



**JUDGE BEVERLY B. MARTIN**  
**Nominee to the Eleventh Circuit Court of Appeals**

President Obama has nominated Beverly B. Martin, U.S. District Court Judge for the Northern District of Georgia, to fill a vacancy on the Eleventh Circuit Court of Appeals, which covers the federal districts within Florida, Georgia, and Alabama.

**QUALIFICATIONS**

Judge Martin has a distinguished professional history. She graduated from Stetson University in 1976 and the University of Georgia Law School in 1981. After law school, she worked in private practice at Martin Snow, LLP in Macon, Georgia, where she handled business transactions and criminal appointments. In 1984, she moved to Atlanta to serve as an assistant attorney general for the state of Georgia. She began a three year period in 1994 as a federal prosecutor focusing on drug conspiracy, firearms possession, and counterfeiting cases. She was appointed acting U.S. attorney, and then later confirmed by the Senate as U.S. attorney in 1998.

President Clinton nominated her to serve on the United States District Court for the Northern District of Georgia in 2000, where she has served since. Judge Martin has, on many occasions, sat by designation on the court to which she is nominated. Her decisions evidence a careful attention to facts and law, and her rulings are well within the legal mainstream.

This year, the American Bar Association's Standing Committee on the Federal Judiciary gave Judge Martin its highest rating of "well qualified."<sup>1</sup>

**CASES**

**Constitutional Protections & Civil Rights**

Judge Beverly Martin has established a strong, if limited, record on issues of constitutional law. For instance, she has no published opinions or orders addressing the Second Amendment or the Takings Clause of the Fifth Amendment. Judge Martin has a scant record on privacy rights, and no cases on choice or LGBT concerns. And, she has very few rulings addressing the Fourteenth Amendment's due process guarantee. But, in

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<sup>1</sup> American Bar Association, Rating of Article III Judicial Nominees 111<sup>th</sup> Congress, 2009, <https://www.abanet.org/scfedjud/ratings/ratings111.pdf>

the areas in which she has ruled, Judge Martin has closely followed the law and precedent, and made tough decisions without concerns of political expediency.

Her approach to First Amendment challenges demonstrates Judge Martin's faithfulness to the Constitution. On two separate occasions, Judge Martin has invalidated, consonant with her responsibility of judicial review, local ordinances that acted as prior restraints on freedom of speech as embodied in the First Amendment. *Lamar Advertising Co. v. City of Douglasville*, 254 F. Supp. 2d 1321 (N.D. Ga. 2003), *Lamar Co. L.L.C. v. City of Marietta*, 538 F. Supp. 2d 1366 (N.D. Ga. 2008). Both cases involved ordinances that prohibited the display of signs without permits. In each case, Judge Martin applied Supreme Court precedent to invalidate laws that had constitutionally deficient permitting processes.

However, in *Florida Association of Professional Lobbyists Inc. v. Division of Legislative Information Services*, 525 F.3d 1073 (11th Cir. 2008), Judge Martin sat by designation on an Eleventh Circuit panel that issued a *per curiam* opinion affirming the constitutional validity of Florida's expanded lobbyist reporting requirements and its prohibition on lobbyists' expenditures. Thus, Judge Martin's record indicates that while she has a healthy respect for the First Amendment, she also recognizes there are compelling government interests that sustain some speech limitations.

In a redistricting challenge, Judge Martin sat on a panel rejecting claims that the Georgia Senate's redistricting plan violated the Equal Protection Clause of the Fourteenth Amendment, the First Amendment, or the Georgia Constitution. In *Kidd v. Cox*, 2006 U.S. Dist. LEXIS 29689 (N.D. Ga. 2006), voters of Athens-Clark County and a member of the Georgia General Assembly brought suit after the Georgia Senate passed a bill—largely along party lines—to alter three senatorial districts. The change divided the county into two districts and diluted the area's heavily Democratic vote. As to plaintiffs' one person, one vote Equal Protection claim, the court found that the apportionment plan fell within firmly established constitutional guidelines since plaintiffs did not show arbitrariness or discrimination. *Id.* at 19. The Court sidestepped the Equal Protection gerrymandering claim and instead analyzed it under First Amendment jurisprudence, ultimately finding no violation.

