

IN THE ALABAMA COURT OF THE JUDICIARY



IN THE MATTER OF:)
ANITA KELLY) Court of the
Circuit Judge,) Judiciary – Case No.: 50
15th Judicial Circuit)

JUDGE ANITA KELLY’S ANSWER AND DEFENSES

Judge Anita Kelly, for her Answer and Defenses to the Complaint of the Judicial Inquiry Commission (“JIC”) dated August 16, 2017, states as follows:

INTRODUCTION

JIC’s 149-page complaint against Judge Kelly alleges that she is guilty of “repeated violations of the Alabama Canons of Judicial Ethics by her pattern and practice of unreasonable and unjustifiable delay in handling her docket in Family Court.” Complaint, at ¶4. This alleged “pattern and practice of unreasonable and unjustifiable delay” is identified in various areas of Judge Kelly’s docket, as allegedly manifested in a variety of ways.

But, just as in real estate the key is location¹, here as to Judge Kelly’s defense the key is context. And, JIC’s accusatory broadside against Judge Kelly throughout omits context crucial to a fair and impartial evaluation of the charges against her, despite JIC being well aware of such context (including through Judge Kelly’s response to and cooperation with JIC’s investigation).

Generally missing from the complaint (and ignored or discounted by JIC in its decision to charge Judge Kelly): the facts that Judge Kelly at all times has worked diligently to handle all her judicial business, as new case filings in the Montgomery County Family Court have soared, especially for Judge Kelly; state funding for the judiciary has been slashed; and numerous support positions in the Family Court critical to the efficient operation of the Court have been

¹ Or more accurately, “the three most important considerations with property are location, location, location.”

shed. Additional missing context is that all three (3) Montgomery County Family Court judges have consistently exceeded the statutory timelines relating to petitions for termination of parental rights (TPR) – which is the basis for roughly half of JIC’s complaint against Judge Kelly -- since at least 2013.² Yet, the Alabama Department of Human Resources (DHR), which was the main complainant triggering the “pattern and practice” investigation of Judge Kelly by JIC, singled out Judge Kelly for complaint. And, even though the circumstances (as presented to JIC) suggest DHR made the complaint for improper purposes, JIC likewise is selectively prosecuting Judge Kelly alone.

The existence of a “pattern and practice of delay” in any given area of Judge Kelly’s docket depends on at least two (2) things. First is the analysis of individual cases based on their particular facts – e.g., whether there actually was a delay in that case, whether any delay was justifiable in whole or in part, and whether Judge Kelly or another actor (e.g., DHR) was responsible for or complicit in any such individual delay. But, whether delay is “unreasonable and unjustifiable” in a given case cannot be analyzed as though the court has a docket of one case. Instead, determining whether delay is unreasonable even in an individual case, and certainly as to the collection of cases required for a “pattern and practice,” requires consideration of structural facts relating to Judge Kelly’s docket and the Montgomery County Family Court as a whole -- case loads, filings, the level of staff support, and the like.

For example, here, for each calendar year 2013 through 2016, Judge Kelly had between 2312 and 2381 new case assignments. *See* chart captioned “# of cases filed in Montgomery County by Family Court Judge during CY 2013-2016” (attached as Exhibit 53). The matters identified in JIC’s complaint still represent a small fraction of the more than 9000 *new* cases

² Transcript of Ex parte testimony of Angela Starr (chief deputy clerk at Montgomery County Juvenile Court) before JIC, May 18, 2017 (“Starr Tr.”), at 67-69.

assigned to Judge Kelly during that period (or the estimated 11,000 to 12,000 new cases assigned to her for the broader period of 2011 through 2016).

