. 130955 Danny Meeks, et al., took place on September 11, 2013.

In the original lawsuit that prompted this appeal, Circuit Court Judge James A. Cales ruled on May 1, 2013, that the General Assembly had “exceeded its power by ceding the setting of toll rates and taxes in violation ... of the Constitution of Virginia.” His ruling called into question provisions of the Public-Private Transportation Act of 1995 (PPTA), including the delegation of taxing authority and the lack of legislative participation in setting toll rates involving profits to a public service corporation. Since the Supreme Court of Virginia’s decision in this case stood to impact the constitutionality of the PPTA, Justice William C. Mims should have recused himself for the following reasons:

- 1) Justice Mims was a delegate in the Virginia General Assembly, where he voted for the precursor of the PPTA in 1994 and for the PPTA in 1995.
- 2) Justice Mims was a senator in the Virginia General Assembly, where he introduced SJ 198 Study; VDOT Office of Public-Private Partnership, requesting that VDOT “study the need for, responsibilities of, and budget for an Office of Public-Private Partnership within its organizational structure.”[<http://lis.virginia.gov/cgi-bin/legp604.exe?001+sum+SJ198>]
- 3) Justice Mims, as senator, was a patron of the Public Private Education Facilities and Infrastructure Act of 2002, the provision for which “are similar to those in the PPTA of 1995.” [<http://lis.virginia.gov/cgi-bin/legp604.exe?021+sum+SB681>]
- 4) Justice Mims was Chief Deputy Attorney General of Virginia from 2006-2009, during which time his office was involved in defending a related case, Marshall v. NVT. The Attorney General during this period was Robert McDonnell, the current governor whose administration negotiated the contract at the heart of this lawsuit.
- 5) Justice Mims was Attorney General of Virginia from 2009 to 2010; he then became a partner and lobbyist in the firm Hunton & Williams, which represented appellants in this case, some of whom were also represented by the Office of the Attorney General. (It should be noted that Justice Mims was quoted in an April 10, 2010, article in the Times-Dispatch as having said he “will disqualify himself from cases from the attorney general’s office...”)

Canon 1 of Canons of Judicial Conduct states that “A judge shall uphold the integrity and independence of the judiciary.” Commentary on this canon states that “violation of this Canon diminishes public confidence in the judiciary and thereby does injury to the system of government under law.”

Canon 3 states that “A judge shall perform the duties of judicial office impartially and diligently.” Rule E under this canon requires disqualification “in a proceeding in which the judge’s impartiality might reasonably be questioned, including but not limited to instances where: (a) The judge has a personal bias or prejudice concerning a party or a party’s lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding; (b) The judge served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge has been a material witness concerning it.”

I believe, as do other witnesses, that Justice Mims, by not recusing himself from this hearing, compromised the integrity and impartiality of the Supreme Court of Virginia and any resulting opinion in this case.

Submitted by

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Theresa L. Danaher

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