Though she has not ruled on many civil rights cases, Judge Martin has displayed sensitivity to claims of discrimination based on race, gender and disability. She has sustained claimed violations of racial discrimination under the Fair Housing Act against motions for summary judgment. *United States v. Habersham Properties*, 319 F. Supp. 2d 1366 (N.D. Ga. 2003). An employee of a housing complex repeatedly told African American prospective tenants that an apartment had no vacancies, but told white prospective tenants apartments were available. *Id.* at 1369. Judge Martin also granted leave to amend a complaint by a blind man denied hotel accommodations who claimed a violation of the Americans with Disabilities Act; amending the complaint allowed him to clarify his reasons for recovering damages as well as adding separate negligence claims. *Amick v. BM & KM, Inc.*, 275 F. Supp. 2d 1378 (N.D. Ga. 2003). In addition, she has denied defendants' motions to dismiss § 1983 and § 1985 claims based on gender and race discrimination and allowed those claims to go to trial. *See Aque v. Home Depot U.S.A.*, 2009 U.S. Dist. LEXIS 55813 (N.D. Ga. 2009); *but see McMillan v. Dekalb*

*County*, 2005 U.S. Dist. LEXIS 44200 (N.D. Ga. 2005) (granting various motions to dismiss on reverse race discrimination claim, but sustaining § 1983 and Title VII claim).

## **Employment**

On reverse discrimination employment cases, Judge Martin thoughtfully balances the competing interests and issues fair decisions. In litigation spanning over thirty years and forty rulings, Judge Martin sat on a panel addressing an appeal by non-black employees of the City of Birmingham challenging a district court decree implementing race conscious job selection procedures for police captains. *Birmingham Fire Fighters Ass'n 117 v. Jefferson County*, 290 F.3d 1250 (11th Cir. 2002). Birmingham failed to advance non-white employees for many years, and following the initiation of this suit the city was subsequently required to implement a job promotion program that more accurately matched skills and job performance with promotion. Twenty years into the litigation, Judge Martin joined a unanimous decision denying an appeal challenging the district court's order which altered the City's hiring practices. The court held that the claim was time barred. Although the non-black employees alleged they were filing a new motion, the court found that they were "re-packaging in new garb [] the corpse of an old motion in an attempt to resurrect it" which could not be "used as a rouse to circumvent the time requirements for filing an appeal" under the rules of civil procedure. *Id.* at 1254. And, in an unpublished district court decision, Judge Martin reduced but upheld a jury verdict in favor of white librarians who sued the Atlanta-Fulton Public Library System after they were transferred from their positions in an effort to replace them with non-white employees. *Bogle v. McClure*, 00-02071-CV-BBM-1 (N.D. Ga. 2002); *aff'd* 332 F.3d 1347 (11th Cir. Ga. 2003). See also *McMillan v. Dekalb County*, 2005 U.S. Dist. LEXIS 44200 (N.D. Ga. 2005) (granting various motions to dismiss on reverse race discrimination claim, but sustaining § 1983 and Title VII claim).

Judge Martin has, however, narrowly interpreted statutes when she determined the facts were unable to sustain a claim or when parties failed to timely file. In *Brown v. Cranford Transportation Service, Inc.*, 244 F. Supp. 2d 1314 (N.D. Ga. 2002), she granted summary judgment to a company claiming it was not an employer within the meaning of the Family and Medical Leave Act ("FMLA"). In so doing, she held that the motion implicated a factual attack on the court's subject matter jurisdiction, which did not require her to apply a presumption of truthfulness to the allegations and instead placed the burden of proof on the plaintiff. Judge Martin found that the trucking company failed to employ fifty employees during twenty weeks within a calendar year, as required by the FMLA—in light of plaintiff's affidavit suggesting contrary facts. See also *AUI, L.L.C. v. Dekalb County*, 2006 U.S. Dist. LEXIS 89828 (N.D. Ga. 2006) (dismissing assignee claim that County declined contract assignment based on race in violation of § 1983 because suit not filed within two-year statute of limitations); *but see Scott v. Gwinnett Hosp. Sys., Inc.*, 2005 U.S. Dist. LEXIS 45975 (N.D. Ga. 2005) (denying employer's motion for summary judgment on FMLA claim, finding plaintiff presented sufficient evidence of interference with leave and retaliation for the same).

