

BEFORE THE COURT OF THE JUDICIARY
OF
ALABAMA



In the Matter of)
PATRICIA D. WARNER,)
Circuit Judge of the) Court of the Judiciary
Fifteenth Judicial Circuit) Case No. 40
of Alabama)

FIRST AMENDED COMPLAINT

The Alabama Judicial Inquiry Commission brings this Complaint against Judge Patricia D. Warner, Circuit Judge of the Fifteenth Judicial Circuit of Alabama. The facts and charges, upon which this complaint is based, averred separately and severally, are as follows:

1. Patricia D. Warner (hereinafter "Judge Warner") took office as a circuit judge of the Fifteenth Judicial Circuit of Alabama on January 18, 2005, and served continuously thereafter during the matters alleged in this complaint to have taken place after that date.

COUNT ONE

FACTS

2. From October 2, 2006, until August 15, 2008, Judge Warner presided over Susan D. Hall v. Malcolm J. Hall, DR-92-1256.01. On September 27, 2006, Ms. Susan D. Hall (now known as "Susan Raybon") filed a petition to show cause why her former husband, Mr. Malcolm Hall, should not be held in contempt of court for failing to make court-ordered child support payments. Judge Warner presided over Ms. Raybon's petition to show cause.

3. During the initial hearing on the petition held on March 19, 2007, and during the continuation of that hearing on April 4, 2007, both Ms. Raybon and Mr. Hall appeared pro se. At the hearing, Ms. Raybon contended Mr. Hall owed her more than \$7,000 in back child support. Mr. Hall admitted he owed Ms. Raybon a little over \$6,000 in back child support. Therefore, it was undisputed by the parties that Mr. Hall owed Ms. Raybon at least \$6,000 in back child support. Mr. Hall's defense as stated in court was that he had paid about \$12,000 for a private school for the child, although this was not a part of the child support agreement.

4. According to the record, Ms. Raybon maintained a personal Regions bank account into which Mr. Hall deposited child support payments and Ms. Raybon also deposited monies from other sources from time to time. Ms. Ramona Hall, Mr. Hall's current wife, appeared at the continuation of the hearing on April 4, 2007, and told the court she had reviewed the accounts and the documents that were supplied to the court. Ms. Hall stated she had made charts showing the Regions bank account and the monies paid by Mr. Hall, both into the Regions bank account and for the private school. The charts were submitted to the court for the court's consideration. Ms. Hall stated that she was an accounting manager and worked with accounts.¹After the hearings, Judge Warner entered an order on May 14, 2007, granting Mr. Hall credit for deposits Ms. Raybon made into

¹ During the April 4, 2007, hearing, Ms. Ramona Hall spoke on behalf of her husband, stating as follows:

MS. RAMONA HALL: Other than just on the totals, I mean, just to cut through the hard part, I mean, it really depends on whether you consider the payments to the school to be part of what he owes. Because if you don't, then it looks like a little over 6,000 difference. Like I said, there was no consistency that I could see to any month's payment. Sometimes it was less, sometimes more, sometimes nothing. Then if you take into consideration the payments made to the school then he breaks pretty much even. So, I mean, it just kind of boils down to how you view those payments.

her own account from other sources. According to the record, Mr. Hall did not dispute that these deposits were made by Ms. Raybon and should not be credited against his child support obligations. Also, it was undisputed that Mr. Hall had paid for private school, which was not provided for in the child support agreement. Judge Warner indicated on the record that she understood that the private school payments could not be credited to Mr. Hall's child support obligation under the child support agreement. On May 14, 2007, Judge Warner, in spite of Mr. Hall's admission that he owed in excess of \$6,000 in back child support, found Mr. Hall's child support arrearage to be only \$1,941.25.

5. After the May 14, 2007, order, Ms. Raybon retained Attorney Susan Norris to represent her. On June 12, 2007, Ms. Norris filed a motion to alter, amend, or vacate Judge Warner's order of May 14, 2007, alleging that Mr. Hall owed over \$7,000 in child support arrearage. Judge Warner set a hearing on that motion for August 20, 2007.

6. On August 17, 2007, the Friday before the hearing scheduled for August 20, 2007, Ms. Norris went to the office of Judge Warner's assistant to obtain copies of

exhibits in preparation for the hearing. Judge Warner walked into her assistant's office and began talking to Ms. Norris. Once Judge Warner learned that Ms. Norris was representing Ms. Raybon, Judge Warner initiated ex parte communications with Ms. Norris concerning Ms. Raybon, in which Judge Warner made derogatory comments about Ms. Raybon, including comments on Ms. Raybon's standard of living, saying, "Well, you know she drives a Lexus," in a sarcastic and mean-spirited tone. Judge Warner also mentioned to Ms. Norris that Ms. Raybon had deposited, into her checking account, the sale or purchase proceeds of a home. That deposit was one of the deposits Judge Warner had previously credited to Mr. Hall toward his child support arrearage, improperly reducing the amount owed by Mr. Hall from \$6,000 to \$1,941.25 in the May 14, 2007, order. Judge Warner thus admitted knowledge of improperly crediting payments from other sources against Mr. Hall's obligations.

7. The record shows that during the hearing on August 20, 2007, Ms. Norris reiterated to Judge Warner Mr. Hall's admission that he owed at least "a little over" \$6,000, an amount Ms. Norris stated Ms. Raybon would accept as

a judgment. Judge Warner ignored Mr. Hall's admissions and failed to rule on the motion. Judge Warner failed to rule on Ms. Raybon's motion to alter, amend, or vacate, in spite of the fact that Judge Warner admitted to Ms. Norris that she knew Ms. Hall had made some of the deposits into the Regions account containing the child support. It is apparent on the record that Judge Warner also admittedly knew that she could not credit to Mr. Hall, as child support payments, amounts he had paid for private school outside the child support agreement and that all parties had admitted that the amount owed, outside of crediting the private school payments, was between \$6,000 and \$7,000. Judge Warner knew or should have known her original decision was not supported by the record. The motion was deemed denied by operation of law on September 10, 2007. Ms. Raybon appealed to the Alabama Court of Civil Appeals.

8. On June 13, 2008, the Court of Civil Appeals reversed Judge Warner's calculation of the amount of child support arrearage due to be paid to Ms. Raybon based on two facts: a) Judge Warner credited Mr. Hall with having made all of the deposits into Ms. Raybon's Regions Bank checking account between 2001 and 2006; and b) the evidence was

undisputed that this calculation was in error because Ms. Raybon made some of the deposits.²

9. Despite the court's reversal of the arrearage determination based on improperly crediting all deposits into Ms. Raybon's Regions Bank account, Judge Warner did not subsequently attempt to determine which deposits were made by Mr. Hall and properly credited to him. Rather, on July 3, 2008, two days prior to the Court of Civil Appeals' issuance of its certificate of judgment returning jurisdiction of the case to Judge Warner's court, Judge Warner entered an order further lowering the amount of arrearage owed, holding:

[B]ecause evidence has not been presented to support which party made deposits into the checking account

²*E.g.*, the Court of Civil Appeals held:

[T]here was no evidence presented to support a finding that all the deposits made into the checking account had been made by the father. In fact, the mother specifically testified that she had deposited money into the checking account. The father did not even claim to have made all the deposits. There is nothing in the record to support the trial court's calculation of child support for the years 2001 to 2006. Because the trial court's calculation of the arrearage during the years 2001 to 2006 is unsupported by the evidence, we conclude that the trial court exceeded its discretion in calculating the father's child-support arrearage for 2001-2006.

Hall v. Hall, 998 So.2d 1072, 1076 (Ala. Civ. App. 2008).

set up according to the settlement agreement³ the deposits made will be accredited to the person named in the settlement agreement to make such deposits, Malcolm J. Hall, without further evidence to the contrary.

Judge Warner issued this order before receiving the court's certificate of judgment, despite the fact that the Court of Civil Appeals had given her notice on August 3, 2007, in its opinion in Wannamaker v. Wannamaker, 979 So. 2d 68 (Ala. Civ. App. 2007), which cited long-established and unmistakable precedent, holding that the trial court is divested of jurisdiction over a case during an appeal. In its opinion in Wannamaker, the appellate court noted that Judge Warner had admitted when she entered an order in a matter pending on appeal that she knew the appeal divested her of jurisdiction. In her haste to enter a new order in the present case, Judge Warner either ignored the fact that she did not have jurisdiction over the matter or failed to make any effort to ascertain the procedure for returning jurisdiction to her court. Jurisdiction is relinquished on the filing of a "Notice of Appeal" and

³ Contrary to Judge Warner's order, the parties' settlement agreement does not contain any provisions regarding any checking account, nor obviously who would be credited for deposits made into any such account.

returned with the issuance of a certificate of judgment by the appellate court.

10. Thus, with clear knowledge that Mr. Hall had not made and should not be credited with having made all deposits into Ms. Raybon's Regions Bank account from 2001 to 2006, and contrary to the plain import of the opinion of the Court of Civil Appeals, Judge Warner nevertheless entered an order, directly contrary to the Court of Civil Appeals' opinion, doing exactly that: crediting Mr. Hall with all such deposits.⁴ On July 9, 2008, Ms. Raybon filed a motion for Judge Warner to recuse or disqualify, on numerous grounds including Judge Warner's bias in the case; her continued failure to follow the evidence; her failure to follow the instructions of the Court of Civil Appeals; and Judge Warner's ex parte communications with Ms. Norris concerning Ms. Raybon. The motion was supported by an affidavit from Ms. Norris, disclosing Judge Warner's ex parte communications. On August 15, 2008, after the motion to recuse was filed, Judge Warner recused from the

⁴This order was subsequently reversed on appeal on February 27, 2009, because Judge Warner entered the order before the certificate of judgment was issued from the Court of Civil Appeals and was thus entered while the trial court was divested of jurisdiction during the appeal process. Raybon v. Hall, 17 So.3d 673 (Ala.Civ.App. 2009).

proceeding and, without a motion from any party and without basis or legal justification, Judge Warner improperly sealed the case file, stating, "[T]his case shall be SEALED from public scrutiny and no copies shall be made from this file without prior written permission from the Court." Judge Warner sealed the case file for Judge Warner's own benefit. As the Court of Civil Appeals observed in Ms. Raybon's second appeal, "[There is] no basis for the trial court's ordering the record sealed." Raybon v. Hall, 17 So. 3d 673, 675 n.1.

11. During some of the hearings before Judge Warner, Judge Warner failed to be patient, dignified, or courteous to Ms. Raybon or Ms. Norris. When Ms. Raybon or Ms. Norris addressed the court during the hearings, Judge Warner was inattentive or acted as if she were inattentive. Judge Warner also ignored or acted as if she were ignoring most of Ms. Raybon's and Ms. Norris's comments during the hearings. With regard to Mr. Hall and his non-party current wife, Judge Warner was considerate, patient, attentive, and sympathetic, even allowing the non-party wife to argue at length on Mr. Hall's behalf and submit her calculations,

which supported the position that the amount of Mr. Hall's arrearage was between \$6,000 and \$7,000.

CHARGES

Charge One

12. Judge Warner, a circuit judge of Montgomery County in the Fifteenth Judicial Circuit, while serving in that capacity, *failed to observe high standards of conduct so that the integrity and independence of the judiciary may be preserved*, as required by **Canon 1** of the Alabama Canons of Judicial Ethics, in that, separately and severally, she engaged in the conduct, or engaged in the conduct in bad faith, alleged in paragraphs 4, 6, 7,9, 10, and 11, under the circumstances or leading to the circumstances and conduct described in paragraphs 2 through 11, in that, under the circumstances described, she, among other matters,

- a. engaged in the ex parte conversation with Ms. Norris; and/or
- b. was prejudiced against Ms. Raybonas manifested by her conversations with Ms. Norris; and/or

- c. after the motion for recusal was filed and without a motion from any party or any basis or legal justification, improperly sealed the case file, stating, "[T]his case shall be SEALED from public scrutiny and no copies shall be made from this file without prior written permission from the Court," to protect herself from criticism; and/or
- d. was prejudiced against Mr. Hall paying Ms. Raybon the amount that he admitted was owed under the child support agreement; and/or
- e. credited Mr. Hall with payments he and/or others on his behalf admitted he did not make; and/or
- f. denied Ms. Raybon the child support arrearage to which she was, as a matter of law, entitled; and/or
- g. ignored the admissions by both parties that the amount of child support arrearage was between \$6,000 and \$7,000 and awarded a lesser amount without evidence to support her finding; and/or

- h. treated or appeared to treat Mr. Hall more courteously than Ms. Raybon and her attorney, Ms. Norris, during some of the proceedings;and/or
- i. ignored or appeared to ignore Ms. Raybon's testimony and/or Ms. Norris' arguments while they were in court during the August 20 hearing;and/or
- j. gave no opportunity for the submission of additional evidence as to the bank account after the Court of Civil Appeals held that there was insufficient evidence to credit all of the deposits made into Ms. Raybon's account to Mr. Hall;and/or
- k. based her second judgment awarding arrearage on the same evidence despite the finding by the Court of Civil Appeals that the evidence was insufficient;and/or
- l. refused to credit any deposits to Ms. Raybon in spite of the facts that Ms. Raybon testified that she had made some of the deposits, Mr. Norris admitted that all of the deposits were

not his, and Judge Warner admitted to Ms.

Norris in the ex parte conversation that Judge Warner knew Ms. Raybon had made deposits into the account; and/or

m. based her ruling on her apparent dislike for Ms. Raybon; and/or

n. issued a judgment before receiving the Certificate of Judgment from the Court of Civil Appeals, contrary to clearly established law; and/or

o. has established a pattern of failing to base her rulings on the evidence before her and on the law as more fully set out in Counts One through Five of this Complaint even though she was repeatedly admonished by the Court of Civil Appeals as set out in Count Six, incorporated herein by reference, that the trial court's ruling must be supported by the evidence presented in court; and

p. engaged in the conduct described in Counts Two through Five of this Amended Complaint.

Charge Two

13. Judge Warner, a circuit judge of Montgomery County in the Fifteenth Judicial Circuit, while serving in that capacity, *failed to avoid impropriety and the appearance of impropriety in all her activities*, as required by **Canon 2** of the Alabama Canons of Judicial Ethics, in that, separately and severally, she engaged in the conduct, or engaged in the conduct in bad faith, alleged in paragraphs 4, 6, 7, 9, 10, and 11, under the circumstances or leading to the circumstances and conduct described in paragraphs 2 through 11, and as shown by the totality of the circumstances and more specifically the matters itemized in paragraphs a through o in Charge One, as well as in the remainder of this Amended Complaint.

Charge Three

14. Judge Warner, a circuit judge of Montgomery County in the Fifteenth Judicial Circuit, while serving in that capacity, *failed to respect and comply with the law*, as required by **Canon 2A** of the Alabama Canons of Judicial Ethics, in that, separately and severally, she engaged in the conduct, or engaged in the conduct in bad faith,

alleged in paragraphs 4, 6, 7,9, 10, and 11, under the circumstances or leading to the circumstances and conduct described in paragraphs 2 through 11, and as shown by the totality of the circumstances and more specifically the matters itemized in paragraphs a through o in Charge One, as well as in the remainder of this Amended Complaint.

Charge Four

15. Judge Warner, a circuit judge of Montgomery County in the Fifteenth Judicial Circuit, while serving in that capacity, *failed to conduct herself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary*, as required by **Canon 2A** of the Alabama Canons of Judicial Ethics, in that, separately and severally, she engaged in the conduct, or engaged in the conduct in bad faith, alleged in paragraphs 4, 6, 7,9, 10, and 11, under the circumstances or leading to the circumstances and conduct described in paragraphs 2 through 11, and as shown by the totality of the circumstances and more specifically the matters itemized in paragraphs a through o in Charge One, as well as in the remainder of this Amended Complaint.

Charge Five

16. Judge Warner, a circuit judge of Montgomery County in the Fifteenth Judicial Circuit, while serving in that capacity, *failed to maintain the decorum and temperance befitting her office*, as required by **Canon 2B** of the Alabama Canons of Judicial Ethics, in that, separately and severally, she engaged in the conduct, or engaged in the conduct in bad faith, alleged in paragraphs 6 and 11, under the circumstances or leading to the circumstances and conduct described in paragraphs 2 through 11; more specifically, she engaged in the conduct itemized in paragraphs a, b, h, i, and m in Charge One, and as shown by the totality of the circumstances and more specifically the matters itemized in paragraphs a through o in Charge One, as well as in the remainder of this Amended Complaint.

Charge Six

17. Judge Warner, a circuit judge of Montgomery County in the Fifteenth Judicial Circuit, while serving in that capacity, *failed to avoid conduct prejudicial to the administration of justice that brings the judicial office into disrepute*, as required by **Canon 2B** of the Alabama

Canons of Judicial Ethics, in that, separately and severally, she engaged in the conduct, or engaged in the conduct in bad faith, alleged in paragraphs 4, 6, 7,9, 10, and 11, under the circumstances or leading to the circumstances and conduct described in paragraphs 2 through 11, and as shown by the totality of the circumstances and more specifically the matters itemized in paragraphs a through o in Charge One, as well as in the remainder of this Amended Complaint.

Charge Seven

18. Judge Warner, a circuit judge of Montgomery County in the Fifteenth Judicial Circuit, while serving in that capacity, *failed to perform the duties of her office impartially*, as required by **Canon 3** of the Alabama Canons of Judicial Ethics, in that, separately and severally, she engaged in the conduct alleged in paragraphs 4, 6, 7, 9, 10, and 11, under the circumstances or leading to the circumstances and conduct described in paragraphs 2 through 11 as more specifically set out in paragraphs a through o of Charge One, as well as in the remainder of this Amended Complaint.

Charge Eight

19. Judge Warner, a circuit judge of Montgomery County in the Fifteenth Judicial Circuit, while serving in that capacity and *in the performance of her adjudicative duties, initiated and considered ex parte communications concerning a pending proceeding*, as prohibited by **Canon 3A(4)** of the Alabama Canons of Judicial Ethics, in that she engaged in the conduct alleged in paragraph 6, under the circumstances or leading to the circumstances and conduct described in paragraphs 2 through 11.

Charge Nine

20. Judge Warner, a circuit judge of Montgomery County in the Fifteenth Judicial Circuit, while serving in that capacity and *in the performance of her adjudicative duties, failed to be unswayed by fear of criticism*, as required by **Canon 3A(3)** of the Alabama Canons of Judicial Ethics, in that she engaged in the conduct alleged in paragraph 10, especially by sealing the record without a motion from either party with the effect of protecting herself from criticism for her actions after Ms. Norris filed the motion to recuse, under the circumstances or leading to the

circumstances and conduct described in paragraphs 2 through 11.

Charge Ten

21. Judge Warner, a circuit judge of Montgomery County in the Fifteenth Judicial Circuit, while serving in that capacity and *in the performance of her adjudicative duties, failed to be patient, dignified, and courteous to litigants, witnesses, and lawyers*, as required by **Canon 3A(3)** of the Alabama Canons of Judicial Ethics, in that, separately and severally, she engaged in the conduct alleged in paragraphs 6 and 11, under the circumstances or leading to the circumstances and conduct described in paragraphs 2 through 11.

Charge Eleven

22. Judge Warner, a circuit judge of Montgomery County in the Fifteenth Judicial Circuit, while serving in that capacity and *in the performance of her adjudicative duties, failed to be faithful to the law and maintain professional competence in it*, as required by **Canon 3A(1)** of the Alabama Canons of Judicial Ethics, in that, separately and

severally, she engaged in the conduct alleged in paragraphs 4, 6, 7,9, 10, and 11, under the circumstances or leading to the circumstances and conduct described in paragraphs 2 through 11.

Charge Twelve

23. Judge Warner, a circuit judge of Montgomery County in the Fifteenth Judicial Circuit, while serving in that capacity, *failed to disqualify herself in a proceeding in which her impartiality might reasonably be questioned*, as required by **Canon 3C(1)** of the Alabama Canons of Judicial Ethics, and as evidenced, separately and severally, by her conduct alleged in paragraphs 4, 6, 7, 9, 10, and 11, under the circumstances or leading to the circumstances and conduct described in paragraphs 2 through 11, in that, under the circumstances described, among other matters alleged, she

- a. was prejudiced against Ms. Raybon as shown by her conversations with Ms. Norris as set out in paragraph 6; and/or
- b. indicated to Ms. Raybon's attorney her prejudice against Ms. Raybon; and/or

- c. made statements to Ms. Raybon's attorney that can be construed to indicate her prejudice against Ms. Raybon; and/or
- d. credited Mr. hall with payments he admitted he did not make; and/or
- e. denied Ms. Raybon child support arrearage to which she was, as a matter of law, entitled; and/or
- f. would not enter a decision based on the evidence in the case; and/or
- g. engaged in the ex parte conversation with Ms. Norris.