With respect to case dispositions, although relating to a slightly different time frame (fiscal as opposed to calendar years), according to AOC caseload reports for FY 2013 through FY 2015, Judge Kelly disposed of over 2300 cases in each of those three fiscal years. And, in those last three full fiscal years, she disposed of very nearly as many cases as she had filings for each year (indeed, in FY 2014, she had 2358 new filings and disposed of 2358 cases).³

And to put the new case filings in a statewide context, Montgomery County as a whole for FY 2012 through FY 2014 ranked third among counties statewide in new dependency filings, new delinquency filings, and total new filings in family court cases, *see* chart titled “Number of CS, DR, and JU Court Filings between Fiscal Years 2012 and 2014 by County,” even though only the fourth most populous county (per 2010 census data). Montgomery County had almost 40 percent more new filings than Madison County, the third most populous county, even though Madison County has roughly 50 percent more people (per 2010 census data). As to the two counties closest to Montgomery County (approximately 229,000) in population, i.e., Shelby County and Tuscaloosa County (both roughly 195,000), Montgomery County had approximately twice as many new filings as Shelby County, and approximately 50 percent more than Tuscaloosa County.

As to the Montgomery County judges, Judge Kelly has had more new cases than either of the other two Montgomery County family court judges, Calvin Williams and Robert Bailey, each calendar year from 2013 through 2016. Although she had only 9 more cases in 2013 than Judge Bailey, Judge Kelly otherwise had from a low of 73 to a high of more than 440 more new cases

³ As one reflection of a dramatic increase in her cases leading up to those years, according to the same type of reports for earlier years, Judge Kelly’s total case dispositions jumped from 1168 in FY 2011 to 1891 in FY 2012, and then to over 2300 beginning in FY 2013.

in a given calendar year than either of the other two judges. Judge Kelly has had 1,498 more new cases over the last four years than one of those judges (Judge Williams), and 458 more new cases during the same period than the other (Judge Bailey).

Other factors have also increased Judge Kelly's workload over time in recent years. For example, before his appointment as circuit judge in June 2011, Robert Bailey was a full-time referee on dependency and delinquency cases. After his appointment, that referee position (now held by Vicky Toles, who handles mainly initial dependency proceedings) was reduced to part-time. As a result, the family court judges have more dependency cases than before. Also, as of May of 2012, the family court judges were required to handle all default hearings in domestic relations (DR) cases. The workloads of the family court judges also expanded in approximately April of 2015, when they were first required to review and sign all consent decrees generated in juvenile court intake.

As to a change affecting specifically the workload of Judge Kelly (as opposed to the other family court judges), before July of 2016 – or during nearly all of the period covered by JIC's complaint – Judge Kelly heard all her own cases regarding establishment of paternity and child support. This included non-IV-D cases, on the advice of counsel at the Alabama Administrative Office of Courts (AOC) that such cases were to be heard by judges and not referees. Only in July of 2016, when a clerk's office supervisor informed Judge Kelly that the other two judges routinely referred all non-IV-D cases to the referee, did Judge Kelly start referring such cases to the referee and stop hearing them personally.

In its charges against Judge Kelly, JIC complains of various scheduling issues: hearings not timely set; cases that, once set for hearing, are not completed, and must be rescheduled; and cases that are not timely rescheduled for further hearing – all of which JIC attributes to Judge

Kelly as delay or failure to act. But, in attributing these occurrences to Judge Kelly as misconduct, JIC misconceives long-held scheduling practices in the Montgomery County family courts; and ignores the realities of the docket.

Judge Kelly's judicial assistant does schedule all of Judge Kelly's domestic relations (DR) cases. But, the clerk's office routinely schedules all juvenile (JU) cases, both delinquency and dependency, for all three judges and the part-time referee. The scheduling by the clerk's office of all JU cases for all judges has been the routine practice since Judge Kelly took the bench after being elected in November of 2004, and to her understanding, for some time before that. *See also* Affidavit of Tiffany McCord (Montgomery County Circuit Clerk) (attached to as Exhibit 1(3)).

Judge Kelly generally has hearing dockets at least 4 full days, and not uncommonly 5 days, per week. Until January of 2017, Judge Kelly normally heard domestic relations cases (including divorce, custody, protection from abuse, and child support matters) all day Monday, Tuesday, and Thursday of each week. Each Wednesday routinely is devoted to hearing juvenile cases. Although ostensibly an administrative day (including, e.g., preparation of decisions), Friday often is used by Judge Kelly to hear other emergency matters.