In *Weeks v. Harden Manufacturing*, 291 F.3d 1307 (11th Cir. 2002), Judge Martin, sitting by designation, authored the opinion for the panel in which she determined

that it was not objectively reasonable for five employees to believe that a mandatory arbitration provision governing Title VII cases was an unlawful employment practice. As such, she remanded the case to the district court, holding that an employee's refusal to sign a compulsory arbitration provision regarding employment was not a protected activity for the purposes of justifying a retaliation complaint. *Id.* at 1310.

## **Environment**

Judge Martin has ruled on only a few environmental cases. She issued two detailed orders in an action where the Sierra Club and other environmentalists alleged state and federal agencies violated the Clean Air Act by approving Metro Atlanta's \$36 billion transportation plan. *Sierra Club v. Atlanta Reg'l Comm'n*, 171 F. Supp. 2d 1349 (N.D. Ga. 2001); 255 F. Supp. 2d 1319 (N.D. Ga. 2002). In the first order, Judge Martin denied the plaintiff's injunction request. Her later order granted the government's motion for summary judgment. But, she did find a violation in *College Park Holdings v. Racetrac Petroleum*, 239 F. Supp. 2d 1334 (N.D. Ga. 2002). *College Park* involved two adjoining commercial landowners; the plaintiff owned land for commercial use and the defendant operated a gas station. Plaintiff discovered benzene and other petroleum contaminants on its property and sued alleging violations of the Resource Conservation and Recovery Act and state environmental law. Judge Martin found violations of federal and state environmental laws and regulations, ordered a permanent injunction against defendant to stop its contaminating activities, and awarded litigation costs.

## **International Law**

On only one occasion has Judge Martin ruled on the applicability of foreign law, but in so doing, she issued a straightforward application of the Federal Rules of Civil Procedure to determine jurisdiction over a foreign party in a securities fraud suit. In *In Re S1 Corporation Securities Litigation*, 173 F. Supp. 2d 1334 (N.D. Ga. 2001), Judge Martin ruled that a foreign defendant, a Belgium resident, received proper service and was lawfully within the jurisdiction of the District Court. The defendant alleged that since he was not served in accordance with the requirements of Fed. R. Civ. P. 4(m)—within 120 days of the commencement of the action—the claims against him should be dismissed. Judge Martin disagreed. Rule 4 provides a clear, bright-line exception to the rigid 120 days test as applied to a foreign party. And, in these instances, according to Rule 4(f), service of process may be effected on defendants in other countries pursuant to “the Hague Convention.” Belgium is a signatory to the Convention. Applying the Hague Convention's guidelines, Judge Martin held that the defendant was properly served.

## **Criminal Justice**

Judge Martin's record reveals a concern for the rights of the accused. For example, sitting by designation on the Eleventh Circuit, Judge Martin issued a pointed dissent in which she argued that the repeated discharge of a taser gun on a handcuffed, seated, and crying individual to induce him to stand up was a clear violation of the Fourth

Amendment. *Buckley v. Haddock*, 2008 U.S. App. LEXIS 19482 (11th Cir. 2008). In her dissent she wrote, “[i]n light of the repeated and continuous nature of the force used against [the Defendant], the substantial pain and bodily injury that resulted, and the absence of any arguable justification, I have no difficulty in concluding that no particularized preexisting case law was necessary for it to be clearly established that [the officer’s] conduct was unconstitutional.” *Id.* at 805-06. *See also United States v. Farley*, 2008 U.S. Dist. LEXIS 12737 (N.D. Ga. 2008) (holding that thirty-year mandatory minimum sentence of defendant convicted of crossing state lines with the intent to engage in a sexual act with a minor, but who never actually harmed his victim, violated the Eighth Amendment).

When Judge Martin addresses claims of due process violations or ineffective assistance of counsel, she consistently gives them serious attention and consideration—whether she rejects them or not. *See United States v. Rodriguez*, 2007 U.S. App. LEXIS 29417 (N.D. Ga. 2007) (denying defendant’s claim that a delay in his appeal was a violation of his due process rights); *Green v. United States*, 2008 U.S. Dist. LEXIS 12747 (N.D. Ga. 2008) (denying defendant’s claims of ineffective assistance of counsel). And, she carefully analyzes motions to suppress and other requests for court orders. *United States v. Reynolds*, 526 F. Supp. 2d 1330 (N.D. Ga. 2007) (granting motions to dismiss evidence and statements to police, finding violation of Fifth Amendment rights on non-*Mirandized* statements).