Charge Thirteen

24. Judge Warner, a circuit judge of Montgomery County in the Fifteenth Judicial Circuit, while serving in that capacity, *failed to disqualify herself in a proceeding in which her impartiality might reasonably be questioned where she had a personal bias or prejudice concerning a party*, as required by **Canon 3C(1)(a)** of the Alabama Canons of Judicial Ethics, and as evidenced, separately and severally, by her conduct alleged in paragraphs 4, 6, 7, 9,

10, and 11, under the circumstances or leading to the circumstances and conduct described in paragraphs 2 through 11, in that, under the circumstances described, among other matters alleged, she

- a. was prejudiced against Ms. Raybon as shown by her conversations with Ms. Norris as set out in paragraph 6; and/or
- b. indicated to Ms. Raybon's attorney her prejudice against Ms. Raybon; and/or
- c. made statements to Ms. Raybon's attorney that can be construed to indicate her prejudice against Ms. Raybon; and/or
- d. credited Mr. Hall with payments he admitted he had made; and/or
- e. denied Ms. Raybon child support arrearage to which she was, as a matter of law, entitled.

COUNT TWO

FACTS

25. From April 15, 2009, until she left the Montgomery County Circuit Court bench, Judge Warner presided over M.W.M v. M.S.M., DR-09-347, a divorce action including a

custody dispute concerning a minor child, and JU-09-509, a juvenile case concerning that same child, which Judge Warner opened while presiding in the divorce action. The divorce action was filed on April 14, 2009, by the husband, M.W.M. (hereinafter WM), and sought sole custody of the minor child.⁵ On April 23, 2009, M.S.M. (hereinafter SM) filed her answer and counter petition for divorce in which she, too, sought sole physical custody of the minor child.⁶ On April 23, 2009, Judge Warner entered an order setting the first pendente lite hearing for May 18, 2009 (actually held on May 19, 2009), before Ms. Laurel Crawford, a second-year law student appointed by Judge Warner to serve as special master in her court.

⁵ According to the record in the case, M.S.M (hereinafter SM) and her husband, M.W.M (hereinafter referred to as WM), a college professor, had been married since 1990. When the couple's only child was born in 1996, SM cared for the child fulltime in lieu of employment. The child is a "special needs" child who was home-schooled by SM for approximately twelve years prior to the couple's filing for divorce.

⁶ As grounds for sole custody, SM alleged WM was physically and mentally abusive to SM and the minor child; WM had threatened to take away all funds from SM and the child; WM had extreme mood swings and was prone to violent behavior; SM was a stay-at-home mother who homeschooled the minor child and had not been in the work force for years; due to physical and mental abuse, all visitation by WM should be supervised; SM had no income, employment, or funds of her own and, therefore, required support for both herself and the child.

26. On April 30, 2009, WM filed a motion for the appointment of a guardian ad litem for the minor child and, on May 4, 2009, Judge Warner appointed Diane Paris, her long-time friend and former office suite-mate to serve in that position.

27. Ms. Paris interviewed WM and then, on May 18, 2009, first met with SM. About fifteen minutes into the interview with SM, when SM began to tell Ms. Paris that WM had psychological issues at his former place of employment in Georgia, Ms. Paris told SM that she (Ms. Paris) may have already concluded the child was dependent. Ms. Paris told SM the Department of Human Resources may need to be brought into the case and Judge Warner could very easily take the child from both parents. SM subsequently cited this conversation as grounds for replacing Ms. Paris as guardian ad litem.

28. On May 19, 2009, one month after WM filed his complaint for divorce, the first pendente lite hearing was held before Ms. Crawford. On May 21, 2009, two days after the hearing, Ms. Paris, the guardian ad litem, filed an unsworn motion in the divorce proceeding titled "Motion for Finding of Dependency," requesting a finding of dependency

of the minor child and alleging the child was emotionally abused by both parents and lacked proper parental care and parental control. Ms. Paris alleged the motion was based on testimony at the pendent lite hearing, including the testimony of WM and his father concerning the antics of the parties. She further alleged in conclusory fashion, "it is not a good situation"; "this family is simply a mess"; and "[t]he parents have placed this child squarely in the middle of their marital issues and have not tended to their minor child's needs in an adult, parental manner." Without alleging any specifics, she tracked the language of § 12-15-1(10)(f) and (j), Code of Alabama (1975), to seek a declaration of dependency. Under Alabama law, the only persons who may authorize the filing of dependency petitions, i.e., formal pleadings seeking a judicial finding that a child is a "dependent child,"⁷ which initiates a dependency proceeding, are the intake officers of the juvenile courts,⁸ and the

⁷Section 12-15-102(8), Code of Alabama (1975), defines a "dependent child," as "A child who has been adjudicated dependent by a juvenile court and is in need of care or supervision and [meets any of several enumerated circumstances]." (Emphasis added.)

⁸Under Alabama law, while any person or agency may file a verified complaint with the juvenile court intake officer alleging facts to support the filing of a dependency petition, filing such a complaint with the juvenile court is not the

only courts authorized to make a finding of dependency are the state's juvenile courts. There is no authority for attaching a dependency proceeding to a divorce proceeding in the manner done in this case.⁹

29. Notwithstanding the clear Alabama Code provisions, on June 23, 2009, Ms. Crawford issued her "Report of Reference," recommending that Judge Warner find the approximately thirteen-year-old child dependent and award SM temporary physical custody of the child. That same date, i.e., June 23, 2009, Judge Warner, rather than dismiss the petition for dependency as beyond her jurisdiction, improperly filed and, unauthorized in the

filing of a dependency petition and does not initiate a dependency proceeding. Rather, under § 12-15-50, Code of Alabama (1975), and Rule 12, Ala. R. Juv. P., the decision whether to file a dependency petition, based on the allegations of a verified complaint, and to thereby initiate a dependency proceeding or action, is entrusted to the discretion of the juvenile court's intake officer. Until the intake officer makes a preliminary investigation and exercises the discretion statutorily invested in that officer in favor of the filing of the petition, no dependency petition may be filed and no dependency proceeding is commenced.

⁹As the Court of Civil Appeals noted in reversing this matter, "The trial judge, acting as a circuit-court judge in a divorce action, did not have jurisdiction to enter a finding of dependency. See § 12-15-114(a), Ala. Code 1975. . . . It does not matter that the trial judge was designated as circuit-court judge and a juvenile judge." M.S.M v. M.W.M, No. 2090949, 2011 WL 835095, at *13 (Ala. Civ. App. March 11, 2011) (citations omitted).

divorce action, issued an order adopting the "Report of Reference" and Ms. Paris's recommendation; finding the child dependent; transferring the issue of child custody to the Montgomery County Juvenile Court (JU-09-509.01); and ordering further, contrary to law, that there was no need to notify the Alabama Department of Human Resources of her finding of dependency. Judge Warner's finding of dependency violated the clear provision in § 12-15-120(a), Code of Alabama (1975), requiring a dependency hearing and further violated § 12-15-118(2), Code of Alabama (1975), which requires notification to the Alabama Department of Human Resources of allegations of a child's dependency.

30. On July 10, 2009, SM filed a motion to reconsider the finding of dependency, alleging that there was no hearing or evidence before the court on which to base the finding and seeking a hearing on the issue of dependency. That motion was summarily denied on July 20, 2009. However, on July 14, 2009, Judge Warner ordered a home evaluation by the Department of Human Resources on the homes of both parties.¹⁰

¹⁰ DHR completed its report on September 14, 2009, and filed the report with the court on September 16, 2009. The DHR investigation included only SM, and DHR therefore did not make a

31. On August 4, Judge Warner entered an order stating that she did not have time to hold a hearing at that time, but, upon reviewing the pleadings filed to that date, she approved the child's admission to public school for the school year. In that order Judge Warner set what she referred to as "a short hearing initially" for September 22, 2009, and stated further that if the child was doing well at that time the hearing would become a "status conference" and she would consider any other matters raised in the interim.

32. On August 19, 2009, SM filed a motion for the appointment of an attorney to represent the minor child in the juvenile proceeding. Judge Warner summarily denied that motion on August 25, 2009, because she had already appointed a guardian ad litem for the child. On that same day, SM filed another motion for appointment of counsel and an "Emergency Motion for Replacement of Guardian Ad Litem," asking Judge Warner to replace Ms. Paris as guardian ad litem due to her prejudice against SM. On August 27, 2009, SM filed an "Addendum to Wife's Motion for Replacement Guardian Ad Litem," stating again there was no evidence to

recommendation concerning placement. The contents of the Report are alleged infra.

justify Ms. Paris's motion to have the child declared dependent and recounting as one of the grounds for replacement Ms. Paris's conversation concerning dependency during her initial interview of SM.

33. On August 25, 2009, Ms. Paris filed objections to SM's motion for appointment of an attorney to represent the child, alleging SM was trying to make Ms. Paris appear biased and alleging SM was merely trying to frustrate Ms. Paris's representation of the child by filing "such frivolous pleadings" while she (Ms. Paris) was attempting to look after the best interests of the child. Ms. Paris requested a hearing to order SM to appear and give evidence to support her claims.

34. On August 27, 2009, Judge Warner held a hearing on SM's motions. It is apparent from the transcript and the audio recordings of that hearing that Judge Warner was upset SM had requested appointment of counsel and replacement of Ms. Paris. During this hearing, Judge Warner was clearly hostile toward SM and her attorney, Mr. Scott Johnson. As the record shows, at the beginning of the hearing, Mr. Johnson asked if testimony would be taken on the motions. Judge Warner indicated this hearing was

for argument on the motion, not for the taking of testimony. Mr. Johnson argued or attempted to argue four reasons Ms. Paris should be replaced including matters related to selecting the child's school; Ms. Paris's statements relative to dependency at the first meeting with SM on May 18, 2009; Ms. Paris's influence over the child; and Ms. Paris's decisions on visitation issues without considering or seeking input from SM. Judge Warner cut off any attempt by Mr. Johnson to speak about the school issue, noting that she had decided that issue, although she later allowed Ms. Paris to address that issue. Judge Warner and Ms. Paris made light of any discussion about the guardian ad litem's influence over the child. Ms. Paris sarcastically stated, "First I certainly appreciate compliments regarding my winning ways and bubbly personality. I will admit that I was social chairman of my college sorority because of all of those reasons, I feel certain." Judge Warner stated that influencing the child is not the guardian's job. Yet, in subsequent proceedings in this matter, there is evidence of Ms. Paris's influencing the child: for instance, taking the child shopping for three to four hours and purchasing a shaving

kit for the child. Also, during the hearing, Ms. Paris complained that she had been denied access to the child. Mr. Johnson stated and SM testified that SM denied access only after the Motion to Replace was filed pending a decision on that motion.

35. When SM conferred with Mr. Johnson during the hearing of August 27, 2009, Judge Warner asked if she wanted to testify. Mr. Johnson objected, and SM declined. Judge Warner, at Ms. Paris's insistence, required SM to testify, despite Mr. Johnson's objections and Judge Warner's declarations that there would be no testimony taken. Judge Warner's action in this instance -- declining testimony offered by Mr. Johnson and compelling SM's testimony when urged by Ms. Paris -- appears to be arbitrary and show bias.

36. During the hearing of August 27, 2009, the record and the tapes of the proceeding show Judge Warner was courteous and respectful to Ms. Paris, WM, and his attorney, but was impatient, hostile, overbearing, curt, and disrespectful to SM and Mr. Johnson. On numerous occasions during the proceeding on August 27, Judge Warner interrupted Mr. Johnson, effectively cutting off his

attempts to argue SM's motions. After denying SM's motion to replace Ms. Paris as guardian ad litem, Judge Warner warned SM that "there's a cost" for SM's attempt to have counsel appointed for the child or to have Ms. Paris replaced.

37. On August 28, 2009, Judge Warner issued an order denying SM's motion to replace Ms. Paris and setting a pendente lite hearing regarding the issues of temporary custody and spousal support for September 9, 2009, before the special master. According to the record, the September 9, 2009, pendente lite hearing was continued, to September 17, 2009, at 2:00 p.m. The child was subpoenaed to testify for that day and did testify, regarding the issue of custody, before Judge Warner (rather than the special master), with counsel present. During the hearing before Judge Warner, the child testified that she wanted to live with SM. Ms. Crawford, the special master, also heard matters regarding the child's custody on September 17, 2009. Judge Warner also had Ms. Crawford hold another pendente lite hearing on September 22, 2009, regarding the financial issues of child support and spousal support. Judge Warner had already, on August 4, 2009, scheduled a

status conference for September 22, 2009, to review the child's school circumstances and any matters pending at that time.

38. During a telephone conversation on September 18, 2009, the child's court-appointed counselor, Ms. Lori Parsons, mentioned to Ms. Paris that both SM and WM had been frequently calling Ms. Parsons about their child. Ms. Paris responded she would see to it that the parents' excessive telephone calls ceased. Ms. Parsons did not tell anyone else about the parents' telephone calls.

39. Between the telephone conversation on September 18, 2009, described in the preceding paragraph and the status hearing held at 10:41 a.m. on September 22, 2009, before Judge Warner, Judge Warner learned, ex parte, of SM's and the husband's telephone calls to Ms. Parsons. Although Ms. Paris did not file a pleading or motion raising the issue of the parents' excessive telephone calls, Judge Warner raised the issue when she stated during the September 22, 2009, status conference, which began prior to the 11:00 a.m. pendente lite hearing of the same date, "I'm hearing from the folks at the pendente lite hearing . . . let's just say it looks like we are elevating

our passive-aggressive behavior." (The September 17 pendente lite hearing occurred before the conversation between Ms. Paris and Ms. Parsons, and the September 22 pendente lite hearing occurred after these comments were made by Judge Warner.) Judge Warner admonished both parties about calling the counselor, but reserved her strongest admonishment for SM. Judge Warner stated, among other things, the following:

"Now, I understand they [the parties] have run to the counselor, the child's counselor, and put the strong arm on the counselor.

Stop it. Mr. Johnson tell your client to stop it.

* * * *

She's going to end up in jail. And I guess that is what it is going to take. She sits right here beside you and she looks at me and blinks."

40. On September 30, 2009, after the pendente lite hearings, Ms. Paris filed her pendente lite report. The report found that SM was not attending counseling because she did not think she needed counseling due to attending parenting classes. Ms. Paris found that her actions and conduct throughout this litigation indicated otherwise. Ms. Paris noted, "In this case, as in any custody dispute, the mental health of the parties is in issue as it relates

to custody of the minor child." The report found that SM and WM testified to incidents that indicated SM's failure or refusal to support and encourage a healthy parent-child relationship between the child and the father, WM, while WM testified he would encourage a healthy relationship with SM. The report noted SM's failure to obtain employment as a matter of concern. Ms. Paris recommended placing the child in WM's custody. The report contained no visitation recommendation and contained no references to WM's mental health.

41. On October 2, 2009, Judge Warner entered an order adopting Ms. Crawford's second "Report of Reference," of the same date. In the Report of Reference, the special master recommended the transfer of legal and physical custody of the child from SM to the father, WM. The stated basis for this transfer in physical custody was (a) SM's failure to find gainful employment since the first pendente lite hearing on May 19, 2009 (despite her having been given less than four months to seek employment in a small town and during a major recession, with no employment history for the previous twelve years during which she cared for and home-schooled the "special needs" child pursuant to the

couple's agreement, and with only a college degree in the highly specialized discipline of botany); (b) SM's discontinuation of counseling for herself; and (c) SM's failure to pack sufficient clothing for the child's visits with WM, thereby allegedly interfering with WM's visitation with the child.¹¹ Judge Warner stripped SM of physical custody of the child. Based on the record before the court, other than SM's motion to have Ms. Paris replaced, there was no substantial change between June 23, 2009, and October 2, 2009, that warranted this drastic change in

¹¹Neither Ms. Crawford's Report of Reference, Ms. Paris's Pendente Lite Report, nor Judge Warner's order of October 2, 2009, reference, discuss, or make any mention of the Report of the Alabama Department of Human Resources completed on September 14, 2009, and filed with the court on September 16, 2009. That report concluded SM could not care for the child financially without monetary assistance from WM; SM remained unemployed and appeared emotionally drained and overwhelmed by the divorce and custody process; SM and the child have a strong bond and are respectful of each other; and references were positive with regard to SM's adequately caring for the child. Concerns noted in the report were SM's financial situation, the emotional well-being of the child and SM, and the fact that their relationship appears to be more of a friendship rather than parent-daughter roles. The report found the child to be a very intelligent thirteen-year-old child who desires a relationship with both of her parents; she needs to build social skills and learn age-appropriate behavior; and she needs to remain in counseling, and the current counselor is able to be a neutral party and help the child with the changes. The Department's information was that both parents love the child and want what is best for her. Lastly, the report, in noting that the information contained in it regards only SM, did not contain a recommendation regarding placement, but concluded that the Department remained ready to assist the court regarding the family. There is no Department investigation of WM in the record.

physical custody of the child, especially since SM was living in the marital home and DHR found no egregious issues with the child. In Judge Warner's October 2, 2009, order, Judge Warner also ordered the reduction of SM's temporary alimony from \$1,500 to \$200. She further ordered WM to continue to pay the mortgage and utilities of the marital home where SM was residing.

42. On November 25, 2009, the day before Thanksgiving, Judge Warner *suasponete* set a status conference in SM's case for less than one week later on December 1, 2009, without a motion from any of the parties requesting the status conference. Neither SM, WM, nor the child's counselor, Ms. Parsons, attended the December 1, 2009 status conference; only the attorneys for the parties were present. When Judge Warner convened the hearing, she stated, "We're here for a status conference. I know that there are issues that have arisen in the last two weeks that concern the child, and I think we need to discuss that." Nothing of record had arisen prior to the setting of the hearing.

43. At the December 1, 2009, conference, several matters were raised for discussion, according to the record. However, all of these matters arose after Judge

Warner set the hearing date. SM's attorney, Mr. Johnson, did not receive the November 25, 2009, order setting the status conference until November 30, 2009, one day before the status conference. Prior to receiving the Court's November 25, 2009, order setting the December 1, 2009, status conference, on November 30, 2009, Mr. Johnson filed "Wife's Motion for Expedited Third Pendente Lite Hearing on Transfer of Temporary Custody," in which SM also requested the juvenile case be transferred to the county where SM's daughter resided. On the day of the status conference on December 1, 2009, Ms. Paris filed her "Renewed Motion for Psychiatric Evaluation of the Parties," as well as "Guardian Ad Litem's Objection to Mother's Motion to Transfer Venue." During the status conference on December 1, 2009, Judge Warner took up the above-referenced motions (all of which were filed after Judge Warner entered her November 25, 2009, order setting the December 1, 2009, status conference). Other matters that had occurred "within the last two weeks," but before the setting of the hearing were also discussed during the December 1, 2009, status hearing.

44. It is apparent from the record of the status conference that Judge Warner had set the status conference for December 1, 2009, upon considering matters learned ex parte, outside the record. During the status conference, WM's attorney raised, for the first time, an incident he said WM had informed him about in a telephone conversation on the Thursday or Friday (November 19 or 20, 2009) before Thanksgiving, November 26, 2009. During their conversation, WM told his attorney that the child had flooded his bathroom with toilet water and put water in a hygiene kit Ms. Paris had purchased for her. WM said when the child was asked why she flooded the bathroom, she "ultimately" said, "Mom told me to." (Ms. Paris had purchased the hygiene kit for the child on their three-to-four-hour shopping trip, so the child could begin shaving her legs, against SM's wishes.) WM denied visitation to SM following the alleged incident.

45. During the December 1, 2009, hearing, Ms. Paris orally moved that Judge Warner order the child to be seen by her counselor, Ms. Parsons, which Judge Warner granted and so ordered. Judge Warner further ordered Ms. Paris to investigate the toilet incident and subsequently report

whether the incident did in fact occur, as alleged by WM's attorney. Ms. Paris stated she had already asked WM to schedule the child for an appointment with Ms. Parsons and had also called Ms. Parsons and left a request that Ms. Parsons return her telephone call. Obviously, both WM and WM's attorney knew of the toilet incident prior to the hearing. Although there was no mention of the incident in the order setting the conference, it appears Mr. Paris also knew about it. Mr. Johnson was not aware of the incident prior to the hearing. Thereafter, based only on argument of counsel, without a scintilla of evidence to support the representations of WM's attorney and without any opportunity by Mr. Johnson to rebut those mere allegations, Judge Warner ordered from the bench that SM's visitation with her daughter be immediately suspended, and that SM could not even have telephone contact with her daughter. Judge Warner also stated, "This is not going to end well. . . . I'm concerned, Mr. Johnson, that your client [SM] is not going to be happy until [the child] is no longer with us."