For more than 12 years (Judge Kelly's entire judicial tenure to date), the clerk's office has scheduled the family court judges to hear juvenile cases one day per week, with 4 hours each of court time allocated to delinquency and dependency cases. *McCord Affidavit*. At least Judge Kelly, Judge Calvin Williams, and the circuit clerk find that the one day per week allotted to juvenile cases is inadequate. *See Affidavit of Circuit Judge Calvin L. Williams* (attached to as Exhibit 1(4); *McCord Affidavit*). But, according to the circuit clerk, the clerk's office has insufficient staff employed to work juvenile court cases. *McCord Affidavit*. To address the

insufficiency of 4 hours of week to hear dependency cases, Judge Kelly's dependency cases "on more than an occasional basis" are scheduled for a full day. *Id.* When necessary, the clerk's offices specially sets dependency cases for Judge Kelly at her downtown office (as opposed to the Youth Facility in west Montgomery). *Id.* And, effective January of this year, Judge Kelly has the clerk's office set dependency cases two additional days per month, on alternate Mondays, in an effort to address the number of cases on her dependency docket, but especially petitions for TPR. *Id.*

Dependency dockets often have more cases set than can be heard during a given day's docket (especially a half-day docket), Affidavit of Gwendolyn Thomas Kennedy (attached to Exhibit 1(10), and particularly when a TPR petition is scheduled. Indeed, a TPR hearing, when conscientiously done with adherence to all the statutory requirements, often cannot be completed within a single docket setting, *see id.*; if started, the hearing often must be reset to resume at a later date. TPR petitions are set the last week of the month, and the hearings are scheduled six months out. McCord Affidavit. When a continuance is granted or a hearing is not completed, it is often difficult to reset the hearing within 30 days. *Id.* The length of TPR hearings, the limited time available, and the number of dependency cases to be scheduled (including TPR cases, which by statute are given priority) all make it difficult to reset and resume an interrupted hearing as promptly as it should be (or within the statutorily prescribed time).

In short, even with 2 more days each month allocated to juvenile cases, and some other special settings, in addition to the 4 hours each per week that have been allocated per judge to dependency cases and to delinquency cases since before Judge Kelly came on the bench, there is inadequate time allocated to or available to handle juvenile cases, including cases that by Alabama statute are to be given priority (TPRs).

Compounding all these difficulties in prompt scheduling, hearing, completion, and decision of cases, including priority TPR petitions, are the state's budget woes. From 2002 to FY 2015, general fund appropriations for Alabama's Unified Judicial System have decreased by over \$55 million. After a cut of nearly \$20 million in appropriations between 2011 and 2012, Unified Judicial System funding had not regained its 2011 level as of 2015. *See* attached Exhibit 52 (composite of selected communications from AOC regarding judicial funding dated between February 2013 and May 2015).

As to the effect of these funding shortfalls on the Montgomery County courts specifically, based on information received by the now-retired presiding judge (Judge Eugene Reese) from AOC, the Montgomery County family court was short 2.3 judges based on the court's weighted caseload. Affidavit of Circuit Judge Robert Bailey (attached to as Exhibit 1(5)). Similarly, based on a manpower study by AOC, the Montgomery County circuit clerk's office, which for many years has scheduled all juvenile matters for the family court judges, needs 46 employees to efficiently operate its offices, but is working with less than half that – 21 employees (down from 45 employees in 2008). McCord Affidavit, at 2.

All these are basic structural facts for the Montgomery County family court generally, and Judge Kelly specifically, which collectively increase substantially the likelihood of delays in hearings and rulings, especially in Judge Kelly's docket, even when a judge is giving best efforts.