But, Judge Martin has also issued at least one unpublished order denying relief for a convicted death row inmate. Ronald Keith Spivey filed a § 1983 action to stay his execution challenging the qualifications of members of Georgia’s Board of Prisons and Pardons alleging that their approved lethal injection method violated the Eighth Amendment. *Spivey v. State Board Pardons*, 1:02-cv-00181-BBM (N.D. Ga. 2002). Judge Martin applied Circuit precedent and held that the motion was effectively a renewed *habeas* petition. And, since the petitioner failed to properly file the petition as required by the Antiterrorism and Effective Death Penalty Act, 28 U.S.C. § 2244(b)(3)(A), her court lacked jurisdiction to hear the claim. *Id.* Although the decision was affirmed on appeal, Judge Barkett dissented arguing that the claim was effectively filed. 279 F.3d 1301, 1304-06 (11th Cir. 2002).

## **Access to Justice**

Judge Martin has a balanced record on access to justice issues. In *Kidd v. Cox*, 2006 U.S. Dist. LEXIS 29689 (N.D. Ga. 2006), Judge Martin held that voters had standing to challenge Georgia’s redistricting plan after a change in law diluted their vote. And, as recently as 2008, she noted that recent Supreme Court decisions have not altered the pleading standard in federal cases. *White v. Wachovia Bank*, 563 F. Supp. 2d 1358, 1363 (N.D. Ga. 2008) (citing *Bell Atl. Corp. v. Twombly* for principle that federal courts rely on notice, not fact pleadings) (internal citations omitted).

Judge Martin has ruled on a limited number of preemption cases. Overall, her rulings reflect the often complex interplay between state and federal law, and generally recognize the legitimate interests of those bringing claims. A recent case before Judge

Martin's court, *White v. Wachovia Bank*, 563 F. Supp. 2d 1358 (N.D. Ga. 2008), is instructive. In *White*, plaintiffs were members of a class action suit against Wachovia Bank alleging a number of illegal business practices including the unwarranted charging of overdraft fees and delays in posting deposits. They sued under several state law theories. On a motion to dismiss, Wachovia argued that the National Bank Act and its implementing regulations conflicted with and preempted these claims. Judge Martin disagreed. She held that the applicable federal regulations, which have broad preemptive language, were not violated because the state laws only "incidentally affected" Wachovia's deposit-taking powers and were not inconsistent with their charge. In so ruling, she held that she was "not inclined to dismiss Plaintiffs' claims as preempted before the parties have developed record evidence." *Id.* at 1368. *But see Promissor, Inc. v. Branch Bank and Trust Company*, 2008 U.S. Dist. LEXIS 98472 (N.D. Ga. 2008) (sitting in diversity, Judge Martin grants motion to dismiss holding that Georgia's Commercial Code preempts common law negligence action for conversion because Code provides comprehensive remedy).

In other matters where Judge Martin addressed preemption, she did so with a fidelity to statutory requirements. In *Black v. Equinox Financial Management*, 2007 U.S. Dist. LEXIS 16767 (N.D. Ga. 2007), she clarified an earlier order from her court which had awarded attorneys fees to the defendant under the Fair Debt Collection Practices Act, 15 U.S.C. § 1692. The exact amount of the award was unspecified, but was issued in accordance with the Federal Rules of Civil Procedure 54(d) (providing for the award of fees). On a motion to clarify, Judge Martin held that the Act preempted the rule and as a result the court failed to meet the strict fees standard set forth under the statute. And in *Greaves v. McAuley*, 264 F. Supp. 1078 (N.D. Ga. 2003), Judge Martin ordered a class action shareholder suit alleging breach of various fiduciary duties to be remanded to state court under a carve-out provision of the Securities Litigation Uniform Standards Act, 15 U.S.C. § 77p(d). The parties agreed that the case should be heard in its entirety in either the state or federal venue. And, although some claims fell outside of the carve-out provision, she held that all doubts about jurisdiction should be resolved in favor of remand to state court. *Id.* at 1086.

## CONCLUSION

In nominating Judge Beverly B. Martin to the Eleventh Circuit Court of Appeals, President Obama selected a thoughtful and straightforward judge. Her record indicates that she approaches cases with an open mind, and weighs both parties' arguments before reaching her conclusion. We commend the President for picking a nominee with a strong voice who appears committed to our nation's core constitutional values.