46. After the December 1, 2009, status conference, Ms. Paris asked Ms. Parsons to investigate the toilet incident

with the child. Ms. Paris asked Ms. Parsons to find out if the child put the hygiene kit in the toilet after defecating in the toilet. Ms. Parsons subsequently interviewed the child and reported back to Ms. Paris that the child said SM had told her only to sprinkle toilet water in the kit, and that the child did not put the shaving kit in the toilet after defecating in the toilet. On December 9, 2009, Ms. Paris filed her "Notice to the Court," stating, "The GAL [Ms. Paris] has spoken with the child's counselor and the minor child with regard to this [toilet] issue. Apparently the Mother did instruct the child to deposit the items [i.e., the shaving kit] and flush them." Ms. Paris made these statements in her December 9, 2009, Notice despite the fact that Ms. Parsons had actually told Ms. Paris the contrary, i.e., that the child did not put the shaving kit into the toilet after defecating in the toilet, but, instead, the bottom of the shaving kit had been merely sprinkled with water.

47. Nevertheless, on December 16, 2009, without any statement on the record that the child had put the hygiene kit in the toilet after defecating in the toilet, Judge Warner entered an order stating:

At the December 1, 2009 status conference [t]he Father, through counsel, represented that there was unusual circumstances which warranted denying the Mother's week-end [sic] visitation. According to the Father, the Mother instructed the child to deposit and flush some personal hygiene items (a razor and can of shaving cream) into the toilet of the Father's home. The child did as instructed after defecating in the toilet. This resulted in the toilet being stopped up and overflowing onto the floor.

Judge Warner's December 16, 2009, order further stated that SM's visitation was suspended and that SM was allowed only recorded telephone contact with the child.

48. Throughout the December 1, 2009, status hearing, Judge Warner acted in a hostile manner toward SM and her attorney. Her hostility appeared to be based solely on the arguments made by Ms. Paris and WM's attorney, without any evidence, and/or Judge Warner's attitude toward SM. Specifically, while referring to SM's alleged "control" issues, Judge Warner told Mr. Johnson, "She's not going to jerk me around." When Mr. Johnson later attempted to discuss WM's past refusal to undergo a psychiatric evaluation¹² and decision to quit his teaching job at a

¹²During these proceedings SM offered evidence of MW's mental health: that in 2007, the husband was employed as a professor at a college in Georgia; students complained to the dean of the college about the husband's bizarre behavior, including his accusing students of putting chemicals on his clothing, causing

Georgia college, Judge Warner stated, "I don't know about that. You said that." (Judge Warner and Ms. Crawford had refused to allow these facts into evidence at pendente lite hearings on September 17 and 22, 2009.) Ms. Paris then added, "That's not evidence," to which Judge Warner agreed, "That's not evidence." This exchange occurred immediately after Judge Warner suspended SM's visitation without any evidence. Mr. Johnson attempted to explain that he had submitted, as evidence, documents regarding the husband's alleged significant psychiatric issue(s) exhibited within the prior two years. Judge Warner responded, "And, Mr. Johnson, this was in Georgia. Your client continued to live with [SM] as his wife. They moved to [Alabama]. She's still there." Mr. Johnson then asked Judge Warner, "I think our concern is about the child, right?" Judge Warner answered, "And [SM] is the only one who is not working. Let's don't interfere with [the husband's]

him to emit an offensive odor; telling students he thought someone was "out to get" him; telling a student he believed his neighbor had released a chemical in his home ventilation system; and asking students whether he smelled bad. After his employer insisted he undergo a psychiatric evaluation, he resigned. Subsequently, he accepted a teaching position at a university in Alabama, and he and SM relocated to Alabama. Throughout the proceedings in this matter, Judge Warner entered rulings prohibiting any consideration of WM's conduct and mental state while in Georgia.

employment. [SM] can't support herself at the present time, or won't."

49. During the final hearings on January 7, January 25, and February 1, 2010, Judge Warner sustained Ms. Paris's hearsay objections to SM's evidence of the husband's alleged significant psychiatric issue(s) and his refusal to submit to a psychiatric evaluation, as documented through business records from his previous employer, even though the custodian of records had traveled from Georgia to appear and authenticate the documents. In addition, the final hearings were the first opportunity for Ms. Parsons, the child's court-appointed counselor, to testify before Judge Warner.

50. At the conclusion of the first day of the final hearing, on January 7, 2010, before SM testified, Judge Warner told SM off the record to get prepared to vacate the family residence by February 1, 2010.

51. During the child's testimony at the January 7, 2010, hearing, Judge Warner allowed Ms. Paris to stand beside the child in such a position as to block SM's and Mr. Johnson's view of the child. She testified that she wished to reside with WM. During the questioning about the

toilet incident, the child gave numerous conflicting answers, including the admission that she herself had thought of the idea to put hygiene items in the toilet, but in no way did she indicate that her mother had instructed her to put items in the toilet and defecate on them and, in fact, she testified that she had not "used" the toilet before putting anything into it. Judge Warner refused to allow Mr. Johnson to question the child concerning WM's alleged violent outbursts and tendencies.

52. Throughout the final hearings on January 7, January 25, and February 1, 2010, Judge Warner repeatedly interrupted Mr. Johnson during his questioning. She also qualified numerous questions of his by chiding the witness "if you know," even though opposing counsel had not objected to those questions.

53. During the final hearing on February 1, 2009, Dr. Warren Brantley, the senior court therapist for Montgomery County was called as a witness. Dr. Brantley had performed psychological testing on both SM and WM. (The tests were not for determining mental illness, but to identify issues for counseling). As to WM, Dr. Brantley reported WM's test results showed issues impacting those with whom he

interacts. His test score was "unique" and inconsistent with his perfectly normal interview. As to SM, Dr. Brantley was not asked to review her tests and files for the trial and, thus, did not have them with him during his testimony. He did recall that SM's test did not present as many issues as did WM's and that she exhibits personal rigidity but has the capacity for normal social relations.

54. During the trial, psychiatric evaluations of the wife were submitted on her behalf. (On December 16, 2009, Judge Warner had ordered psychiatric evaluations of SM and WM.) SM's evaluation, performed on December 24, 2009, by Dr. Fernando Lopez, showed the following: SM is "bright, alert, verbal, cooperative, engaging, and pleasant. Not depressed and not psychotic. Good normal motor activities. Good motor effect. Good attention and clear speech. Not homicidal or suicidal. She is not taking medications for anything." WM testified that a Dr. Strunk had done his psychiatric evaluation, but the report was unavailable for trial. Although Judge Warner had ordered the evaluation of WM, she did not wait for the results, but entered a final ruling without that information. In addition, WM's

counselor, Dr. Hill, testified, but Judge Warner sustained Ms. Paris's objections to his testimony concerning WM.

55. On March 11, 2010, Judge Warner issued the final judgment of divorce and consolidated the juvenile case into the divorce case. In the final judgment, Judge Warner awarded sole legal and physical custody to WM and awarded SM a four-hour supervised visit every other Saturday until WM and Ms. Parsons agreed SM should have unsupervised visitation. This ruling effectively gave WM veto over SM's unsupervised visitation. Judge Warner applied this latter condition despite the advice provided to her by the Court of Civil Appeals six months earlier, on September 9, 2009, in M.R.J. v. D.R.B., 34 So. 3d 1287, 1292 (Ala. Civ. App. 2009), that the Court of Civil Appeals had consistently held that a judgment that leaves visitation to the sole discretion of the custodial parent is an abuse of discretion because it, in effect, awards no visitation. Judge Warner also awarded, in her final order, the marital residence to WM, immediately terminated SM's occupancy, and awarded SM \$200 rehabilitative alimony for nine months. SM appealed. On March 11, 2011, the Court of Civil Appeals reversed and held that Judge Warner's custody determination

based on Ms. Paris's petition for dependency was void for lack of subject matter jurisdiction; Judge Warner's order granting Ms. Paris's petition for dependency was void; Judge Warner erred by refusing to admit into evidence WM's counseling records and other evidence pertaining to WM's mental state; and Judge Warner's division of property and award of rehabilitative alimony were inequitable. M.S.M. v. M.W.M., No. 2090949, 2011 WL 835095, at *13 (Ala. Civ. App. March 11, 2011). The Court remanded the case to Judge Warner with the instructions that she reconsider the custody determination after hearing the evidence on WM's mental state and that she adjust the award of alimony and division of the property.

56. After the Court issued its Certificate of Judgment on June 1, 2011, SM's new attorney, Ms. Kelli McDaniel, filed another motion for Judge Warner to recuse. In that motion, Ms. McDaniel argued that, under Canon 3C(1) and 3C(1)(a) and pursuant to Advisory Opinion 11-904 of the Judicial Inquiry Commission, Judge Warner was disqualified from sitting because of an alleged pending, full investigation by the Judicial Inquiry Commission of the three complaints SM and Ms. McDaniel had filed against

Judge Warner. Ms. McDaniel further pointed out that, pursuant to the mandatory disclosure required of the Commission by Rules 6 and 7, Rules of Procedure of the Judicial Inquiry Commission, promulgated by the Alabama Supreme Court, and despite the fact that SM's case was still pending before Judge Warner, the Commission had served Judge Warner with the three complaints and the subpoenas compelling SM and Ms. McDaniel to testify before the Commission. Judge Warner has failed to rule on SM's motion to recuse. SM has had only three hours of visitation (supervised) with her child during the previous nineteen months.

57. The record shows that, during the hearings before Judge Warner, Judge Warner was openly hostile to SM and made sarcastic and inappropriate comments about and to SM. Judge Warner was also openly hostile to SM's attorney, Mr. Johnson, and repeatedly interrupted Mr. Johnson while he was addressing the court. Judge Warner also made off-handed and inappropriate comments to Mr. Johnson concerning SM. During one hearing, described above, Judge Warner forced SM to testify during a non-evidentiary hearing over

Mr. Johnson's objections simply because SM was conferring with Mr. Johnson, her counsel, during the hearing.

CHARGES

Charge Fourteen

58. Judge Warner, a circuit judge of Montgomery County in the Fifteenth Judicial Circuit, while serving in that capacity, *failed to observe high standards of conduct so that the integrity and independence of the judiciary may be preserved*, as required by **Canon 1** of the Alabama Canons of Judicial Ethics, in that, separately and severally, she engaged in the conduct, or in bad faith engaged in the conduct, alleged in paragraphs 25 through 26, 29 through 32, 34 through 37, 39, 41 through 45, 47 through 52, and 54 through 57, under the circumstances or leading to the circumstances and conduct described in paragraphs 25 through 57, in that, under the circumstances described, she, among other matters,

- a. acted clearly without jurisdiction in accepting an improperly filed, unverified petition for dependency of a minor child as part of a divorce action; and/or

- b. based on the unverified, improperly filed petition for dependency, created a separate action in juvenile court and entered an order finding the child dependent without holding a hearing or properly considering evidence; and/or
- c. granted physical custody of the minor child to a party determined by the declaration of dependency to be unfit; and/or
- d. contrary to a statutory requirement, failed to notify the Department of Human Resources of the allegations of dependency or her determination of dependency; and/or
- e. although serving as a juvenile court judge, failed to follow the law and due process requirements afforded a child and the parents of a child during a dependency proceeding; and/or
- f. throughout the court conferences and hearings, was rude, impatient, disparaging, curt, to SM and her attorney; and/or

- g. applied a different standard to herself and Ms. Paris as opposed to SM and SM's attorney, scolding them for seeking an attorney for the child in the dependency matter, which she did not even have jurisdiction to hear; and/or
- h. was courteous and respectful to Ms. Paris and, for the most part, WM and WM's attorney, while frequently treating SM and her attorney with disrespect, rudeness, and sarcasm; and/or
- i. treated SM's motion to have the guardian ad litem replaced and to appoint an attorney to represent the child as frivolous, when in fact SM alleged serious matters expressing her concerns about the guardian ad litem's impartiality and actions; and/or
- j. severely admonished SM and her attorney for filing the motions to replace the guardian ad litem; and/or
- k. engaged in and/or considered ex parte communications in several instances, all to SM's disadvantage; and/or

- l. during several proceedings, made off-handed and sarcastic comments to SM's attorney concerning SM; and/or
- m. throughout the proceedings appeared to question SM's actions, ability, and mental state while giving little weight to WM's issues; and/or
- n. ignored evidence that SM was capable of caring for the child; and/or
- o. applied a double standard to SM and WM, holding SM to task for complying with court orders but ignoring WM's failure to comply, e.g. the order for all parties to have psychiatric evaluations; and/or
- p. on December 1, 2009, at a status conference set based on ex parte communications, stripped SM of visitation with the child without notice and an opportunity to be heard, when WM and his attorney had ample time (over a one week) to file pleadings and give full notice of the incident made the basis of the order; and/or
- q. failed to enforce her order for a DHR investigation of WM, although she had ordered

both parties to submit to an investigation and SM had complied; and/or

- r. changed custody to WM without a report from DHR; and/or
- s. during the final trial of the divorce and custody proceeding, told SM, before SM testified, on the first day of a three day proceeding, to be ready to vacate the marital home; and/or
- t. during the divorce proceeding refused to allow SM's attorney to question the child about WM's alleged violent outbursts; and/or
- u. throughout the proceedings, appeared biased against SM; and/or
- v. failed to disqualify herself from the proceeding after she received notice that SM and her attorney had filed three complaints against her with the Judicial Inquiry Commission, the Commission had notified her of its decision to investigate, and she had been notified that both SM and her new attorney had been subpoenaed to testify before the

Commission, although she did recuse in the
Count One matter and the Count Three matter on
similar motions; and

w. engaged in the conduct described in Counts Two
through Five of this Amended Complaint.

Charge Fifteen

59. Judge Warner, a circuit judge of Montgomery County
in the Fifteenth Judicial Circuit, while serving in that
capacity, *failed to avoid impropriety and the appearance of
impropriety in all her activities*, as required by **Canon 2**
of the Alabama Canons of Judicial Ethics, in that,
separately and severally, she engaged in the conduct, or in
bad faith engaged in the conduct, alleged in paragraphs 25
through 26, 29 through 32, 34 through 37, 39, 41 through
45, 47 through 52, and 54 through 57, under the
circumstances or leading to the circumstances and conduct
described in paragraphs 25 through 57, in that, under the
circumstances described, and as shown by the totality of
the circumstances and more specifically the matters
itemized in paragraphs a through v in Charge Fourteen.

Charge Sixteen

60. Judge Warner, a circuit judge of Montgomery County in the Fifteenth Judicial Circuit, while serving in that capacity, *failed to respect and comply with the law*, as required by **Canon 2A** of the Alabama Canons of Judicial Ethics, in that, separately and severally, she engaged in the conduct, or engaged in the conduct in bad faith, as alleged in paragraphs 29, 49, and 55, under the circumstances or leading to the circumstances and conduct described in paragraphs 25 through 57 and as shown by the totality of the circumstances and more specifically the matters itemized in paragraphs a through v in Charge Fourteen.

Charge Seventeen

61. Judge Warner, a circuit judge of Montgomery County in the Fifteenth Judicial Circuit, while serving in that capacity, *failed to conduct herself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary*, as required by **Canon 2A** of the Alabama Canons of Judicial Ethics, in that, separately and severally, she engaged in the conduct, or engaged in

the conduct in bad faith, as alleged in paragraphs 25 through 26, 29 through 32, 34 through 37, 39, 41 through 45, 47 through 52, and 54 through 57, under the circumstances or leading to the circumstances and conduct described in paragraphs 25 through 57, and as shown by the totality of the circumstances and more specifically the matters itemized in paragraphs a through v in Charge Fourteen.

Charge Eighteen

62. Judge Warner, a circuit judge of Montgomery County in the Fifteenth Judicial Circuit, while serving in that capacity, *failed to maintain the decorum and temperance befitting her office*, as required by **Canon 2B** of the Alabama Canons of Judicial Ethics, in that, separately and severally, she engaged in the conduct, or in bad faith engaged in the conduct, alleged in paragraphs 25 through 26, 29 through 32, 34 through 37, 39, 41 through 45, 47 through 52, and 54 through 57, under the circumstances or leading to the circumstances and conduct described in paragraphs 25 through 57, and as shown by the totality of

the circumstances and more specifically the matters itemized in paragraphs a through v in Charge Fourteen.

Charge Nineteen

63. Judge Warner, a circuit judge of Montgomery County in the Fifteenth Judicial Circuit, while serving in that capacity, *failed to avoid conduct prejudicial to the administration of justice that brings the judicial office into disrepute*, as required by **Canon 2B** of the Alabama Canons of Judicial Ethics, in that, separately and severally, she engaged in the conduct, or in bad faith engaged in the conduct, alleged in paragraphs 25 through 26, 29 through 32, 34 through 37, 39, 41 through 45, 47 through 52, and 54 through 57, under the circumstances or leading to the circumstances and conduct described in paragraphs 25 through 57, and as shown by the totality of the circumstances and more specifically the matters itemized in paragraphs a through v in Charge Fourteen.

Charge Twenty

64. Judge Warner, a circuit judge of Montgomery County in the Fifteenth Judicial Circuit, while serving in that

capacity, conveyed or permitted Ms. Diane Paris to convey the impression that she was in a special position to influence her in violation of **Canon 2C** of the Alabama Canons of Judicial Ethics, in that, separately and severally, she engaged in the conduct, or in bad faith engaged in the conduct, alleged in paragraphs 25 through 26, 29 through 32, 34 through 37, 39, 41 through 45, 47 through 52, and 54 through 57, under the circumstances or leading to the circumstances and conduct described in paragraphs 25 through 57, and as shown by the totality of the circumstances and more specifically the matters itemized in paragraphs a through v in Charge Fourteen.

Charge Twenty-One

65. Judge Warner, a circuit judge of Montgomery County in the Fifteenth Judicial Circuit, while serving in that capacity, failed to perform the duties of her office impartially, as required by **Canon 3** of the Alabama Canons of Judicial Ethics, in that, separately and severally, she engaged in the conduct alleged in paragraphs 25 through 26, 29 through 32, 34 through 37, 39, 41 through 45, 47 through 52, and 54 through 57, under the circumstances or leading

to the circumstances and conduct described in paragraphs 25 through 57, and as shown by the totality of the circumstances and more specifically the matters itemized in paragraphs a through v in Charge Fourteen.

Charge Twenty-Two

66. Judge Warner, a circuit judge of Montgomery County in the Fifteenth Judicial Circuit, while serving in that capacity and *in the performance of her adjudicative duties, failed to be faithful to the law and maintain professional competence in it*, as required by **Canon 3A(1)** of the Alabama Canons of Judicial Ethics, in that, separately and severally, she engaged in the conduct, or in bad faith engaged in the conduct, alleged in paragraphs 25 through 26, 29 through 32, 34 through 37, 39, 41 through 45, 47 through 52, and 54 through 57, under the circumstances or leading to the circumstances and conduct described in paragraphs 25 through 57, and as shown by the totality of the circumstances and more specifically the matters itemized in paragraphs a through v in Charge Fourteen.

Charge Twenty-Three

67. Judge Warner, a circuit judge of Montgomery County in the Fifteenth Judicial Circuit, while serving in that capacity and *in the performance of her adjudicative duties, failed to maintain order and decorum in proceedings before her*, as required by **Canon 3A(2)** of the Alabama Canons of Judicial Ethics, in that, separately and severally, she engaged in the conduct, or in bad faith engaged in the conduct, alleged in paragraphs 27 through 29, 32 through 40, 45, 47, 48, 50, and 57, under the circumstances or leading to the circumstances and conduct described in paragraphs 25 through 57, and as shown by the totality of the circumstances and more specifically the matters itemized in paragraphs a through v in Charge Fourteen.

Charge Twenty-Four

68. Judge Warner, a circuit judge of Montgomery County in the Fifteenth Judicial Circuit, while serving in that capacity and *in the performance of her adjudicative duties, failed to be patient, dignified, and courteous to litigants and others with whom she deals in her official capacity*, as required by **Canon 3A(3)** of the Alabama Canons of Judicial

Ethics, in that, separately and severally, she engaged in the conduct, or in bad faith engaged in the conduct, alleged in paragraphs 27 through 29, 32 through 40, 45, 47, 48, 50, and 57, under the circumstances or leading to the circumstances and conduct described in paragraphs 25 through 57, and as shown by the totality of the circumstances and more specifically the matters itemized in paragraphs a through v in Charge Fourteen.