As suggested above, JIC's investigation of a possible "pattern and practice of delays" was triggered by DHR -- first by a letter from DHR detailing a "laundry list" of grievances against Judge Kelly, and then by an Alabama appellate opinion in a case appealed by DHR from Judge Kelly's court. Although one could not tell from the Complaint in this court, DHR's grievances and JIC's investigation into a possible "pattern and practice of delays" by Judge Kelly – at least

as identified by JIC to Judge Kelly⁴ -- focused solely on dependency cases, in Judge Kelly's juvenile docket.

But, JIC's complaint in this matter expanded the scope of the alleged "pattern and practice of delays" far beyond the dependency cases that comprised the investigation of which Judge Kelly had been notified. Indeed, Judge Kelly first learned of "pattern and practice" allegations concerning her domestic relations cases (including uncontested divorces, joint petitions for modifications of divorce decrees, child support, custody, alimony, and visitation cases) and protection-from-abuse (PFA) cases through JIC's filing of its formal charges here. JIC accordingly gave Judge Kelly *no* notice of or opportunity to respond regarding those matters during JIC's pre-charge investigation – e.g., by voluntarily testifying before JIC, as she did regarding the dependency cases⁵ --, which likely violated both due process and JIC's own rules. *See* Rule 6, Rules of Procedure of the Judicial Inquiry Commission.

As for DHR's role here, DHR may charitably be termed a "frequent flyer" in family court, as it is a party or otherwise involved in all or nearly all dependency cases in Alabama. DHR's complaint to JIC identified matters involving over 30 children and over 40 cases involving those children, raising a variety of gripes⁶ toward Judge Kelly ranging over a 3 to 5 year period. DHR's allegations appeared to have been gleaned from a "full-court press" review of DHR's cases assigned to Judge Kelly, i.e., from hundreds of dependency cases pending before Judge Kelly.

⁴ Apart from two individual domestic relations matters, neither of which is part of JIC's complaint here.

⁵ And some miscellaneous items included in DHR's "laundry list."

⁶ E.g., parts of DHR's complaint letter a) involved mere disagreements with orders entered by Judge Kelly, which is an *improper* basis for a judicial ethics complaint; b) did not involve issues of delay; and c) were conspicuously disingenuous about DHR's responsibility or complicity in at least some of the "delays" they attribute to Judge Kelly.

DHR first submitted those complaints unsolicited to JIC by letter dated August 1, 2014, in connection with JIC's unrelated investigation of a single matter handled by Judge Kelly. JIC did not request any response from Judge Kelly to DHR's complaints in 2014. DHR then recycled and slightly updated and expanded that list of complaints, in a letter to JIC dated November 30, 2016. That recycled letter formed nearly all the basis of JIC's "pattern and practice" investigation leading to these charges, as least as identified to Judge Kelly before the charges were filed (i.e., the allegations relating to her dependency docket).

In filing these charges, JIC overlooked the circumstances (as identified to JIC by Judge Kelly) reflecting that DHR made and then recycled its complaints against Judge Kelly to JIC for impermissible reasons, because of a) repeated disagreements with Judge Kelly's rulings, b) chafing against her criticisms of DHR in cases for not meeting their professional obligations, c) retaliatory motive, or d) some other improper motive.

For example, DHR first complained to JIC just a few months after Judge Kelly sharply criticized DHR in an order for DHR's abrupt and unexplained 180-degree reversal of position (from reunification of a family, withdrawing its effort to seek TPR, and objecting to adoption of a minor by foster parents, to supporting adoption of that same minor by the same foster parents before a different judge in another county) in a case before her. *See* Letter to JIC from Judge Kelly's counsel dated May 18, 2017 (attached as Exhibit 1, at 14). Also, DHR's general counsel, both in her complaint letter to JIC and in ex parte testimony before JIC, gratuitously made numerous representations negative to Judge Kelly that were unrelated to any claims of a pattern and practice of delays in hearings and rulings. Most of them were not based on first-hand knowledge; all were false. *Id.* at 13. There also was evidence of personal hostility on the part of

upper level DHR personnel toward Judge Kelly.⁷ *Id.*; Affidavit of Michael Guy Holton (attached to as Exhibit 1(9)).