Charge Twenty-Five

69. Judge Warner, a circuit judge of Montgomery County in the Fifteenth Judicial Circuit, while serving in that capacity and *in the performance of her adjudicative duties, failed to accord to every person who is legally interested in a proceeding full right to be heard according to law*, as required by **Canon 3A(4)** of the Alabama Canons of Judicial Ethics, in that, separately and severally, she engaged in the conduct, or in bad faith engaged in the conduct, alleged in paragraphs 25 through 26, 29 through 32, 34 through 37, 39, 41 through 45, 47 through 52, and 54 through 57, under the circumstances or leading to the circumstances and conduct described in paragraphs 25

through 57, and as shown by the totality of the circumstances and more specifically the matters itemized in paragraphs a through v in Charge Fourteen.

Charge Twenty-Six

70. Judge Warner, a circuit judge of Montgomery County in the Fifteenth Judicial Circuit, while serving in that capacity and *in the performance of her adjudicative duties, considered ex parte communications concerning a pending proceeding*, as prohibited by **Canon 3A(4)** of the Alabama Canons of Judicial Ethics, in that, separately and severally, she engaged in the conduct alleged in paragraphs 38, 39, and 42 through 45, under the circumstances or leading to the circumstances and conduct described in paragraphs 25 through 57, and as shown by the totality of the circumstances and more specifically the matters itemized in paragraphs a through v in Charge Fourteen.

Charge Twenty-Seven

71. Judge Warner, a circuit judge of Montgomery County in the Fifteenth Judicial Circuit, while serving in that capacity, *failed to disqualify herself in a proceeding in*

*which her impartiality might reasonably be questioned, as required by **Canon 3C(1)** of the Alabama Canons of Judicial Ethics, and as evidenced, separately and severally, by her conduct alleged in paragraphs 25 through 26, 29 through 32, 34 through 37, 39, 41 through 45, 47 through 52, and 54 through 57, under the circumstances or leading to the circumstances and conduct described in paragraphs 25 through 57, and as shown by the totality of the circumstances and more specifically the matters itemized in paragraphs a through v in Charge Fourteen.*

Charge Twenty-Eight

72. Judge Warner, a circuit judge of Montgomery County in the Fifteenth Judicial Circuit, while serving in that capacity, *failed to disqualify herself in a proceeding in which her impartiality might reasonably be questioned where she had a personal bias or prejudice concerning a party, as required by **Canon 3C(1)(a)** of the Alabama Canons of Judicial Ethics, and as evidenced, separately and severally, by her conduct alleged in paragraphs 25 through 26, 29 through 32, 34 through 37, 39, 41 through 45, 47 through 52, and 54 through 57, under the circumstances or*

leading to the circumstances and conduct described in paragraphs 25 through 57, and as shown by the totality of the circumstances and more specifically the matters itemized in paragraphs a through v in Charge Fourteen.

COUNT THREE

FACTS

73. In 2003, Mr. Matt Maier filed a complaint for divorce against his wife, Ms. Jacqueline Maier, in Montgomery County Circuit Court. Matt Maier v. Jacqueline Maier, DR-03-627. Judge Warner did not preside over the couple's initial divorce proceedings. A final divorce judgment was entered in 2004. Mr. Maier subsequently filed a petition to modify that judgment, and on May 9, 2005, the case was reassigned to Judge Warner (DR-03-627.01; DR-03-627.02; DR-03-627.03).

74. From May 9, 2005, until March 31, 2009, Judge Warner presided over the Maiers' child custody dispute, which primarily involved their teenage son. After the Maiers were divorced in 2004, Ms. Maier initially had physical custody of their two minor children, a son and an older daughter. In 2005, Mr. Maier filed a petition to

modify the 2004 divorce decree to obtain joint physical custody of the children (DR-03-627.01).

75. On August 12, 2005, Judge Warner appointed attorney Clay Benson as guardian ad litem to represent the Maiers' two children. Subsequently, Ms. Maier filed motions to have Mr. Benson removed as guardian ad litem because of Mr. Benson's alleged relationship with Mr. Maier's brother and his alleged bias against Ms. Maier.

76. After a final hearing, Judge Warner entered an amended final decree of divorce on December 21, 2006, awarding primary physical custody of the children to Mr. Maier and designating him the ultimate decision-maker regarding any issues involving the children, such as schooling and religion. Judge Warner also ordered that the Maiers continue "co-parenting" and that the children alternate weeks with each parent until the Maiers' daughter entered college in the fall of 2007. Judge Warner also lowered Mr. Maier's child support payments from \$2,000 per month to \$553 per month, retroactive to November 2005.

77. On or about July 27, 2007, in anticipation of his daughter's departure for college, Mr. Maier filed another complaint and petition for modification of the court's

amended divorce decree, requesting sole physical custody of the Maiers' teenage son and another decrease in his court-ordered child support payments. On or about August 8, 2007, Judge Warner entered an order setting Mr. Maier's petition for a status conference for September 20, 2007. On August 10, 2007, Mr. Maier filed a motion requesting sole physical custody of the son pendente lite, without offering any evidence in support of his motion. Mr. Maier merely alleged that Judge Warner's December 21, 2006, order indicated the alternating-week custodyschedule would be in effect only until the Maiers' daughter entered college in the fall of 2007. Mr. Maier argued that, because their older daughter was entering college soon, the alternating-week custody should cease and he should have sole physical custody of the Maiers' son.

78. Ms. Maier was not served with the summons and July 27, 2007, petition for modification until August 13, 2007. Nevertheless, on August 16, 2007, despite the upcoming September 20, 2007, status conference, Judge Warner entered an ex parte order granting Mr. Maier's August 10, 2007, pendente lite motion and awarding Mr. Maier sole physical custody of the Maiers' son. Judge Warner also suspended Mr.

Maier's childsupport payments, set a visitation schedule allowing Ms. Maier to see her son every other weekend, and set a final hearing for December 12, 2007. On September 18, 2007, Ms. Maier filed a "Motion to Vacate Ex Parte Order." Judge Warner has failed to rule or even set that motion for a hearing.

79. Despite the fact Ms. Maier had sole physical custody of the Maiers' son for multiple years, including the three years the couple were separated prior to their initial 2003 divorce filing, Judge Warner, in her August 16, 2007, order summarily stripped Ms. Maier of physical custody without sufficient supporting allegations, without a hearing, and without affording Ms. Maier any opportunity to respond or submit evidence in her defense. Although Judge Warner had set a final hearing on this issue for December 12, 2007, on December 3, 2007, Judge Warner continued the final hearing until February 13, 2008, while leaving in effect her August 16, 2007, order stripping Ms. Maier of physical custody. After the final hearing, Judge Warner issued an order on February 15, 2008, continuing physical custody of the Maiers' son with Mr. Maier and ordering Ms. Maier to pay \$275 per month child support.

80. Thereafter, on or about January 15, 2009, Mr. Maier filed another complaint for modification against Ms. Maier (DR-03-627.03), this one requesting modification of Ms. Maier's visitation rights. Mr. Maier also filed a "Motion For Pendente Lite Suspension of Visitation and for Pendente Lite Hearing," including the allegation that Ms. Maier violated the court's order by extending her visitation two days so the Maiers' son could go hunting with Ms. Maier's relatives in Louisiana during his Christmas school break. The following day, January 16, 2009, Judge Warner issued an ex parte order granting Mr. Maier's motion and barring Ms. Maier from having any visitation or telephone contact with the Maiers' son before Ms' Maier was served with the motion. Once again, Judge Warner issued this order without a hearing, without any evidence, and without allowing Ms. Maier the opportunity to defend against the motion. Judge Warner granted Mr. Maier's motion without also granting his request for a hearing on that motion and before Ms. Maier was served with Mr. Maier's complaint on January 23, 2009. Had Ms. Maier been allowed to contest Mr. Maier's allegation that she had violated Judge Warner's visitation order, she would have

established that she returned the Maiers' son to Mr. Maier within her court-ordered period for visitation, but two days later than she had told Mr. Maier she would return their son to him.

81. Mr. Maier's pendente lite motion did not comply with Rule 65 of the Alabama Rules of Civil Procedure, nor did Mr. Maier even request an emergency ex parte order. Despite Ms. Maier's subsequent, strenuous objections to Judge Warner's ex parte order stripping her of her visitation rights, Judge Warner continued to keep the suspension of visitation in place without a hearing.

82. Ms. Maier filed a motion on January 29, 2009, for Judge Warner to recuse on the ground Judge Warner was prejudiced against Ms. Maier, in part because Ms. Maier had filed a complaint against Judge Warner with the Judicial Inquiry Commission. (The Commission had served that complaint on Judge Warner on September 4, 2007, as required by Rule 6, Rules of Procedure of the Judicial Inquiry Commission.) Judge Warner held a hearing on Ms. Maier's motion on March 5, 2009, and orally denied her motion.

83. On March 31, 2009, Judge Warner sua sponte entered an order vacating her oral order from March 5, 2009. Judge

Warner granted Ms. Maier's motion to recuse, stating, "Subsequent to the [March 5, 2009] hearing, the Court has reconsidered the Former Wife's motions and finds that while no bias exists, the case should be reassigned [to a different judge] to avoid the appearance of impropriety." The Maiers' case was reassigned to the Honorable Anita J. Kelly.

84. Ms. Maier's visitation rights were suspended for over a year until February 3, 2010, when Judge Kelly finally restored visitation after denying Mr. Maier's request to end visitation. Judge Kelly determined that the most serious allegations in Mr. Maier's January 15, 2009, motion were unfounded and that Ms. Maier had never violated the court's visitation order. During the year Ms. Maier's visitation was suspended, she only briefly saw her son twice.

85. Judge Warner exhibited improper demeanor toward Ms. Maier and her attorney, Mr. Jerry Blevins, during hearings. Judge Warner's prejudice against Ms. Maier was evident from Judge Warner's demeanor and the manner in which she addressed Mr. Blevins, in contrast to the way she addressed Mr. Maier's attorney and Mr. Benson. During a

hearing held on March 5, 2009, Judge Warner openly accused Attorney Blevins of impropriety and attempting to frighten the Maiers' son, who was sixteen years old at the time. Her stern accusation was based simply on Mr. Blevins's request to speak with the Maiers' son before trial to determine his wishes concerning custody. According to the record at the hearing, when Mr. Blevins stated he would object to the child testifying when and if the matter came to trial and to any statements of the child being admitted into evidence, Judge Warner stated "Well, you know what Mr. Blevins? We're not in court - - and I don't think anybody's exchanged a witness list. I really think you're premature on all of these objections to what might, sort of, perhaps, kind of could happen in the future in the trial, if you get my drift."

CHARGES

Charge Twenty-Nine

86. Judge Warner, a circuit judge of Montgomery County in the Fifteenth Judicial Circuit, while serving in that capacity, *failed to observe high standards of conduct so that the integrity and independence of the judiciary may be*

preserved, as required by **Canon 1** of the Alabama Canons of Judicial Ethics, in that, separately and severally, she engaged in the conduct alleged in paragraphs 76 through 85, under the circumstances or leading to the circumstances and conduct described in paragraphs 73 through 85, and, more specifically, among other conduct alleged, she

- a. granted petitions filed by Mr. Maier without notice to Ms. Maier and/or an opportunity to be heard by Ms. Maier, and without supporting evidence when no emergency claims were made; and/or
- b. entered an order granting retroactive relief from payment of child support, contrary to law, in that an order of child support is a fixed judgment for past amounts owed; and/or
- c. denied Ms. Maier's counsel access to the 16-year-old child whose custody was at issue, hampering his opportunity to prepare for the hearing; and/or
- d. suspended Ms. Maier's visitation and telephone contact not initiated by the child without a hearing and without hearing evidence when the

grounds for the suspension were easily explained and without merit; and/or

- e. was rude and discourteous to Ms. Maier's attorney; and/or
- f. failed to disqualify herself under circumstances in which she admitted continuing to preside gave the "appearance of impropriety"; and/or
- g. engaged in the conduct described in Counts One, Two, Four, and Five of this Amended Complaint.

Charge Thirty

87. Judge Warner, a circuit judge of Montgomery County in the Fifteenth Judicial Circuit, while serving in that capacity, *failed to avoid impropriety and the appearance of impropriety in all her activities*, as required by **Canon 2** of the Alabama Canons of Judicial Ethics, in that, separately and severally, she engaged in the conduct, or engaged in the conduct in bad faith, alleged in paragraphs 76 through 85, under the circumstances or leading to the circumstances and conduct described in paragraphs 73 through 85 and more specifically, and as shown by the

totality of the circumstances and more specifically the matters itemized in paragraphs a through f in Charge Twenty-nine, as well as in the remainder of this Amended Complaint.

Charge Thirty-One

88. Judge Warner, a circuit judge of Montgomery County in the Fifteenth Judicial Circuit, while serving in that capacity, *failed to respect and comply with the law*, as required by **Canon 2A** of the Alabama Canons of Judicial Ethics, in that, separately and severally, she engaged in the conduct, or in bad faith engaged in the conduct alleged in paragraphs 79, 80, 81 and 83, under the circumstances or leading to the circumstances and conduct described in paragraphs 73 through 85, and as shown by the totality of the circumstances and more specifically the matters itemized in paragraphs a through f in Charge Twenty-Nine, as well as in the remainder of this Amended Complaint.

Charge Thirty-Two

89. Judge Warner, a circuit judge of Montgomery County in the Fifteenth Judicial Circuit, while serving in that capacity, *failed to conduct herself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary*, as required by **Canon 2A** of the Alabama Canons of Judicial Ethics, in that, separately and severally, she engaged in the conduct, or engaged in the conduct in bad faith, alleged in paragraphs 76 through 85, under the circumstances or leading to the circumstances and conduct described in paragraphs 73 through 85, and as shown by the totality of the circumstances and more specifically the matters itemized in paragraphs a through f in Charge Twenty-nine, as well as in the remainder of this Amended Complaint.

Charge Thirty-Three

90. Judge Warner, a circuit judge of Montgomery County in the Fifteenth Judicial Circuit, while serving in that capacity, *failed to maintain the decorum and temperance befitting her office*, as required by **Canon 2B** of the Alabama Canons of Judicial Ethics, in that, she engaged in

the conduct, or in bad faith engaged in the conduct alleged in paragraph 85, under the circumstances or leading to the circumstances and conduct described in paragraphs 73 through 85.

Charge Thirty-Four

91. Judge Warner, a circuit judge of Montgomery County in the Fifteenth Judicial Circuit, while serving in that capacity, *failed to avoid conduct prejudicial to the administration of justice that brings the judicial office into disrepute*, as required by **Canon 2B** of the Alabama Canons of Judicial Ethics, in that, separately and severally, she engaged in the conduct, or engaged in the conduct in bad faith, alleged in paragraphs 76 through 85, under the circumstances or leading to the circumstances and conduct described in paragraphs 73 through 85, and as shown by the totality of the circumstances and more specifically the matters itemized in paragraphs a through f in Charge Twenty-nine, as well as in the remainder of this Amended Complaint.

Charge Thirty-Five

92. Judge Warner, a circuit judge of Montgomery County in the Fifteenth Judicial Circuit, while serving in that capacity, *failed to perform the duties of her office impartially*, as required by **Canon 3** of the Alabama Canons of Judicial Ethics, in that, separately and severally, she engaged in the conduct, or engaged in the conduct in bad faith, alleged in paragraphs 76 through 85, under the circumstances or leading to the circumstances and conduct described in paragraphs 73 through 85, and as shown by the totality of the circumstances and more specifically the matters itemized in paragraphs a through f in Charge Twenty-nine, as well as in the remainder of this Amended Complaint.

Charge Thirty-Six

93. Judge Warner, a circuit judge of Montgomery County in the Fifteenth Judicial Circuit, while serving in that capacity and *in the performance of her adjudicative duties*, *failed to be faithful to the law and maintain professional competence in it*, as required by **Canon 3A(1)** of the Alabama Canons of Judicial Ethics, in that, separately and

severally, she engaged in the conduct, or in bad faith engaged in the conduct, alleged in paragraphs 79, 80, 81, 82, and 83, under the circumstances or leading to the circumstances and conduct described in paragraphs 73 through 85, and as shown by the totality of the circumstances and more specifically the matters itemized in paragraphs a through f in Charge Twenty-Nine, as well as in the remainder of this Amended Complaint.

Charge Thirty-Seven

94. Judge Warner, a circuit judge of Montgomery County in the Fifteenth Judicial Circuit, while serving in that capacity and *in the performance of her adjudicative duties, failed to be patient, dignified, and courteous to litigants and others with whom she deals in her official capacity*, as required by **Canon 3A(3)** of the Alabama Canons of Judicial Ethics, in that, separately and severally, she engaged in the conduct, or in bad faith engaged in the conduct, alleged in paragraph 85, under the circumstances or leading to the circumstances and conduct described in paragraphs 73 through 85, and as shown by the totality of the circumstances and more specifically the matters itemized in

paragraphs a through f in Charge Twenty-Nine, as well as in the remainder of this Amended Complaint.

Charge Thirty-Eight

95. Judge Warner, a circuit judge of Montgomery County in the Fifteenth Judicial Circuit, while serving in that capacity and *in the performance of her adjudicative duties, failed to accord to every person who is legally interested in a proceeding full right to be heard according to law*, as required by **Canon 3A(4)** of the Alabama Canons of Judicial Ethics, in that, separately and severally, she engaged in the conduct, or in bad faith engaged in the conduct, alleged in paragraphs 79, 80, 81, 83, and 85, under the circumstances or leading to the circumstances and conduct described in paragraphs 73 through 85, and as shown by the totality of the circumstances and more specifically the matters itemized in paragraphs a through f in Charge Twenty-Nine, as well as in the remainder of this Amended Complaint.

Charge Thirty-Nine

96. Judge Warner, a circuit judge of Montgomery County in the Fifteenth Judicial Circuit, while serving in that capacity, *failed to disqualify herself in a proceeding in which her impartiality might reasonably be questioned*, as required by **Canon 3C(1)** of the Alabama Canons of Judicial Ethics, in that, separately and severally, she engaged in the conduct, or in bad faith engaged in the conduct, alleged in paragraphs 79, 80, 81, 82, and 83, under the circumstances or leading to the circumstances and conduct described in paragraphs 73 through 85, and as shown by the totality of the circumstances and the matters itemized in paragraphs a through f in Charge Twenty-Nine, as well as the remainder of this Amended Complaint. More specifically, after the Judicial Inquiry Commission complaint filed by Ms. Maier, Judge Warner delayed ruling on Ms. Maier's motions and delayed giving her an opportunity to be heard before losing visitation with her child under circumstances she later stated gave the "appearance of impropriety".

Charge Forty

97. Judge Warner, a circuit judge of Montgomery County in the Fifteenth Judicial Circuit, while serving in that capacity, *failed to disqualify herself in a proceeding in which her impartiality might reasonably be questioned where she had a personal bias or prejudice concerning a party*, as required by **Canon 3C(1)(a)** of the Alabama Canons of Judicial Ethics, in that, separately and severally, she engaged in the conduct, or in bad faith engaged in the conduct, alleged in paragraphs 81 and 82, under the circumstances or leading to the circumstances and conduct described in paragraphs 73 through 85, and as shown by the totality of the circumstances and more specifically the matters itemized in paragraphs a through f in Charge Twenty-Nine, as well as in the remainder of this Amended Complaint.

COUNT FOUR

FACTS

98. On October 13, 2010, S.B.J. filed a petition for protection from abuse, on a printed standard form, which is filled out and filed by the party seeking court protection.

On that same date, the case was docketed as S.B.J v. R.E.J, DR-10-891, in the CircuitCourtofMontgomeryCounty and assigned to Judge Warner. Judge Warner presided over S.B.J.'s case from October 13, 2010, until November 12, 2010. In her petition, S.B.J. requested a protection-from-abuse order against R.E.J, her husband (of one year), because he had physically assaulted S.B.J.; broken her laptop computer and cell phone; assaulted her by poking, slapping, and hitting her, in the presence of their child; threatened physical harm to her when she told him they needed to separate; and threatened to take their child from her. S.B.J. specifically requested that the protection-from-abuse order award her custody of their child; remove R.E.J. from her home they shared; prohibit him from "transferring, concealing, encumbering, or otherwise disposing of" S.B.J.'s automotive repair business (which she alone owned); and any other relief deemed necessary for the protection of S.B.J. and their child. S.B.J. did not mark the form's specific box requesting the court also order the defendant to stay away from the petitioner's "place of employment" nor did S.B.J. otherwise indicate, in her petition, she wanted the court to order R.E.J. to stay

away from S.B.J.'s automotive business where he was employed.

99. On October 13, 2010, Judge Warner completed the "Ex Parte Protection Order" form, temporarily ordering R.E.J. to vacate S.B.J.'s home; enjoining him from committing or threatening to commit any acts of abuse against S.B.J.; ordering him to stay away from S.B.J.'s residence; and prohibiting him from "transferring, concealing, encumbering, or otherwise disposing of" any mutual property or S.B.J.'s automotive repair business. Judge Warner did not order R.E.J. to stay away from S.B.J.'s business and left the box for such an order unmarked on the form. Judge Warner ordered that her order remain in effect until the final hearing set for November 10, 2010.

100. On November 10, 2010, Judge Warner held the final hearing on S.B.J.'s petition. At that hearing, S.B.J. and R.E.J. appeared pro se. During the November 10, 2010 hearing, Judge Warner's demeanor toward the husband, R.E.J., was cordial, polite, and respectful. When Judge Warner asked S.B.J. at the beginning of the hearing why the couple was in court, S.B.J. stated, "We are here because I

fear for the long-term safety of my child and me with my husband."13 Judge Warner asked R.E.J. for his response. He did not respond to S.B.J.'s statement, but began talking about their child. Judge Warner's attitude softened, she rested her head on her hand, began smiling at R.E.J., and said, "Oh, I bet she is just beautiful." Judge Warner smiled, laughed, and pleasantly conversed with R.E.J. When R.E.J. quoted Biblical scripture about a woman's submission to her husband, Judge Warner replied, "That's not exactly what the Bible states Mr. J." R.E.J told Judge Warner the couple's problems started when S.B.J. became pregnant "and you know that women's bodies change a lot during pregnancy." Judge Warner replied, "Yes, Mr. J., I do know that women's bodies change during pregnancy." R.E.J. then told Judge Warner that S.B.J. had "control issues" and was overbearing. He further stated S.B.J. has an M.B.A. from Auburn and a problem "with being in control." When S.B.J.

13The quotation of dialogue, throughout paragraphs 101 to 104, is not intended to infer that the quoted material is an excerpt from a transcription of the first hearing with Ms. Johnston, for the Commission is not aware of the existence of any recording of the proceedings referenced herein. The Commission's use of quotations is intended rather to facilitate the approximate description, to the best of the Commission's ability, of dialogue and conversation, i.e., in those words or words to that effect.

told Judge Warner she was scared of R.E.J., and "I need help," Judge Warner then turned to R.E.J. and asked if he heard that S.B.J. was scared. He responded that he did, but assured that S.B.J. had no reason to be. R.E.J. admitted to Judge Warner he had "anger issues." Despite having previously hurt S.B.J., he stated he would never hurt her. Judge Warner then began to counsel R.E.J. concerning his hypothesis that his anger stemmed from his parents' divorce, stating, "Mr. J., you do realize you had nothing to do with that, don't you?"

101. During the same hearing, Judge Warner's demeanor toward S.B.J was disrespectful and completely opposite her attitude toward R.E.J. She was abrupt, stern, and admonishing to S.B.J. When R.E.J. stated S.B.J. has an M.B.A. from Auburn University and a problem "with being in control," Judge Warner turned to S.B.J. and inquired, "Is that true?" S.B.J. replied, "Is what true?" Judge Warner retorted, "Mrs. J., you weren't even listening. Mrs. J., don't you know marriage is 50/50 and it takes people listening in order to communicate effectively?" S.B.J. told Judge Warner that most of R.E.J.'s comments were not true.

102. S.B.J. told Judge Warner she was afraid of R.E.J. because of his history of physical abuse and repeated threats to harm S.B.J. S.B.J. also told Judge Warner about R.E.J.'s recent threats, personal property damage, and physical assaults described in S.B.J.'s petition. In addition, S.B.J. informed Judge Warner R.E.J. repeatedly came home drunk late at night and tried to have sexual relations with her and, if she attempted to refuse, he threatened her and destroyed personal property. S.B.J. brought, to the hearing, evidence documenting R.E.J.'s past physical abuse, including a police report of the January 1, 2010 assault and photographs of the black eye and bruises on her face and head inflicted by R.E.J. When S.B.J. attempted to show Judge Warner the photographs and other evidence, Judge Warner refused to look at them.

103. At one point in the proceeding, S.B.J. started crying while she was attempting to answer one of Judge Warner's questions. Judge Warner insisted, "Stop Mrs. J, just stop." S.B.J. replied, "I haven't been able to speak yet, and please just let me finish. This is the worst thing that I've ever been through in my life, and I don't know what to do. I've done everything I can to try and

make this marriage work, but it's getting worse, and I'm scared of this man. I am asking, no pleading, for your help, Judge Warner." After this plea, Judge Warner spoke to S.B.J. the following words or words to this effect:

Mrs. J., do you realize I can throw you in jail for contempt of court for speaking to me like that in my courtroom? You do realize this is my courtroom, don't you? And no one tells me what they are going to do in my courtroom. You obviously don't know where you are."

To this outburst, S.B.J. replied, "No, m'am, I didn't know that, and I guess I don't know where I am." Judge Warner replied, "You never watch court on TV." Judge Warner told the parties she had basically two options: one, issue an order that would, basically, keep the parties from "nitpicking" at one another, or two, deny S.B.J.'s protection-from-abuse petition. When Ms. J. asked for clarification, Judge Warner stated, "Honestly, I don't know what's going on here, Mr. and Mrs. J., but I don't see anything here that makes me think I should issue a protection order, Mrs. J. Motion denied."

104. On December 2, 2010, S.B.J. filed a complaint for divorce against R.E.J., which was docketed in the Circuit Court of Montgomery County as S.B.J.v R.E.J, DR-10-1044, and on December 7, 2010, the case was assigned to Judge

Warner. Judge Warner presided over S.B.J.'s divorce case until March 1, 2011.

105. On December 10, 2010, one month after S.B.J.'s November 10, 2010 hearing before Judge Warner, R.E.J. assaulted S.B.J. by throwing a large, metal Swingline stapler at her head. S.B.J. received twenty-four stitches, a black eye, and a disfiguring scar. She still suffers from vision problems, nerve damage, and vertigo. R.E.J. has since been criminally charged with felony assault against S.B.J.

106. After this last assault, S.B.J. filed a second petition for protection from abuse on December 13, 2010. S.B.J v R.E.J, DR-10-1074. This case was also assigned to Judge Warner on December 13, 2010. On December 14, 2010, Judge Warner consolidated S.B.J.'s second protection-from-abuse case with S.B.J.'s divorce case (DR-10-1044). In her December 13, 2010 protection-from-abuse petition, in addition to the same requests for relief as in her October 10, 2010 petition, S.B.J. marked on the second-petition form the box indicating she wanted the court to order R.E.J. to also stay away from S.B.J.'s business. On December 14, 2010, Judge Warner entered an order similar to

her October 13, 2010 order, but this time she marked on the order form the provision that R.E.J. stay away from S.B.J.'s business. Judge Warner ordered the December 14, 2010 order remain in effect until a final hearing, which she set for December 20, 2010. The hearing was subsequently continued to January 6, 2011.

107. On January 3, 2011, S.B.J.'s counsel Ms. Kelli McDaniel filed a motion requesting that Judge Warner recuse from S.B.J.'s case. As grounds for her motion, S.B.J. stated (a) Judge Warner had "wrongfully dismissed" S.B.J.'s October 13, 2010 petition for protection from abuse, resulting in R.E.J.'s assaulting and severely injuring S.B.J., and (b) the Judicial Inquiry Commission was actively investigating Ms. McDaniel's complaint against Judge Warner. On January 4, 2011, without a hearing, Judge Warner summarily denied S.B.J.'s motion, by writing on S.B.J.'s motion, "Denied. Parties were pro se in the PFA hearing."

108. Based upon R.E.J.'s two motions to continue, Judge Warner reset the final hearing on S.B.J.'s second petition for protection from abuse for February 28, 2011. On that date, S.B.J. filed a second motion to recuse, this

one arguing Judge Warner was disqualified from presiding because both S.B.J. and Ms. McDaniel had filed complaints with the Judicial Inquiry Commission against Judge Warner, and the Commission was investigating those complaints. Copies of the complaints filed with the Judicial Inquiry Commission were attached to the motion.

109. A short hearing on the motion to recuse was held, on the record with a court reporter, on February 28, 2011. In that hearing, Judge Warner was very polite to S.B.J., showing a completely different attitude from the first protection-from-abuse hearing. She allowed S.B.J.'s attorney to argue the second motion to recuse. During that hearing, Judge Warner tried to get S.B.J. to agree to a different version of the facts occurring at the first protection-from-abuse hearing. After Judge Warner asked S.B.J. some leading questions in her attempt to get S.B.J. to adopt Judge Warner's version, Judge Warner very politely stated her own version of the facts of the previous hearing.

THE COURT: And I believe, Mrs. J. you asked me if the granting of your motion for a PFA would keep Mr. J. from working with you. Do you remember asking me that?

THE WIFE: Yes, m'am.

THE COURT: And I said, yes, it would. It would prevent him from being around you. Do you remember what you said? You said you needed him to work with you

THE WIFE: I don't remember.

THE COURT: Well I do. And I remember it very well because I felt like you were due to have your PFA granted.

THE WIFE: Uh-huh.

THE COURT: I thought you admitted - he admitted - when I returned to him and said what do you have to say about this and he told me that he had hurt you. And I thought, based on the law, that you were due to have it granted. And you said I need him to work with me in the business. What am I supposed to do, he can't work with you. And you said, okay, we'll - I said, that means, it will be dismissed and you said, okay. Then you filed the second one with the photographs - I am so sorry that that happened. I hate that.

THE WIFE: It's been pretty bad.

THE COURT: I'm sure it has. I don't find that there is any reason for me to recuse, but I surely don't want either Mr. J. or Ms. J. to feel like you have someone sitting here who would have any reason to do the wrong thing. I think there are some issues between the two of you and I guess some other judge will resolve those issues. I am sorry Ms. J. I know this has been terrible for you. Mr. J., I don't know what's going on. Perhaps another judge can get to the bottom of it. So your motion is granted Ms. McDaniel, and we are adjourned.

A month before this hearing, Judge Warner had received

detailed investigation letters from the Judicial Inquiry Commission concerning the Johnston case, and six weeks before, Commission subpoenas concerning its investigations of complaints against Judge Warner. On March 1, 2011, Judge Warner entered a formal recusal order in S.B.J.'s case. (The Judicial Inquiry Commission issued Advisory Opinion 11-904 after Judge Warner's recusal in this matter.)

CHARGES

Charge Forty-One

110. Judge Warner, a circuit judge of Montgomery County in the Fifteenth Judicial Circuit, while serving in that capacity, *failed to observe high standards of conduct so that the integrity and independence of the judiciary may be preserved*, as required by **Canon 1** of the Alabama Canons of Judicial Ethics, in that, separately and severally, she engaged in the conduct alleged in paragraphs 101, 102, 103, 108, and 109, under the circumstances or leading to the circumstances and conduct described in paragraphs 98 through 109 and more specifically, among other conduct alleged, she

- a. during the November 10, 2010 hearing, was prejudiced against S.B.J. as indicated by her disparate treatment of S.B.J. and R.E.J; and/or
- b. during the November 10, 2010 hearing, treated R.E.J. with courtesy, consideration, and respect, while being disrespectful, discourteous, and rude to S.B.J.; and/or
- c. during the November 10, 2010 hearing, treated the courtroom as her own property rather than a place dedicated to the rule of law and serving the public; and/or
- d. during the November 10, 2010 hearing, conducted herself with arrogance during a judicial proceeding in her statements including references to "my" court room, raising herself and her own importance above the issues or parties before her; and/or
- e. denied S.B.J.'s October 13, 2010 petition for protection from abuse, despite acknowledging at the February 28, 2011 hearing that S.B.J.'s October 13, 2010 petition was due to be granted by law; and/or

- f. during the November 10, 2010 hearing, failed to show S.B.J. the same deference for credibility as she had shown for S.B.J.'s abusive husband; and/or
- g. during the November 10, 2010 and the February 28, 2011 hearings, denied S.B.J. her right to be protected from abuse by the courts; and/or
- h. during the November 10, 2010 hearing, ignored S.B.J.'s pleas for protection and, instead, threatened to "throw her in jail" for contempt because she was crying in her courtroom; and/or
- i. during the November 10, 2010 hearing, treated or appeared to treat the R.E.J. more courteously than S.B.J.; and/or
- j. ignored, or appeared to ignore, S.B.J.'s pleas for protection from abuse; and/or
- k. during the November 10, 2010 hearing, did not give S.B.J. the opportunity to present all the evidence she had with her; and/or
- l. during the February 28, 2011 hearing, attempted to use a judicial proceeding to promote her own self-

interests by re-creating the facts of the November 10, 2010 hearing through leading questions and self-serving statements not subject cross examination; and/or

m. engaged in the conduct described in Counts One, Two, Three and Five of this amended complaint.

Charge Forty-Two

111. Judge Warner, a circuit judge of Montgomery County in the Fifteenth Judicial Circuit, while serving in that capacity, *failed to avoid impropriety and the appearance of impropriety in all her activities*, as required by **Canon 2** of the Alabama Canons of Judicial Ethics, in that, separately and severally, she engaged in the conductor, in bad faith, engaged in the conduct alleged in paragraphs 101 through 109, under the circumstances or leading to the circumstances and conduct described in paragraphs 98 through 109, and as shown by the totality of the circumstances and more specifically the matters itemized in paragraphs a through l in Charge Forty-Two, as well as in the remainder of this amended complaint.

Charge Forty-Three

112. Judge Warner, a circuit judge of Montgomery County in the Fifteenth Judicial Circuit, while serving in that capacity, *failed to respect and comply with the law*, as required by **Canon 2A** of the Alabama Canons of Judicial Ethics, in that, separately and severally, she engaged in the conduct or, in bad faith, engaged in the conduct alleged in paragraphs 102 and 103 under the circumstances or leading to the circumstances and conduct described in paragraphs 98 through 109, and as shown by the totality of the circumstances and more specifically by the facts that she denied S.B.J.'s first protection-for-abuse petition, which she later admitted under the law was due to have been granted, and/or at the November 10, 2010 hearing, she failed to consider S.B.J.'s evidence of abuse, as well as the matters alleged in the remainder of this amended complaint.

Charge Forty-Four

113. Judge Warner, a circuit judge of Montgomery County in the Fifteenth Judicial Circuit, while serving in that capacity, *failed to conduct herself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary*, as required by **Canon 2A** of the Alabama Canons of Judicial Ethics, in that, separately and severally, she engaged in the conduct or, in bad faith, engaged in the conduct alleged in paragraphs 101 through 109, under the circumstances or leading to the circumstances and conduct described in paragraphs 98 through 109, and as shown by the totality of the circumstances and more specifically the matters itemized in paragraphs a through l in Charge Forty-Two, as well as in the remainder of this amended complaint.

Charge Forty-Five

114. Judge Warner, a circuit judge of Montgomery County in the Fifteenth Judicial Circuit, while serving in that capacity, *failed to maintain the decorum and temperance befitting her office*, as required by **Canon 2B** of the Alabama Canons of Judicial Ethics, in that, separately and severally, she engaged in the conduct alleged or, in bad

faith, engaged in the conduct alleged in paragraphs 101 through 109, under the circumstances or leading to the circumstances and conduct described in paragraphs 98 through 109, and as shown by the totality of the circumstances and more specifically the matters itemized in paragraphs a through l in Charge Forty-Two, as well as in the remainder of this amended complaint.

Charge Forty-Six

115. Judge Warner, a circuit judge of Montgomery County in the Fifteenth Judicial Circuit, while serving in that capacity, *failed to avoid conduct prejudicial to the administration of justice that brings the judicial office into disrepute*, as required by **Canon 2B** of the Alabama Canons of Judicial Ethics, in that, separately and severally, she engaged in the conduct or, in bad faith, engaged in the conduct alleged in paragraphs 101 through 109, under the circumstances or leading to the circumstances and conduct described in paragraphs 98 through 109, and as shown by the totality of the circumstances and more specifically the matters itemized in paragraphs a through l in Charge Forty-Two, as well as in

the remainder of this amended complaint.

Charge Forty-Seven

116. Judge Warner, a circuit judge of Montgomery County in the Fifteenth Judicial Circuit, while serving in that capacity, *failed to perform the duties of her office impartially*, as required by **Canon 3** of the Alabama Canons of Judicial Ethics, in that, separately and severally, she engaged in the conduct or, in bad faith, engaged in the conduct, alleged in paragraphs 101 through 109, under the circumstances or leading to the circumstances and conduct described in paragraphs 98 through 109, and as shown by the totality of the circumstances and more specifically the matters itemized in paragraphs a through l in Charge Forty-Two, as well as in the remainder of this amended complaint.

Charge Forty-Eight

117. Judge Warner, a circuit judge of Montgomery County in the Fifteenth Judicial Circuit, while serving in that capacity and *in the performance of her adjudicative duties*, *failed to be faithful to the law and maintain professional*

competence in it, as required by **Canon 3A(1)** of the Alabama Canons of Judicial Ethics, in that, separately and severally, she engaged in the conduct alleged in paragraphs 102 and 103 under the circumstances or leading to the circumstances and conduct described in paragraphs 98 through 109, and as shown by the totality of the circumstances and more specifically by the facts that she denied S.B.J.'s first protection-for-abuse petition, which she later admitted under the law was due to have been granted, and/or at the November 10, 2010 hearing, she failed to consider S.B.J.'s evidence of abuse, as well as the matters alleged in the remainder of this amended complaint.

Charge Forty-Nine

118. Judge Warner, a circuit judge of Montgomery County in the Fifteenth Judicial Circuit, while serving in that capacity and *in the performance of her adjudicative duties*, failed to maintain order and decorum in proceedings before her, as required by **Canon 3A(2)** of the Alabama Canons of Judicial Ethics, in that, separately and severally, she engaged in the conduct alleged in paragraphs 101 and 102,

under the circumstances or leading to the circumstances and conduct described in paragraphs 98 through 109 and as shown by the totality of the circumstances and more specifically the matters itemized in paragraphs a through l in Charge Forty-Two, as well as in the remainder of this amended complaint.

Charge Fifty

119. Judge Warner, a circuit judge of Montgomery County in the Fifteenth Judicial Circuit, while serving in that capacity and *in the performance of her adjudicative duties, failed to be patient, dignified, and courteous to litigants*, as required by **Canon 3A(3)** of the Alabama Canons of Judicial Ethics, in that, separately and severally, she engaged in the conduct alleged in paragraphs 101 through 109, under the circumstances or leading to the circumstances and conduct described in paragraphs 98 through 109 and as shown by the totality of the circumstances and more specifically the matters itemized in paragraphs a through l in Charge Forty-Two, as well as in the remainder of this amended complaint.

Charge Fifty-One

120. Judge Warner, a circuit judge of Montgomery County in the Fifteenth Judicial Circuit, while serving in that capacity and *in the performance of her adjudicative duties, failed to accord to every person who is legally interested in a proceeding full right to be heard according to law*, as required by **Canon 3A(4)** of the Alabama Canons of Judicial Ethics, in that, separately and severally, she engaged in the conduct alleged in paragraphs 101 through 109 under the circumstances or leading to the circumstances and conduct described in paragraphs 98 through 109 and as shown by the totality of the circumstances and more specifically the matters itemized in paragraphs a through l in Charge Forty-Two, as well as in the remainder of this amended complaint.

Charge Fifty-Two

121. Judge Warner, a circuit judge of Montgomery County in the Fifteenth Judicial Circuit, while serving in that capacity, *failed to disqualify herself in a proceeding in*

which her impartiality might reasonably be questioned, as required by **Canon 3C(1)** of the Alabama Canons of Judicial Ethics, in that, separately and severally, she engaged in the conduct alleged in paragraphs 107 through 109, under the circumstances or leading to the circumstances and conduct described in paragraphs 98 through 109 and as shown by the totality of the circumstances and more specifically the matters itemized in paragraphs a through l in Charge Forty-Two, as well as in the remainder of this amended complaint.

Charge Fifty-Three

122. Judge Warner, a circuit judge of Montgomery County in the Fifteenth Judicial Circuit, while serving in that capacity, *failed to disqualify herself in a proceeding in which her impartiality might reasonably be questioned where she had a personal bias or prejudice concerning a party*, as required by **Canon 3C(1)(a)** of the Alabama Canons of Judicial Ethics, in that, separately and severally, she engaged in the conduct alleged in paragraphs 107 through 109, under the circumstances or leading to the circumstances and conduct described in paragraphs 98

through 109 and as shown by the totality of the circumstances and more specifically the matters itemized in paragraphs a through l in Charge Forty-Two, as well as in the remainder of this amended complaint.