In support of its “pattern-and-practice of delay” allegations as to Judge Kelly’s dependency cases (and specifically TPRs), JIC’s complaint here cites the filing of several petitions for writ of mandamus seeking orders for Judge Kelly to take timely action. Complaint, at ¶22. But, the filing of those petitions supports an inference that DHR’s “laundry list” of complaints and the petitions themselves are part of a scheme by DHR to target Judge Kelly for professional discipline for an improper purpose.

All eight (8) of the cited petitions were filed by DHR, all relating to the timelines for TPR motions. DHR chose to file the first petition within two (2) weeks after its August 1, 2014, first “laundry list” letter to JIC; and chose to file the second less than a month after the first petition. Twice DHR has chosen to file more than one (1) petition for mandamus relief against Judge Kelly on the same date (three on June 15, 2015, and two on March 10, 2017). The second occasion was during JIC’s pre-charge investigation in this matter, and DHR promptly reported its filings to JIC to bolster its claims. And, even though all three (3) of the Montgomery County Family Court judges have consistently missed the timelines for TPRs since approximately 2013, *Starr Tr.*, at 67-69, upon information and belief DHR has sought mandamus relief against Judge Kelly only.

As an additional example of missing context, the specific areas in which JIC’s complaint alleges a pattern and practice of delay include some areas in which the Alabama Legislature has prescribed time standards, and other areas in which there are no specific prescribed time standards.

⁷ For more detail supporting an inference of improper purpose on DHR’s part in complaining to JIC, *see* Exhibit 1, at 12-14.

There are only a few time standards relevant to this complaint as imposed by Alabama statutes: e.g., a) Code sections in dependency cases directing the court to make (i) a “reasonable efforts” determination (i.e., whether reasonable efforts have been made to prevent removal from the home, or whether such efforts are not required) within 60 days after a child’s initial removal from his or her home, and (ii) a separate “reasonable efforts” determination (as to whether reasonable efforts have been made to finalize the existing permanency plan) within 12 months after removal, and within every 12 months thereafter during continuation of out-of-home case, *see* Code of Alabama §§12-15-312(a)(2),(3); b) Code sections regarding petitions to terminate parental rights directing the court to complete a trial on a TPR petition “within 90 days after service of process has been perfected,” and to enter a final order within 30 days of the completion of the trial,” Code of Alabama §12-15-320(a); and c) a Code provision in protection-from-abuse cases that directs the court to rule on a temporary ex parte protection order within three (3) business days of the filing of the petition, and to hold a final hearing upon the request of the defendant or within 10 days of perfection of service. Code of Alabama §30-5-6(a) & (b).

But, even as to these few specific time standards, JIC commits an error of law in treating them as mandatory, “strict liability” provisions, under which exceeding the prescribed time (a) is an automatic violation of the statute and/or (b) a per se judicial ethics violation, with no exceptions, extensions, or discretion allowed.⁸ And, apart from the specific TPR and protection-

⁸ No Alabama case appears to have addressed this particular point as to these particular time directives. But, based on Alabama cases construing the effect of *similar* statutory time prescriptions, notwithstanding the use of “shall” (e.g., “the trial . . . shall be completed” and “the trial court shall enter”), these statutes are not mandatory, but directory. The statutes specify only the required performance, but not the result obtained or consequence applied if performance is not done. *E.g., Ex parte Hood*, 404 So.2d 717, 718 (Ala. 1981). Moreover, provisions requiring a public officer to perform an official act within a specified time generally are construed as directory, particularly where reasonable delays beyond the specified time may often be necessary to carry out the purposes of the statute. *E.g., MCI Telecommunications, Inc. v. Alabama Public Service Comm’n*, 485 So.2d 700, 703-04 (Ala. 1986); *Key v. Alabama State Tenure Comm’n*, 407 So.2d 133, 135 (Ala.Civ.App. 1981). Furthermore, even if these statutes were strictly

from-abuse time directives, there are no specific time standards to determine what constitutes “delay,” “excessive delay,” or a “pattern and practice” in all the other areas alleged in the complaint – in short, *no* standard that gives a judge such as Judge Kelly fair notice as to when a lapse of time (whether in setting or re-setting a hearing, completing a trial, or issuing an order) gives rise to potential discipline, as required by due process.⁹