COUNT FIVE

FACTS

123. From January 12, 2009, until Judge Warner retired, she presided over the divorce proceedings of Ms. Kimberly McGregor Brown and Mr. Todd Brown, Brown v. Brown, DR-09-900005; DR-09-90005.01. On March 31, 2009, on the date of the *pendente lite* hearing, Judge Warner held a conference pursuant to the motion signed and filed the same date by the court-appointed guardian ad litem, Mr. Joshua James, stating in its entirety, "Recent events have occurred involving the undersigned and the court appointed counselor, Laurie Mattson Shoemaker, that need to be immediately addressed with the Court prior to the *pendente lite* hearing scheduled for today, March 31, 2009." In the conference, Mr. James and Ms. Shoemaker abruptly withdrew without any explanation -- on the day they were to make and had been ready to make their recommendations for the

custody arrangements of the Browns' children, including the children's contact with the maternal grandparents. Even though Ms. Shoemaker stood crying before Judge Warner as she withdrew, even though their withdrawal occurred on the day they were to give Judge Warner their recommendations, and even though their abrupt withdrawal would cause a delay in the proceedings, Judge Warner did not make any inquiry whatsoever as to the reason the officers of the court, appointed by her, abruptly withdrew.

124. A final judgment of divorce was entered pursuant to the parties' settlement agreement on April 28, 2009 (DR-09-090005). Six weeks later, on June 16, 2009, Ms. Brown filed a "Complaint for Modification of Former Husband's Visitation" (DR-09-900005.01). Ms. Brown's complaint for modification was separate from the original divorce proceedings initiated by Mr. Brown when he filed his complaint for divorce on January 12, 2009. Mr. Brown was not properly served with the summons and June 16, 2009 complaint filed by Ms. Brown until July 9, 2009.

125. On June 18, 2009, Judge Warner entered an order appointing attorney Mr. Jay Taylor as guardian ad litem representing the Browns' minor children in the modification

proceeding (DR-09-900005.01). On June 25, 2009, Mr. Taylor filed an emergency motion to suspend Mr. Brown's visitation pending a hearing. Mr. Taylor did not include any evidence to support his allegations. On June 26, 2009, Judge Warner summarily granted Mr. Taylor's motion without a hearing, but set the matter for a hearing for July 2, 2009. Mr. Brown's attorney, Mr. Mark Montiel, did not receive Judge Warner's order (postmarked June 29, 2009) until June 30, 2009, just a few days before the scheduled hearing.

126. On July 2, 2009, Mr. Brown filed his "Former Husband's Motion for Summary Dissolution of Orders and Cancellation of July 2 Hearing Due to Lack of Jurisdiction." In his motion, Mr. Brown argued that, because he had not yet been served with the summons and complaint filed by Ms. Brown, Judge Warner was without jurisdiction to suspend his visitation. Mr. Brown requested Judge Warner vacate her order suspending his visitation and cancel the July 2, 2009 hearing.

127. On July 2, 2009, Judge Warner *only* cancelled the July 2, 2009 hearing on Mr. Taylor's emergency motion, but left her order suspending Mr. Brown's visitation in effect despite obvious jurisdictional and procedural defects,

the lack of evidentiary allegations, and the lack of service of the summons and complaint to Mr. Brown.

128. On July 15, 2009, Mr. Brown filed a petition for writ of mandamus with the Alabama Court of Civil Appeals, seeking a reversal of Judge Warner's order suspending Mr. Brown's visitation. The Court denied Mr. Brown's petition on August 13, 2009, and issued its certificate of judgment on September 18, 2009.

129. On September 11, 2009, Mr. Brown filed his "Petition for Emergency Order to Establish a Parenting Plan for the Minor Children," in which he requested Judge Warner restore his custodial rights. On November 12, 2009, Judge Warner denied Mr. Brown's petition, stating in part, "the Former Husband is reminded that the Court set a hearing regarding the suspension of his visitation within seven days of the Order suspending visitation. It was the Former Husband's request that the hearing be cancelled."

130. On December 14, 2009, Mr. Brown filed his "Renewed Motion to Restore Custodial Rights and Visitation Rights to Former Husband." At a status conference on December 14, 2009, Judge Warner orally denied Mr. Brown's motion. On December 28, 2009, Mr. Brown appealed Judge Warner's

decision to the Court of Civil Appeals.

131. On March 23, 2010, the Court of Civil Appeals issued an order instructing Judge Warner to respond to Mr. Brown's appeal (which the appellate court treated as a petition for writ of mandamus) within twenty-one days, unless Judge Warner held an evidentiary hearing regarding the suspension of Mr. Brown's visitation before the expiration of the twenty-one days. On March 29, 2010, Judge Warner set a hearing on Mr. Brown's visitation rights for April 12, 2010.

132. During the April 12, 2010 hearing, Judge Warner limited the hearing to three hours and allowed only the guardian ad litem, Mr. Taylor, to call witnesses. Mr. Taylor's direct examination of the witnesses lasted approximately one hour and ten minutes. Mr. Montiel's cross-examination of those witnesses took one hour and one minute (from the time Judge Warner informed Mr. Montiel his cross-examination would count against his time allotment). Mr. Floyd Minor, Ms. Brown's lawyer, cross-examined witnesses for thirty-seven minutes (twenty-three of which were his cross-examination of Mr. Brown). Judge Warner permitted Mr. Montiel to cross-examine his own client, Mr.

Brown, for only twelve minutes before Judge Warner abruptly ended the hearing. She did not allow Mr. Montiel to present testimony of the six witnesses ready to testify on Mr. Brown's behalf.

133. On April 13, 2010, Judge Warner vacated her order suspending Mr. Brown's visitation, but allowed Mr. Brown to have supervised visitation with his children only under terms agreed upon by Ms. Brown, the court-appointed guardian ad litem, the court-appointed parenting coordinator, and the court-appointed children's counselor. Judge Warner ordered this condition despite the advice provided to her by the Court of Civil Appeals six months earlier, on September 9, 2009, in M.R.J. v. D.R.B., 34 So. 3d 1287, 1292 (Ala. Civ. App. 2009), that that Court had consistently held a judgment that leaves visitation to the sole discretion of the custodial parent is an abuse of discretion because it, in effect, awards no visitation. Judge Warner, in her April 13, 2010 order, also held that if Mr. Brown failed to comply with any requirements imposed by the parenting coordinator, the guardian ad litem, or the children's counselor, he would be subject to contempt sanctions by the court.

134. On May 20, 2010, Mr. Brown filed his "Renewed Motion to Restore Custodial Rights and Visitation to the Former Husband and Motion for Immediate Parenting Time with Father," in which Mr. Brown argued that Judge Warner's April 13, 2010 order was improper because it imposed conditions on visitation that required Ms. Brown's consent. Mr. Brown also argued Ms. Brown would consent to Mr. Brown's visitation only if the parenting coordinator supervised it, but the coordinator was then in Africa. On May 21, 2010, Mr. Brown filed "Motion for Recusal and/or Disqualification."

135. On July 2, 2010, i.e., more than a year since Judge Warner had suspended Mr. Brown's visitation rights without a hearing, Judge Warner entered an order denying Mr. Brown's May 21, 2010 motion for recusal and setting the final hearing in the matter for October 12 through October 15, 2010.

136. On September 21, 2010, Mr. Brown filed another motion for recusal, arguing Judge Warner should recuse herself because he had filed a complaint against her with the Judicial Inquiry Commission, the Commission was then actively investigating his complaint, and he was a material

witness in that investigation.

137. On October 7, 2010, Judge Warner entered an order stating, "[D]ue to the pending Judicial Inquiry Complaint filed by the Former Husband against the undersigned and the Renewed Motion for Recusal filed on the behalf of the Former Husband, the undersigned has requested an Advisory Opinion from the Judicial Inquiry Commission." Judge Warner then postponed the final hearing set for October 2010 until the Commission issued an advisory opinion pursuant to her alleged request.

138. After Mr. Brown filed another motion for recusal, on December 6, 2010, Judge Warner entered an order setting the final hearing for January 19, 2010. She so ordered without an advisory opinion from the Commission.

139. On December 7, 2010, Mr. Brown filed yet another motion for recusal. On December 22, 2010, in compliance with Rule 18, Rules of Procedure of Alabama Judicial Inquiry Commission, Judge Warner submitted a written request to the Commission requesting an advisory opinion on whether a judge is disqualified from presiding in a case because a party in the case has filed a complaint against the judge and because the Commission is conducting a full

investigation during the pendency of that underlying case. On March 11, 2011, the Commission issued Advisory Opinion 11-904, setting forth the Commission's opinion that, "[u]nder the circumstances known to the inquiring judge and the Commission, including the extent of the Commission's investigation and the judge's correlating exposure to extrajudicial information or gain of personal knowledge, the inquiring judge's impartiality is reasonably questioned, and a reasonable appearance of impropriety has arisen."

140. After the Commission advised Judge Warner, in Advisory Opinion 11-904, she was disqualified, she did not recuse from Mr. Brown's case. Mr. Brown filed another motion for recusal. Instead of granting Mr. Brown's motion, as the Commission advised, Judge Warner opened discovery on the issue of her disqualification and set Mr. Brown's motion for an evidentiary hearing for June 2, 2011 -- almost two years since she had suspended his visitation without a hearing. Judge Warner subsequently continued the June 2, 2011 hearing until the end of July 2011, thereby continuing to refuse to recuse from Mr. Brown's case, despite the Commission's advice and despite the fact that

she had recused herself from other cases, such as Ms. Maier's case and S.B.J.'s case, because a party had filed a complaint against her with the Commission. Mr. Brown had repeatedly demanded that Judge Warner recuse herself from his case for this very same reason.

141. As a result of Judge Warner's misconduct, Mr. Brown has not been permitted to see his children in approximately two years. In November 2010, Mr. Brown corresponded with the court-appointed parenting coordinator, Ms. Jennifer Tompkins, inquiring about when he could have visitation with his children. On November 5, 2010, Ms. Tompkins sent Mr. Brown an email correspondence stating, "No visitation has occurred because this matter is stayed for the Judicial Inquiry Complaint filed against the Judge as to the handling of this case. I have also conferred with Mr. Taylor [the guardian ad litem Judge Warner appointed] and he agrees that this is on hold until that matter is completed." In a subsequent email correspondence, Ms. Tompkins informed Mr. Brown, "Since you filed a complaint against the Judge everything is stayed until the investigation of her treatment of you is over."

CHARGES

Charge Fifty-Four

142. Judge Warner, a circuit judge of Montgomery County in the Fifteenth Judicial Circuit, while serving in that capacity, *failed to observe high standards of conduct so that the integrity and independence of the judiciary may be preserved*, as required by **Canon 1** of the Alabama Canons of Judicial Ethics, in that, separately and severally, she engaged in the conduct alleged in paragraphs 125, 127, 129 through 133, 135, 138, and 139, under the circumstances or leading to the circumstances and conduct described in paragraphs 123 through 141, in that, under the circumstances described, she, among other matters,

- a. allowed the court-appointed guardian ad litem, Mr. James, and the court-appointed children's counselor, Ms. Shoemaker, to abruptly withdraw without any explanation or inquiry whatsoever on March 31, 2009 -- the day they were to make their recommendation for the custody arrangements of the Browns' children, including limiting visitation with the maternal

- grandparents -- despite the compelling facts that Ms. Shoemaker stood crying before Judge Warner as she withdrew, the court officials' withdrawal occurred on the day they were to give Judge Warner their recommendations, and their abrupt withdrawal would cause a totally unexplained delay in the proceedings; and/or
- b. on June 26, 2009, she summarily granted Mr. Taylor's June 25, 2009 emergency motion to suspend Mr. Brown's visitation despite its obvious jurisdictional and procedural defects and utter lack of any evidence whatsoever to support his allegations; and/or
- c. leaving in effect her order suspending Mr. Brown's visitation despite obvious jurisdictional and procedural defects and complete lack of evidence to support Mr. Taylor's allegations, and without Mr. Brown even having been served with the summons and complaint; and/or
- d. on November 12, 2009, she denied Mr. Brown's September 11, 2009 "Petition for Emergency

Order to Establish a Parenting Plan for the Minor Children," partly on her following observations, which ignored the fact Mr. Brown had asked the hearing on the suspension of his visitation be cancelled on the ground that Judge Warner did not have jurisdiction: "the Former Husband is reminded that the Court set a hearing regarding the suspension of his visitation within seven days of the Order suspending visitation. It was the Former Husband's request that the hearing be cancelled[;]" and/or

- e. on December 14, 2009, she orally denied Mr. Brown's "Renewed Motion to Restore Custodial Rights and Visitation Rights to Former Husband"; and/or
- f. pursuant to a directive by the Court of Civil Appeals to hold an evidentiary hearing regarding her June 26, 2009 suspension of Mr. Brown's visitation, she held a hearing on April 12, 2010, but limited that hearing to three hours; allowed only Mr. Taylor to call

witnesses (his direct examination lasted approximately one hour and ten minutes, Mr. Montiel's cross-examination took one hour and one minute after she had informed him his cross-examination would count against his time allotment, and Mr. Minor's cross-examination took thirty-seven minutes (twenty-three of which were of Mr. Brown)); permitted Mr. Montiel to cross-examine his own client, Mr. Brown, for only twelve minutes before she abruptly ended the hearing; and refused to allow Mr. Montiel to present testimony of the six witnesses ready to testify on Mr. Brown's behalf; and/or

g. her April 13, 2010 vacation of her order suspending Mr. Brown's visitation provided Mr. Brown could have supervised visitation only under terms agreed upon by Ms. Brown, the court-appointed guardian ad litem, the court-appointed parenting coordinator, and the court-appointed children's counselor -- contrary to the advice provided to her by the Court of Civil Appeals six months earlier, on September

9, 2009, in M.R.J. v. D.R.B., 34 So. 3d 1287, 1292 (Ala. Civ. App. 2009) (the Court had consistently held that a judgment that leaves visitation to the sole discretion of the custodial parent is an abuse of discretion because it, in effect, awards no visitation); and/or

h. she failed to rule on Mr. Brown's May 20, 2010 "Renewed Motion to Restore Custodial Rights and Visitation to the Former Husband and Motion for Immediate Parenting Time with Father," in which Mr. Brown argued that her April 13, 2010 order was improper because it imposed conditions on visitation that required Ms. Brown's consent; and/or

i. on July 2, 2010, i.e., more than a year since she had suspended Mr. Brown's visitation rights without a hearing, she denied Mr. Brown's May 21, 2010 "Motion for Recusal and/or Disqualification," and set the final hearing in the matter for October 12 through October 15, 2010; and/or

- j. after Mr. Brown filed his September 21, 2010 renewed motion for recusal based on the Commission's active investigation of his complaint against her, she entered an order on October 7, 2010, postponing the final hearing set for October 2010, until the Commission issued an advisory opinion pursuant to her request; and/or
- k. after Mr. Brown's December 6, 2010 motion for recusal, she entered an order setting the final hearing for January 19, 2010, without an advisory opinion from the Commission; and/or
- l. after Mr. Brown's December 7, 2010 motion for recusal, she submitted a proper request to the Commission for an advisory opinion on December 22, 2010; and/or
- m. although the Commission's March 11, 2011 Advisory Opinion 11-904, advised that, "[u]nder the circumstances known to the inquiring judge, including the extent of the Commission's investigation and the judge's correlating exposure to extrajudicial

information or gain of personal knowledge, the inquiring judge's impartiality is reasonably questioned, and a reasonable appearance of impropriety has arisen," she did not recuse -- despite the Commission's advice and despite the fact that she has previously recused herself from other cases, such as Ms. Maier's case and S.B.J.'s case, because the Commission was conducting a full investigation on a complaint filed by a party against her; and/or

- n. in response to Mr. Brown's last motion for recusal (before she retired), she opened discovery on the issue of her disqualification, set Mr. Brown's motion for an evidentiary hearing for June 2, 2011, and subsequently continued it to the end of July 2011 - two years since she had suspended his visitation without a hearing. Mr. Brown had repeatedly demanded that she recuse herself from his case for this very same reason; and /or
- o. repeatedly delayed and allowed others and/or circumstances to delay reaching a final

decision; and/or

p. repeatedly delayed considering Mr. Brown's requests for visitation with his children; and/or

q. engaged in the conduct described in Counts Two through Four of this amended complaint.

Charge Fifty-Five

143. Judge Warner, a circuit judge of Montgomery County in the Fifteenth Judicial Circuit, while serving in that capacity, *failed to avoid impropriety and the appearance of impropriety in all her activities*, as required by **Canon 2** of the Alabama Canons of Judicial Ethics, in that, separately and severally, she engaged in the conduct or, in bad faith, engaged in the conduct alleged in paragraphs 123, 125, 127, 129, 130, 132, 133, and 138, under the circumstances or leading to the circumstances and conduct described in paragraphs 123 through 141, in that, and as shown by the totality of the circumstances and more specifically the matters itemized in paragraphs a through p in Charge Fifty-Four as well as in the remainder of this amended complaint.

Charge Fifty-Six

144. Judge Warner, a circuit judge of Montgomery County in the Fifteenth Judicial Circuit, while serving in that capacity, *failed to respect and comply with the law*, as required by **Canon 2A** of the Alabama Canons of Judicial Ethics, in that, separately and severally, she engaged in the conduct or, in bad faith, engaged in the conduct alleged in paragraphs 123, 125, 127, 129, 130, 132, 133, and 138, under the circumstances or leading to the circumstances and conduct described in paragraphs 123 through 141, in that, and as shown by the totality of the circumstances and more specifically the matters itemized in paragraphs a through p in Charge Fifty-Fouras well as in the remainder of this amended complaint.

Charge Fifty-Seven

145. Judge Warner, a circuit judge of Montgomery County in the Fifteenth Judicial Circuit, while serving in that capacity, *failed to conduct herself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary*, as required by **Canon 2A** of

the Alabama Canons of Judicial Ethics, in that, separately and severally, she engaged in the conduct or, in bad faith, engaged in the conduct alleged in paragraphs 123, 125, 127, 129, 130, 132, 133, and 138, under the circumstances or leading to the circumstances and conduct described in paragraphs 123 through 141, and as shown by the totality of the circumstances and more specifically the matters itemized in paragraphs a through p in Charge Fifty-Four as well as in the remainder of this amended complaint.

Charge Fifty-Eight

146. Judge Warner, a circuit judge of Montgomery County in the Fifteenth Judicial Circuit, while serving in that capacity, *failed to maintain the decorum and temperance befitting her office*, as required by **Canon 2B** of the Alabama Canons of Judicial Ethics, in that, separately and severally, she engaged in the conduct or, in bad faith, engaged in the conduct alleged in paragraphs 123, 125, 127, 129, 130, 132, 133, and 138, under the circumstances or leading to the circumstances and conduct described in paragraphs 123 through 141, and as shown by the totality of the circumstances and more specifically the matters

itemized in paragraphs a through p in Charge Fifty-Fouras well as in the remainder of this amended complaint.

Charge Fifty-Nine

147. Judge Warner, a circuit judge of Montgomery County in the Fifteenth Judicial Circuit, while serving in that capacity, *failed to avoid conduct prejudicial to the administration of justice that brings the judicial office into disrepute*, as required by **Canon 2B** of the Alabama Canons of Judicial Ethics, in that, separately and severally, she engaged in the conduct or, in bad faith, engaged in the conduct alleged in paragraphs 123, 125, 127, 129, 130, 132, 133, and 138, under the circumstances or leading to the circumstances and conduct described in paragraphs 123 through 141, and as shown by the totality of the circumstances and more specifically the matters itemized in paragraphs a through p in Charge Fifty-Fouras well as in the remainder of this amended complaint.

Charge Sixty

148. Judge Warner, a circuit judge of Montgomery County in the Fifteenth Judicial Circuit, while serving in that capacity, *failed to perform the duties of her office impartially*, as required by **Canon 3** of the Alabama Canons of Judicial Ethics, in that, separately and severally, she engaged in the conduct alleged in paragraphs 123, 125, 127, 129, 130, 132, 133, and 138, under the circumstances or leading to the circumstances and conduct described in paragraphs 123 through 141, and as shown by the totality of the circumstances and more specifically the matters itemized in paragraphs a through p in Charge Fifty-Four, as well as in the remainder of this amended complaint.

Charge Sixty-One

149. Judge Warner, a circuit judge of Montgomery County in the Fifteenth Judicial Circuit, while serving in that capacity and *in the performance of her adjudicative duties, failed to be faithful to the law and maintain professional competence in it*, as required by **Canon 3A(1)** of the Alabama Canons of Judicial Ethics, in that, separately and severally, she engaged in the conduct alleged in paragraphs

123, 125, 127, 129, 130, 132, 133, and 138, under the circumstances or leading to the circumstances and conduct described in paragraphs 123 through 141, and as shown by the totality of the circumstances and more specifically the matters itemized in paragraphs a through p in Charge Fifty-Four, as well as in the remainder of this amended complaint.

Charge Sixty-Two

150. Judge Warner, a circuit judge of Montgomery County in the Fifteenth Judicial Circuit, while serving in that capacity and *in the performance of her adjudicative duties, failed to accord to every person who is legally interested in a proceeding full right to be heard according to law*, as required by **Canon 3A(4)** of the Alabama Canons of Judicial Ethics, in that, separately and severally, she engaged in the conduct alleged in paragraphs 123, 125, 127, 129, 130, 132, 133, and 138, under the circumstances or leading to the circumstances and conduct described in paragraphs 123 through 141, and as shown by the totality of the circumstances and more specifically the matters itemized in paragraphs a through p in Charge Fifty-Four, as well as in

the remainder of this amended complaint.

Charge Sixty-Three

151. Judge Warner, a circuit judge of Montgomery County in the Fifteenth Judicial Circuit, while serving in that capacity, *failed to disqualify herself in a proceeding in which her impartiality might reasonably be questioned*, as required by **Canon 3C(1)** of the Alabama Canons of Judicial Ethics, in that, separately and severally, she engaged in the conduct alleged in paragraphs 123, 135, 137, 138, and 141, under the circumstances or leading to the circumstances and conduct described in paragraphs 123 through 141, and as shown by the totality of the circumstances and more specifically the matters itemized in paragraphs a through p in Charge Fifty-four, as well as in the remainder of this amended complaint.

Charge Sixty-Four

152. Judge Warner, a circuit judge of Montgomery County in the Fifteenth Judicial Circuit, while serving in that capacity, *failed to disqualify herself in a proceeding in which her impartiality might reasonably be questioned where*

she had a personal bias or prejudice concerning a party, as required by Canon 3C(1)(a) of the Alabama Canons of Judicial Ethics, in that, separately and severally, she engaged in the conduct alleged in paragraphs 123, 135, 137, 138, and 141, under the circumstances or leading to the circumstances and conduct described in paragraphs 123 through 141, and as shown by the totality of the circumstances and more specifically the matters itemized in paragraphs a through p in Charge Fifty-Four, as well as in the remainder of this amended complaint.

COUNT SIX

FACTS

153. The facts and circumstances described in paragraphs 1 through 11 of Count One of this Complaint, paragraphs 25 through 57 of Count Two of this Complaint, paragraphs 75 through 85 of Count Three of this Complaint, paragraphs 98 through 109 of Count Four of this Complaint, and paragraphs 123 through 141 of Count Five of this Complaint are incorporated herein by reference.

154. The Alabama Court of Civil Appeals and the Supreme Court of Alabama have, on numerous occasions

through their decisions reversing Judge Warner's orders, given Judge Warner specific notice of the legal standards she is required to follow in deciding matters addressed to her court. Her disregard of those standards, as alleged in Counts One through five, although given specific notice by the appellate courts, further evidences her bad faith and her intentional disregard of her duty to decide cases based on the law and the facts presented to her court in handling the matters alleged in Counts One through Five of this Complaint.

155. Since Judge Warner took office as a circuit judge in the Fifteenth Judicial Circuit of Alabama, the Alabama Court of Civil Appeals has issued twenty-nine appellate opinions¹⁴ that list Judge Warner as the trial court judge whose judgment or order was appealed to that court. (A list of these twenty-nine cases is attached as Exhibit A to this Complaint.) Of those twenty-nine cases, the Court of Civil Appeals strictly affirmed only two. The other twenty-seven appellate opinions all pointed outmajor

¹⁴One of these cases, Cochran v. Cochran, 5 So. 3d 1220 (Ala. 2008), was transferred to the Alabama Supreme Court for appeal after all five Court of Civil Appeals judges recused themselves, due to Mrs. Cochran's employment with that court.

flaws requiring reversal in Judge Warner's handling of each case. In most cases, Judge Warner's legal errors were clear and obviously warranted reversal. Of the same twenty-nine cases, all domestic relations matters, twenty-two of those cases were appealed by the mother or wife, while only two were appealed by the father or husband. A number of these appellate decisions set out in the next succeeding paragraphs evidence Judge Warner's lack of good faith in her handling of the matters set out in Counts One through Five, especially as those appellate decisions evidence Judge Warner's intentional disregard of known legal standards to decide those matters.

156. On June 15, 2005, a divorce and child custody case between Ms. Amy M. Knight Bishop ("the mother") and Mr. Mark D. Bishop ("the father") was transferred to the Montgomery Circuit Court as Case No. DR-05-938.01 and assigned to Judge Warner. After conducting a hearing on November 3, 2005, Judge Warner entered a judgment transferring custody of one of two children from the mother to the father, reducing the father's child support obligation, and expressing concern for the second child's psychological well-being as a result of continuing to live

with the mother. The mother appealed. The opinion of the Court of Civil Appeals instructs Judge Warner that the decisions of a trial court must be supported by record evidence and cannot be supported by the judge's own conclusions for which there is no evidence or for which there is undisputed evidence contrary to the trial court's conclusions.

- a. The Court of Civil Appeals reversed, Bishop v. Knight, 949 So. 2d 160 (Ala. Civ. App. 2006), holding Judge Warner had abused her discretion by transferring custody of the older child from the mother to the father.
- b. The appellate court found Judge Warner's decision was completely unsupported by the evidence. Id. at 168. The record contained undisputed testimony the father had abused both children and the mother during the marriage and the father was entirely uninvolved in typical parenting activities such as helping a child with schoolwork or taking a child to the doctor. See id. at 166-67.

c. The Court found that Judge Warner instead based her decision to transfer custody on her own conclusions, unsupported by record evidence, that the child was suffering emotional harm and embarrassment as a result of the mother's discipline. The Court of Civil Appeals repeatedly found these conclusions were unsupported by the record, id. at 167-68, and reversed Judge Warner under the standard that the trial court's judgment was "so unsupported by the evidence as to be plainly and palpably wrong," warranting reversal. Id. at 166. In the opinion, the Court notified Judge Warner of the correct standard for modifying custody, as set out in Ex parte McLendon, 453 So.2d 863 (Ala. 1984) that custody should be modified only where the change in custody would materially promote the welfare and best interests of the child, off-setting the disruptive effect of uprooting the child. The Court advised Judge Warner that matters such as disagreements between the parents about discipline that allegedly

embarrasses the child are insufficient to meet this standard.

157. On December 21, 2005, Mr. Raymond L. Wannamaker ("the husband") filed for divorce from his wife, Ms. LaQuanda M. Wannamaker ("the wife"), in Montgomery Circuit Court. The case, DR-05-1584, was assigned to Judge Warner. After service of process by certified mail to the wife's address in New York failed, Judge Warner authorized service of process by publication in Montgomery County, Alabama. When the wife did not defend the divorce action, Judge Warner entered a default judgment divorcing the parties and, *while acknowledging she did not have personal jurisdiction over the wife*, dividing their marital property. The wife appealed. The appellate court instructed Judge Warner that a trial court must follow the law in reaching decisions on matters pending before the court. Judge Warner's recognition that she did not have personal jurisdiction over the wife while she proceeded to exercise personal jurisdiction and Judge Warner's continuing to exercise jurisdiction while the matter was on appeal evidence her bad faith in refusing to follow established law in her court.

- a. On June 29, 2007, in Wannamaker v. Wannamaker, 976 So. 2d 1026 (Ala. Civ. App. 2007), the Court of Civil Appeals reversed Judge Warner's default judgment, finding as follows: "Although the trial court expressly found in the default judgment that it did not have personal jurisdiction over the wife, it not only divorced the parties but also divided the parties' marital property and ruled that neither the husband nor wife were obligated to pay alimony." Id. at 1027.
- b. The appellate court cited clear and established case law to demonstrate that Judge Warner's decisions to serve the wife by publication and to enter a default judgment were obviously erroneous. Id. at 1028.
- c. While the first appeal concerning the personal jurisdiction issue was still pending, Judge Warner continued to exercise jurisdiction and adjudication of the case by issuing a visitation order. Judge Warner found that the Alabama Uniform Interstate Family Support Act, § 30-3A-316, Code of Alabama (1975), supported independent

jurisdiction over the interstate child-support portion of the action that was not on appeal.

- d. The wife appealed a second time. On August 3, 2007, the Court of Civil Appeals, in Wannamaker v. Wannamaker, 979 So. 2d 68 (Ala. Civ. App. 2007), in an opinion less than two pages long, reversed Judge Warner again.
- e. The appellate court correctly cited long established and unmistakable precedent holding that the trial court is divested of jurisdiction over a case during an appeal and found Judge Warner's justification for issuing the order, i.e., that the Alabama Uniform Interstate Family Support Act supported independent jurisdiction over the interstate child-support portion of the action that was not on appeal, was completely unsupported by law. Id. at 68-69.

158. On May 7, 2002, the Montgomery Circuit Court divorced Ms. Kristi S. Dyess Cheek ("the mother") and Mr. David W. Dyess ("the father"), dividing their marital property, granting custody of all three children to the mother, and awarding the mother alimony. On March 24,

2004, the trial court entered a judgment for the mother in the amount of \$5,000 for the father's unpaid alimony and found the father in violation of the child custody terms of the divorce judgment. On March 8, 2005, the father filed a complaint requesting termination of alimony and transfer of custody to the father due to an alleged material change in circumstances. On March 10, 2005, the case, DR-01-1502.03, was assigned to Judge Warner. After an ore tenus hearing, Judge Warner entered a judgment finding, without supporting evidence, the father's alimony obligations fulfilled and transferring custody of two of the three children from the mother to the father. The uncontroverted evidence was that the father had not paid alimony to the mother. There was little or no evidence that a change in custody was necessary, a change would materially promote the best interests of the children, or the positive good brought about the change would offset the disruptive effects of the change. To support the transfer in custody, Judge Warner found the children's grades had declined, and the children were undisciplined, out of control, and unsupervised. In fact, the evidence showed the children's grades declined when they changed schools at the time of the divorce, but

had since improved while in the mother's custody; the oldest child had been disciplined by the mother on numerous occasions; and the father, as well as the mother, failed to discipline this child for the alleged specific "undisciplined" conduct. The mother appealed. The appellate court reversed, informing Judge Warner that her decisions must be based on evidence before her and the facts as presented to her in court. The Court also set out for Judge Warner the appropriate standard for modifying a child custody order.

- a. On September 9, 2007, the Court of Civil Appeals reversed Judge Warner's rulings with respect to both the father's alimony obligation and the transfer of custody of the children. Cheek v. Dyess, 1 So. 3d 1025, 1032 (Ala. Civ. App. 2007).
- b. The Court found there was "little, if any, evidence to support" Judge Warner's factual conclusions behind her judgment in favor of the father. Id. at 1030. For example, Judge Warner indicated the father had paid to the mother the full amount of alimony owed, but the appellate court found that "[t]he testimony of both the

father and the mother, as well as the father's exhibit, all indicate that the father did not pay to the mother, and the mother did not receive, the alimony payments due her from the father." Id. at 1028.

c. Likewise, the appellate court dismissed, in sequence, each of Judge Warner's conclusions with respect to the custody dispute, finding that "there is insufficient evidence to support the trial court's determination that the father had met the stringent standards required . . . for a custody modification." Id. at 1031. In its September 7, 2007 opinion, the Court succinctly and more thoroughly set out for Judge Warner the McClendon standard for modification of custody:

This court recently noted in *Bledsoe v. Cleghorn*, 993 So.2d 456, 461 (Ala.Civ.App.2007), that "our supreme court has reiterated that the Ex parte McLendon burden is a heavy burden on the parent seeking a change in custody." See also *Benton v. Benton*, 520 So.2d 534 (Ala.Civ. App.1988)(holding that a stringent standard must be met in order to modify a prior custody determination). In *Bledsoe*, this court, citing our supreme court's recent decision in *Ex parte Martin*, 961 So.2d 83 (Ala.2006), further stated that "a noncustodial

parent [seeking to modify custody] must prove an obvious and overwhelming necessity for the change of custody." 993 So.2d at 462. In Ex parte Martin, the supreme court summarized the McLendon standard as follows:

"[T]he McLendon test for a change of custody after custody is awarded in a divorce judgment is that the noncustodial parent seeking a change in custody must demonstrate (1) that he is fit to be the custodial parent; (2) that material changes that affect the child's welfare have occurred since the original award of custody; and (3) that the positive good brought about by the change in custody will more than offset the disruptive effect of uprooting the child."961 So.2d at 87.

1 So. 3d at 1028.

159. On September 15, 1992, Mr. Herbert Soto ("the father") and Ms. Kim Feria ("the mother") were divorced in Florida. Subsequently, the father moved to Montgomery, Alabama. On May 9, 2006, the father filed a petition, Case No. DR-06-562.01, in Montgomery Circuit Court seeking primary physical custody of the couple's child. Judge Warner conducted a hearing at which the mother was not present, although she had received notice of the hearing. Judge Warner entered a judgment awarding sole custody to the father and requiring the mother to pay child support.

The mother filed a motion to vacate the judgment, arguing that the trial court did not have jurisdiction to alter the original divorce judgment issued by the Florida court. Judge Warner denied the motion, finding she could exercise emergency jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act (the "UCCJEA"). Judge Warner failed to comply with the requirements of the UCCJEA in exercising emergency jurisdiction. The mother appealed. This matter again evidences notice to Judge Warner that she is required to follow the law and Judge Warner's bad faith in failing to follow established law in her orders in matters of child custody where the law is clearly established and available to her.

- a. The Court of Civil Appeals reversed in part, finding that, although Judge Warner had correctly exercised emergency jurisdiction, she had failed to comply with multiple clear requirements in Alabama's version of the UCCJEA as set out below. Feria v. Soto, 990 So. 2d 418, 423 (Ala. Civ. App. 2008).
- b. Specifically, Judge Warner issued an indefinite custody modification judgment, while the UCCJEA

specifically requires any such modification be temporary and define a particular duration of custody. Seeid.at 422 and Ala. Code § 30-3B-204.

c. Judge Warner also failed to fulfill a clear provision in the UCCJEA requiring that the trial court seeking to exercise emergency jurisdiction first contact the out-of-state court. Seeid.at 423. Judge Warner made no attempt to communicate with the Florida court that originally issued the divorce judgment. Id.

d. Accordingly, the appellate court remanded for Judge Warner to comply with these parts of the UCCJEA. Id.

160. Mr. Jonathan Brooks ("the father") and Ms. Taquisha Brooks ("the mother") divorced on April 25, 2002. The original divorce judgment awarded custody of their only child to the mother. On June 26, 2006, the father filed a petition in Montgomery Circuit Court seeking to modify custody and hold the mother in contempt. The case, DR-02-378.02, was assigned to Judge Warner. In his petition, the father alleged the mother had denied him visitation with the child and had otherwise violated the divorce judgment.

After hearing testimony from three witnesses, Judge Warner entered a judgment granting sole legal and physical custody of the child to the father and ordering the mother to repay the father for breaching the parties' separation agreement. Judge Warner based her orders on the following findings of fact that were not supported by the record: in the previous 18 months the father had seen the child only once; the father testified the child was not failing academically prior to his being denied visitation; the mother had not made any effort to enlist the aid of tutors or obtain educational assistance for the child; and since the divorce, the mother had lived in at least six residences. In addition, Judge Warner found disputed facts to be undisputed. She found it was undisputed that the father had seen the child only once in the eighteen months preceding the hearing. The father testified he had seen the child at least five times, and the mother also disputed that fact. Judge Warner found that it was also undisputed the mother had changed residences at least six times. The mother testified she had lived in only three residences during the specified time period. The mother appealed. The appellate court's reversal again put Judge Warner on

specific notice that the trial court's determinations of fact must be based on the evidence before the court and must be true to that evidence and evidences her bad faith in failing to do so.

- a. After considering the entire record, the Court of Civil Appeals reversed with respect to the transfer of custody from the mother to the father, Brooks v. Brooks, 991 So. 2d 293, 303 (Ala. Civ. App. 2008), finding that several of Judge Warner's factual conclusions were clearly erroneous and the father had not shown the "material change in circumstances affecting the child's welfare" necessary for custody modification.
- b. The appellate court pointed out several examples of testimony Judge Warner, in her judgment, described as "undisputed." Id. However, the Court noted direct quotes from the record that show beyond any doubt that those facts actually were disputed. Id. at 302-03. Other factual conclusions stated in the judgment were entirely unsupported by the record. Id. at 302.

c. As a result, the Court of Civil Appeals described Judge Warner's judgment as "clearly erroneous, without supporting evidence, and manifestly unjust"; reversed the child custody portion of the judgment; and remanded to the trial court for further consideration. Id. at 303.

161. In November 2007, Judge Warner, in In the matter of D.R.S., a minor child, JU-93-102.08 in the Juvenile Court of Montgomery County, entered two orders requiring a seventeen-year-old girl, then in the custody of the County Department of Human Resources ("DHR"), to be placed in the National Deaf Academy at the expense of the State of Alabama. The State filed a petition for a writ of mandamus in the Court of Civil Appeals to have the orders vacated because the State had never received a copy of the transcript of the evidentiary hearing. The appellate decision again shows Judge Warner that clearly established law must be followed and evidences bad faith in that she apparently fails to make even minimal efforts to ascertain the requirements of the law she is required to follow.

a. The Court of Civil Appeals granted the writ in part because Judge Warner had obviously ignored

the requirements of Rule 20(B), Alabama Rules of Juvenile Procedure. Ex parte MontgomeryCountyDep't of Human Res., 10 So. 3d 31, 39-40 (Ala. Civ. App. 2008).

b. As found by the appellate court:

Rule 20(B) clearly provides that any party to a proceeding in juvenile court is entitled to a transcript of an evidentiary hearing upon requesting it and paying for it. The petitioners were parties to this proceeding in the juvenile court. Therefore, the juvenile court did not have the authority under Rule 20(B) to deny the petitioners a transcript of the evidentiary hearing.

Id. at 39. Judge Warner simply ignored the plain wording of an unambiguous rule of court.

162. In 2003, the Montgomery Circuit Court entered a judgment divorcing Ms. Susan D. Hall ("the mother") and Mr. Malcolm Hall ("the father"). In 2006, the mother filed a petition requesting the father be held in contempt for failure to pay child support. Judge Warner, who was assigned to the case, DR-92-1256.01, entered an order on October 2, 2006, holding the father in contempt and calculating his child support arrearage. The wife appealed that calculation, and the Court of Civil Appeals reversed,

finding that the trial court's calculation was clearly unsupported by the evidence. Hall v. Hall, 998 So. 2d 1072, 1076-77 (Ala. Civ. App. 2008). Before the Certificate of Judgment from the first appeal had been issued, Judge Warner issued another judgment recalculating the father's arrearage again. Judge Warner issued this judgment before receiving the Certificate of Judgment from the appellate court, despite the fact that the Court of Civil Appeals had given her notice on August 3, 2007, in its opinion in Wannamaker v. Wannamaker, 979 So. 2d 68 (Ala. Civ. App. 2007), which cited long established and unmistakable precedent holding that the trial court is divested of jurisdiction over a case during an appeal. Judge Warner, without a request of the parties and without legal justification, sealed the case file. This is the matter alleged in Count One of this Complaint. The mother appealed a second time. This case evidences Judge Warner's bad faith in making decisions in the matters alleged in Counts One through Five in that it especially demonstrates Judge Warner's intentional disregard of the law and facts in matters pending before her.

- a. On appeal, the mother insisted the judgment issued by Judge Warner while the first appeal was still pending was void. Raybon v. Hall, 17 So. 3d 673, 675 (Ala. Civ. App. 2009). The Court of Civil Appeals agreed, holding that Judge Warner did not have jurisdiction to enter a judgment during the pendency of the mother's first appeal. Id. The Court cited unquestionable precedent in support of this clear-cut result.
- b. The Court also noted it could not find any justification in the record for Judge Warner's decision to seal the case. Id. at 675 n.1.

163. Ms. Rachel Sanders Cochran ("the mother") and Mr. Gregory Donald Cochran ("the father") divorced in 2001. The divorce judgment granted physical custody of the couple's two children to the mother, but retained joint legal custody, with visitation rights awarded to the father. In 2006, the father filed a petition for modification of custody. On September 29, 2006, Judge Warner was assigned to the case, DR-00-1365.04. Judge Warner entered a modification order transferring custody of the children and also voiding arrearage judgments against

the father issued several years earlier. In her order, Judge Warner made findings of fact that were contrary to and unsupported by the evidence. Judge Warner found that the mother, to improve one of the children's school conduct, had that child placed on Prozac without being seen by a doctor. In fact, a psychologist had been treating the child for some time for mood disturbances and had recommended the child take Prozac and after the mother's failed attempts to find a psychiatrist who could treat the child, the child's life-long primary care physicians considered and followed the psychologist's recommendation, prescribed Prozac, and continued to monitor and treat the child. Judge Warner found that the child continued to take Prozac after the physicians ordered cessation of it. The only testimony concerning the cessation of the medication disputed this finding. The mother appealed. This case again evidences Judge Warner's bad faith in refusing to enter rulings in the matters alleged in Counts One through Five in accordance with the law and the facts. Judge Warner again ignored both. On at least three occasions alleged in this Complaint, Judge Warner attempted to set aside arrearages in court ordered payments, contrary to

established law and in spite of being informed by appellate courts, in appeals of her judgments, that she does not have the authority to do so.