As noted above, nearly half of the complaint against Judge Kelly addresses alleged delays in dependency cases, including TPRs. Undergirding JIC’s charges is a focus on permanency as the main goal of the juvenile court process. *See* Complaint, at, e.g., ¶¶6-10, 17, 19. But that focus ignores or omits other critical goals of the same process, such as preserving and strengthening the family of the child whenever possible, Code of Ala. §12-15-101(b)(1); removing the child from his or her parents’ custody “only when it is judicially determined to be in his or her best interests . . .,” *id.* §12-5-101(b)(2); and reuniting the child with his parent(s) “as quickly and as safely as possible when the child has been removed from” his parents’ custody “unless reunification is judicially determined not to be in the best interests of the child.” *Id.* §12-15-101(b)(3). Indeed, “[a]chieving permanent homes for abused and neglected children also includes working toward the reunification of families that have had to be separated.” Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases, at 13 (National Council of Juvenile and Family Court Judges 1995).

JIC’s focus on using the process to achieve permanency, and implicitly treating the TPR process as a gateway for DHR to expedite adoptions of juveniles from foster care, gives short shrift to the

construed to allow no delays or extensions, a violation of even a fixed, mandatory time limit does not support judicial discipline without a showing of bad faith, i.e., proof of malice, ill will, or improper motive. *In re Sheffield*, 465 So.2d at 357-58.

⁹ This is particularly true where JIC expanded the charges beyond those areas it had identified to Judge Kelly during its pre-filing investigation, e.g., all of section III – Delays in Domestic Relations Cases (with the possible exception of subsection D regarding protection from abuse cases. *See* Complaint, at pp. 70-112. In these areas of domestic relations cases, JIC appears to have electronically searched and fly-specked all other areas of Judge Kelly’s docket besides dependency cases, and pulled all instances of apparent delay from among hundreds of cases of that type annually, according to an arbitrary standard determined by and known only to JIC itself. In those areas Judge Kelly clearly lacked any fair notice as to when her conduct would cross a line of judicial ethics, so as to subject her to possible discipline (up to and including removal from office).

biological parent-child bond and operates to relieve or lighten DHR's duty to provide services and promote reunification. "The law recognizes that a higher authority ordains parenthood, and a fallible judge should disturb the relationship thus established only where circumstances compel human intervention." *Ex parte Sullivan*, 407 So.2d 559, 563-64 (Ala. 1981). Indeed, "[t]ermination of a parent's rights is an extremely drastic measure, and once done, we know of no means of reinstating those rights." *C.C. v. State Dept. of Human Resources*, 984 So.2d 447, 450 (Ala.Civ.App. 2007) (quoting *East v. Meadows*, 529 So.2d 1010, 1011-12 (Ala.Civ.App. 1988)).

Accordingly, before a parent's rights may be terminated the court must determine whether a viable alternative to termination of parental rights exists. *E.g., J.B. v. Cleburne County Dept. of Human Resources*, 991 So.2d 273, 282 (Ala.Civ.App. 2008). DHR's duty to make reasonable efforts to reunite a child with her family, *see, e.g.*, Code of Ala. §12-15-312(a), includes efforts to make it possible for a child to return safely to her home, and to rehabilitate a parent so that the parent can again exercise familial rights and responsibilities toward the child in question. *E.g., R.T.B. v. Calhoun Co. Dept. of Human Resources*, 19 So.3d 198, 204 (Ala.Civ.App. 2009). In fact, one exception to the requirement that DHR file a TPR petition when a child has been in foster care for 12 of the most recent 22 months, Code of Ala. §12-15-317(1)(a), is where DHR has failed to provide to the family of the child services necessary for the safe return of the child to his home, consistent with the time period in DHR's individualized service plan. *Id.* §12-15-317(2)(c). For parental rights to be terminated, DHR must prove by clear and convincing evidence that reasonable efforts at reunification had failed. *E.g., L.M.W. v. Etowah Co. Dept. of Human Resources*, 55 So.3d 1204, 1211 (Ala.Civ.App. 2010).