- a. The Alabama Supreme Court¹⁵ reversed and remanded. Cochran v. Cochran, 5 So. 3d 1220, 1230-31 (Ala. 2008).
- b. In addition to finding that many of Judge Warner's factual bases for modifying custody, e.g., the conclusion the mother was misusing prescription drugs and had maliciously terminated the father's weekday visits, were entirely unsupported by the evidence, id. at 1227-30, the Court cited case law clearly holding that neither visitation disputes nor the mere passage of time provides a legitimate rationale for modifying custody. Id. at 1228-30. Judge Warner had relied on both points in her modification order. Id.
- c. Lastly, the Court held Judge Warner had no authority to void the arrearage judgments against the father, stating that "it is well settled that a trial court has no power to forgive an accrued

¹⁵The appeal was transferred to the Alabama Supreme Court. See note 1, supra.

arrearage" and that accrued child support payments are "not modifiable." Id. at 1230.

164. Ms. Cynthia J. Corwin ("the mother") and Mr. Rocky V. Corwin ("the father") divorced in 1989. On July 13, 2007, Judge Warner was assigned to the case, DR-89-556.02. That same year, the mother filed a petition seeking child support arrearages against the father. Judge Warner denied the petition, finding that the mother had failed previously to "preserve" the arrearages in court proceedings over a decade earlier. The mother appealed. Again, bad faith is evidenced by the fact that after specific notice in cases appealed from her own court, Judge Warner refuses to follow the law.

- a. On September 12, 2008, the Court of Civil Appeals reversed, correctly finding, under an "oft-stated principle that child-support payments are judgments on the date that they become due," Corwin v. Corwin, 5 So. 3d 1278, 1280 (Ala. Civ. App. 2008), that the "law clearly supports the mother's position." Id. at 1281.
- b. Furthermore, there was no legal basis whatsoever for Judge Warner's conclusion the mother had

"failed to preserve" the arrearage in 1994.

Id. The Court of Civil Appeals remanded the case to Judge Warner.

- c. On remand, Judge Warner calculated the father's arrearage but, contrary to established case law, refused to award interest on the arrearage to the mother.
- d. The mother appealed a second time. On August 29, 2009, in a less than one full-page opinion, the Court of Civil Appeals reversed yet again. Corwin v. Corwin, 29 So. 3d 913, 914 (Ala. Civ. App. 2009).
- e. The appellate court cited clear case law holding that interest must be applied to arrearages and that the trial court cannot waive this interest. Id. The Court remanded the case again, this time for Judge Warner to calculate the interest and include it in the arrearage. Id.

165. In 2006, M.R.J. ("the mother") filed suit in Montgomery Juvenile Court against D.R.B. ("the father"), seeking formal adjudication of child support obligations. Judge Warner was assigned to the case, JU-06-1038.01 and

JU-06-1038.02. Before the child support issue was resolved, both parents filed complaints seeking custody of the child. Judge Warner ordered joint legal custody with physical custody to the father and visitation for the mother. The mother appealed.

- a. In its opinion issued on February 27, 2009, the Court of Civil Appeals characterized the action as a custody modification proceeding under established case law, found that Judge Warner had used an incorrect legal standard in determining whether to change custody, and reversed. M.R.J. v. D.R.B., 17 So. 3d 683, 686 (Ala. Civ. App. 2009).
- b. The appellate court stated: "This court has repeatedly held that a lower court commits reversible error by analyzing a case under the best-interests-of-the-child standard in custody-modification cases," id., rather than the standard set forth in Ex parte McLendon, 455 So. 2d 863 (Ala. 1984).
- c. After remand, Judge Warner granted custody to the father and visitation to the mother, leaving

that visitation solely within the discretion of the appointed guardian ad litem.

- d. The mother appealed a second time. In its opinion issued on September 9, 2009, the Court of Civil Appeals reversed in part because Judge Warner had given the guardian ad litem sole authority to set the parameters of visitation. M.R.J. v. D.R.B., 34 So. 3d 1287, 1292 (Ala. Civ. App. 2009).
- e. The appellate court stated: "This court has consistently held that a judgment that leaves visitation to the sole discretion of the custodial parent is an abuse of discretion because it, in effect, awards no visitation." Id. The Court again remanded the case back to Judge Warner to correct the additional errors. Id.

166. After C.D.K.S. ("the mother") and K.W.K. ("the father") divorced, the mother filed a petition seeking post-minority support for the child, and the father counterclaimed for physical custody of the child. Judge Warner, who had been assigned to the case, DR-01-90.02, transferred custody of the child to the father for a "trial

period" to see how the child adjusted to residing with the father. In the final hearing of the case, the mother filed an "Emergency Motion for Transfer of Custody" because the father had been arrested and charged with first degree sexual assault and had lost his job. Judge Warner then cancelled an already-scheduled hearing on motions to reconsider filed by both parties. She later repeatedly delayed the hearing while awaiting the outcome of the charges against the father. Finally, several months later, Judge Warner determined the child was doing well living with the father and awarded full custody to the father. The mother appealed. This case again evidences Judge Warner's bad faith in issuing orders not based on the law and the facts before her. She disregards both.

- a. The Court of Civil Appeals reversed based on a standard of review that the trial court's judgment was "plainly and palpably wrong." C.D.K.S. v. K.W.K., 40 So. 3d 736, 743-44 (Ala. Civ. App. 2009).
- b. The appellate court described many of Judge Warner's findings of fact, such as the father's testimony that the child had a .25 grade-point

average in school and the mother's failure to contest that testimony, as either entirely unsupported by evidence or completely contrary to the evidence in the record. Id. at 742. The Court suggested Judge Warner had decided custody without taking into account the evidence: "It appears from its findings that the trial court was convinced that the child was performing more poorly in school than the evidence proved." Id.

c. The appellate court also held that Judge Warner had erred, as a matter of law, by considering certain factors, e.g., changes in visitation by the parents, in deciding whether to transfer custody, id. at 745, because case law prohibits the consideration of those factors in custody modification proceedings. The appellate court reversed and remanded after finding that Judge Warner's judgment was so unsupported by fact or law that reversal was necessary.

167. On June 19, 2009, Judge Warner entered a final judgment in Case No. JU-08-808.01, a child custody case, divesting R.Y. ("the mother") of custody and granting

custody to C.G. and B.G. Under court rules, the mother was required to file her post judgment motion by the end of the 14th day after June 19. That day, July 3, was observed that year as a Fourth of July holiday, and the courts were closed. The mother's motion was received and date-stamped by the clerk of the juvenile court before the end of the day on July 6, the next non-holiday weekday. Despite the mother's compliance with Rule 1(b), Alabama Rules of Juvenile Procedure, and Rule 6(a), Alabama Rules of Civil Procedure, Judge Warner determined that the mother's motion was not timely filed and insisted the mother should have faxed the motion to the court on the day of the holiday. The mother appealed. This case evidences Judge Warner's bad faith in her unwillingness to follow established law.

- a. The Court of Civil Appeals found that Judge Warner's decision to treat the motion as untimely was a "clear violation" of Rule 6(a) of the Alabama Rules of Civil Procedure. R.Y. v. C.G. & B.G., 50 So. 3d 1090, 1092 (Ala. Civ. App. 2010). The Court also described Judge Warner's failure to comply with the simple language of the rule as "manifest error." Id.

b. After determining the motion had at least probable merit and Judge Warner's error was not harmless, the Court reversed and remanded back to Judge Warner. Id.

168. Ms. Annette Marie Walker ("the mother") and Mr. Woodrow Walker ("the father") divorced in 1982. As part of the original divorce judgment, the mother received custody of the child, and the father was ordered to pay child support. On January 12, 2009, after the case, DR-82-228.03, was assigned to Judge Warner, the Alabama Department of Human Resources ("DHR") filed a motion on January 13, 2009, on behalf of the mother, claiming that the child was emancipated and the father owed an arrearage. At the same time, DHR obtained a lien on the father's workers' compensation benefits. Judge Warner entered a judgment directing DHR to remove the lien, finding the father in arrears, and deciding it was "equitable" to waive the interest on the arrearage. This order was entered on September 24, 2009, one month after the appellate court addressed the issue of arrearage interest to Judge Warner in Corwin v. Corwin decided on August 29, 2009 (see paragraphs 149(d) and 149(e) of this Complaint) and one

year after the appellate court addressed the same issue to Judge Warner in Cochran v. Cochran decided on September 26, 2008 (see paragraphs 148(a) and 148(c) of this Complaint). This matter again evidences Judge Warner's bad faith in her utter disregard for the law regarding the payment of child support and alimony arrearage and interest on those amounts.

- a. DHR appealed on behalf of the mother. The Court of Civil Appeals reversed, holding that Judge Warner had no authority to waive the interest on the father's arrearage, to limit the mother's ability to collect the child support, or to require DHR to terminate the lien on the father's benefits. State ex rel. Walker v. Walker, 58 So. 3d 823, 829 (Ala. Civ. App. 2010).
- b. In overturning Judge Warner's decision to waive the interest on the father's arrearage, the appellate court stated: "This court has consistently held that a trial court's failure to impose interest on past-due child-support installments constitutes reversible error." Id. at 826. The first case the Court cited in its

opinion in support of this proposition is Corwin v. Corwin, 29 So. 3d 913 (Ala. Civ. App. 2009), a prior case (cited above) in which the Court reversed Judge Warner for the exact same error - attempting to allow a father to avoid interest on his arrearage.

169. From April 15, 2009, until present, Judge Warner has presided over the divorce litigation of SM ("the mother") and WM ("the father"), DR-09-347, and subsequent related juvenile proceedings pertaining to their child, JU-09-509. On June 23, 2009, Judge Warner found the child dependent and transferred the issue of child custody to the juvenile court, JU-09-509.01. On October 2, 2009, Judge Warner transferred legal and physical custody of the daughter from the mother to the husband. Judge Warner revoked the mother's visitation on December 1, 2009. During the three-day final hearing, Judge Warner sustained the guardian ad litem's objections to the mother's evidence of the husband's alleged significant psychiatric issue(s) and his refusal to submit to a psychiatric evaluation. On March 11, 2010, Judge Warner issued the final judgment of divorce. Judge Warner awarded sole legal and physical

custody to the father and awarded supervised visitation to the mother to continue until the father and the child's counselor agreed the mother should have unsupervised visitation. Judge Warner applied this latter condition despite the advice to her by the Court of Civil Appeals six months earlier, on September 9, 2009, in M.R.J. v. D.R.B., 34 So. 3d 1287, 1292 (Ala. Civ. App. 2009), that that Court had consistently held that a judgment that leaves visitation to the sole discretion of the custodial parent is an abuse of discretion because it, in effect, awards no visitation. Judge Warner also awarded, in her final order, the marital residence to the father, immediately terminated the mother's occupancy, and awarded the mother \$200 rehabilitative alimony for nine months. The mother appealed. This matter manifests Judge Warner's bad faith in her failure to follow clear rule of law.

- a. SM appealed. On March 11, 2011, the Court of Civil Appeals held that Judge Warner's custody determination based on the guardian ad litem's petition for dependency was void for lack of subject matter jurisdiction; Judge Warner's order granting the petition for dependency was void for

lack of a finding of dependency by the juvenile court; Judge Warner erred by refusing to admit into evidence the father's counseling records and other evidence pertaining to the father's mental state; and Judge Warner's division of property and award of rehabilitative testimony were inequitable. M.S.M. v. M.W.M., 2011 WL 835095 (Ala. Civ. App. March 11, 2011).

- b. The Court remanded the case to Judge Warner with the instructions that she reconsider the custody determination after hearing the evidence on the father's mental state and that she adjust the award of alimony and division of the property.

CHARGES

Charge Sixty-Five

170. Judge Warner, a circuit judge of Montgomery County in the Fifteenth Judicial Circuit, while serving in that capacity, *failed to observe high standards of conduct so that the integrity and independence of the judiciary may be preserved*, as required by **Canon 1** of the Alabama Canons of Judicial Ethics, in that, separately

and severally, she engaged in all or a substantial portion of the conduct alleged in Counts One through Five of this Complaint and did so , as evidenced by the conduct alleged in those counts and the matters alleged in Count Six of this Complaint.

Charge Sixty-Six

171. Judge Warner, a circuit judge of Montgomery County in the Fifteenth Judicial Circuit, while serving in that capacity, *failed to avoid impropriety and the appearance of impropriety in all her activities*, as required by **Canon 2** of the Alabama Canons of Judicial Ethics, in that, separately and severally, she engaged in all or a substantial portion of the conduct alleged in Counts One through Five of this Complaint *and did so in bad faith, as evidenced by the conduct alleged in those counts and the matters alleged in Count Six of this Complaint.*

Charge Sixty-Seven

172. Judge Warner, a circuit judge of Montgomery County in the Fifteenth Judicial Circuit, while serving in that capacity, *failed to respect and comply with the law,*

as required by **Canon 2A** of the Alabama Canons of Judicial Ethics, in that, separately and severally, she engaged in all or a substantial portion of the conduct alleged in Counts One through Five of this Complaint *and did so in bad faith, as evidenced by the conduct alleged in those counts and the matters alleged in Count Six of this Complaint.*

Charge Sixty-Eight

173. Judge Warner, a circuit judge of Montgomery County in the Fifteenth Judicial Circuit, while serving in that capacity, *failed to conduct herself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary,* as required by **Canon 2A** of the Alabama Canons of Judicial Ethics, in that, separately and severally, she engaged in all or a substantial portion of the conduct alleged in Counts One through Five of this Complaint *and did so in bad faith, as evidenced by the conduct alleged in those counts and the matters alleged in Count Six of this Complaint.*

Charge Sixty-Nine

174. Judge Warner, a circuit judge of Montgomery County in the Fifteenth Judicial Circuit, while serving in that capacity, *failed to avoid conduct prejudicial to the administration of justice that brings the judicial office into disrepute*, as required by **Canon 2B** of the Alabama Canons of Judicial Ethics, in that, separately and severally, she engaged in all or a substantial portion of the conduct alleged in Counts One through Five of this Complaint *and did so in bad faith, as evidenced by the conduct alleged in those counts and the matters alleged in Count Six of this Complaint.*

Charge Seventy

175. Judge Warner, a circuit judge of Montgomery County in the Fifteenth Judicial Circuit, while serving in that capacity, *failed to perform the duties of her office impartially*, as required by **Canon 3** of the Alabama Canons of Judicial Ethics, in that, separately and severally, she engaged in all or a substantial portion of the conduct alleged in Counts One through Five of this Complaint *and did so in bad faith, as evidenced by the*

conduct alleged in those counts and the matters alleged in Count Six of this Complaint.

Charge Seventy-One

176. Judge Warner, a circuit judge of Montgomery County in the Fifteenth Judicial Circuit, while serving in that capacity and in the performance of her adjudicative duties, failed to be faithful to the law and maintain professional competence in it, as required by **Canon 3A(1)** of the Alabama Canons of Judicial Ethics, in that, separately and severally, she engaged in all or a substantial portion of the conduct alleged in Counts One through Five of this Complaint and did so in bad faith, as evidenced by the conduct alleged in those counts and the matters alleged in Count Six of this Complaint.

Charge Seventy-Two

177. Judge Warner, a circuit judge of Montgomery County in the Fifteenth Judicial Circuit, while serving in that capacity and in the performance of her adjudicative duties, failed to accord to every person who is legally interested in a proceeding full right to be

heard according to law, as required by Canon 3A(4) of the Alabama Canons of Judicial Ethics, in that, separately and severally, she engaged in all or a substantial portion of the conduct alleged in Counts One through Five of this Complaint and did so in bad faith, as evidenced by the conduct alleged in those counts and the matters alleged in Count Six.

Charge Seventy-Three

178. Judge Warner, a circuit judge of Montgomery County in the Fifteenth Judicial Circuit, while serving in that capacity, *failed to disqualify herself when her impartiality might reasonably be questioned, as required by Canon 3C(1) of the Alabama Canons of Judicial Ethics, in that, separately and severally, she engaged in all or a substantial portion of the conduct alleged in Counts One through Five of this Complaint and did so in bad faith, as evidenced by the conduct alleged in those counts and the matters alleged in Count Six.*

Charge Seventy-Four

179. Judge Warner, a circuit judge of Montgomery County in the Fifteenth Judicial Circuit, while serving in that capacity, *failed to disqualify herself when she has a personal bias or prejudice concerning a party, as required by Canon 3C(1)(a) of the Alabama Canons of Judicial Ethics, in that, separately and severally, she engaged in all or a substantial portion of the conduct alleged in Counts One through Five of this Complaint and did so in bad faith, as evidenced by the conduct alleged in those counts and the matters alleged in Count Six.*

DONE this 11thday of October, 2011.

THE ALABAMA JUDICIAL
INQUIRY COMMISSION



P. BenMcLauchlin, Jr.
Chairman
BY ORDER OF THE COMMISSION

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing pleading upon all counsel of record in this cause via electronic mail and by placing a copy of same in the United States mail, postage prepaid, addressed as follows on this the 11th day of October, 2011:

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/s/Richard Trehella
OF COUNSEL

EXHIBIT A

1. State ex rel. Walker v. Walker, 58 So. 3d 823 (Ala. Civ. App. 2010).
2. Hardy v. Weathers, 56 So. 3d 634 (Ala. Civ. App. 2010).
3. L.B. v. R.L.B., 53 So. 3d 969 (Ala. Civ. App. 2010).
4. R.Y. v. C.G., 50 So. 3d 1090 (Ala. Civ. App. 2010).
5. Ex parte State Dep't of Human Res., 47 So. 3d 823 (Ala. Civ. App. 2010).
6. C.D.K.S. v. K.W.K., 40 So. 3d 736 (Ala. Civ. App. 2009).
7. Rose v. Jackson, 47 So. 3d 273 (Ala. Civ. App. 2009).
8. M.R.J. v. D.R.B., 34 So. 3d 1287 (Ala. Civ. App. 2009).
9. Corwin v. Corwin, 29 So. 3d 913 (Ala. Civ. App. 2009).
10. Miller v. Miller, 47 So. 3d 262 (Ala. Civ. App. 2009).
11. M.R.J. v. D.R.B., 17 So. 3d 683 (Ala. Civ. App. 2009).
12. Raybon v. Hall, 17 So. 3d 673 (Ala. Civ. App. 2009).
13. J.M. v. C.M., 16 So. 3d 810 (Ala. Civ. App. 2009).
14. Ex parte Riley, 10 So. 3d 585 (Ala. Civ. App. 2008).
15. Cochran v. Cochran, 5 So. 3d 1220 (Ala. 2008).
16. Corwin v. Corwin, 5 So. 3d 1278 (Ala. Civ. App. 2008).

17. Hall v. Hall, 998 So. 2d 1072 (Ala. Civ. App. 2008).
18. Ex parte Montgomery County Dep't of Human Res., 10 So. 3d 31 (Ala. Civ. App. 2008).
19. M.S. v. D.A.P., 1 So. 3d 73 (Ala. Civ. App. 2008).
20. Brooks v. Brooks, 991 So. 2d 293 (Ala. Civ. App. 2008).
21. Feria v. Soto, 990 So. 2d 418 (Ala. Civ. App. 2008).
22. Ex parte Montgomery County Dep't of Human Res., 982 So. 2d 545 (Ala. Civ. App. 2007).
23. Ex parte Montgomery County Dep't of Human Res., 982 So. 2d 527 (Ala. Civ. App. 2007).
24. Cheek v. Dyess, 1 So. 3d 1025 (Ala. Civ. App. 2007).
25. Wannamaker v. Wannamaker, 979 So. 2d 68 (Ala. Civ. App. 2007).
26. Wannamaker v. Wannamaker, 976 So. 2d 1026 (Ala. Civ. App. 2007).
27. Sankey v. Sankey, 961 So. 2d 896 (Ala. Civ. App. 2007).
28. D.B. v. M.A., 975 So. 2d 927 (Ala. Civ. App. 2006).
29. Bishop v. Knight, 949 So. 2d 160 (Ala. Civ. App. 2006).