The significance here of correcting JIC's erroneous, single-minded focus on permanency, to the exclusion of other equally important goals of the juvenile court system, is this. To the extent that the statutory time periods are not mandatory, strict compliance deadlines, but instead allow deviation from or extension of the standards as needed to carry out the purposes of the statute, then deviations by Judge Kelly from the prescribed periods (or as is often the case, delays attributable to other factors, such as the

clerk's office's inability to schedule more timely) that promote other critical values of the statute besides permanence in the form of adoption, would be reasonable and justifiable – not grounds for discipline.

Indeed, in conducting her court, apart from (apparently) some of the DHR attorneys and administration, Judge Kelly is generally well-regarded for her fairness; her attention to detail; her attention to the needs of parents and families; her respect for litigants; her insistence that DHR provide services to families and that efforts be made to reunify (when possible) children and parents who appear before her (as opposed to simply propelling them toward termination of parental rights); her insistence on evidence to support parties' positions and her decisions; and generally her professionalism. See Holton Affidavit; Kennedy Affidavit.

On a different point, JIC's complaint identifies the training and assistance provided by the National Council of Juvenile and Family Court Judges (based in Reno, Nevada) as additional notice to Judge Kelly of, and another failed opportunity for her to correct, her alleged deficiencies. *See* Complaint, at ¶¶134-144. But, that characterization minimizes Judge Kelly's crucial role in seeking and obtaining their expert assistance; omits the changes she did help implement as presiding judge; and unfairly blames her for not implementing more of NCJFCJ's recommendations.

Upon learning of the expertise and services available from NCJFCJ, Judge Kelly and her staff successfully applied in spring of 2014 for Montgomery to be selected as one of only a few Implementation Sites nationally for NCJFCJ's Implementation Sites Project. Judge Kelly worked assiduously to identify, recruit, and bring together various stakeholders (including DHR personnel) with interests in the Montgomery County juvenile court. And, until she was removed as juvenile court presiding judge by Judge Reese in January 2016, Judge Kelly was the lead judge for Montgomery County on the project.

As described in its NCJFCJ Site Visit Reports, NCJFCJ developed the Implementation Sites project "to assist judges in becoming statewide leaders in best practices, building strong collaborations, and maintaining continuity in their efforts to improve outcomes for children and families." NCJFCJ site visit report, dated January 20, 2016, at 2 (Bates no. 000037).

Judge Kelly was clear-eyed about the problems facing the Montgomery County Family Court. As identified by Judge Kelly in Montgomery County's application to be one of the Implementation Sites, the Montgomery County family court's long list of "desired outcomes" from participation in the project started with: "to increase the number of positive outcomes for children and families; to decrease the number of TPRs and out-of-home placements; to improve the court's processing of dependency cases, including development of standardized administrative processes, utilization of discovery, and development of a schedule to effectively schedule hearings; [and] utilization of dedicated employee to manage administrative processing of dependency cases ..." Mont. Co. family court application for Implementation Sites project, Answer to question 26 (attached as Exhibit 1(8)).

These desired outcomes reflected both Judge Kelly's perception of issues in the operations of the family court, including the scheduling, handling, and processing of dependency cases specifically; and her strong desire to seek expert assistance and to make improvements. Contrary to JIC's suggestion, *see* Complaint, at ¶142, Judge Kelly did work to implement NCJFCJ's recommendations while she was presiding juvenile court judge.

Under Judge Kelly's leadership, following the initial recommendations made in March 2015 (based on NCJFCJ's first site visit in January 2015), the court formed an executive committee of all the dependency judges and directors from DHR. The intake process was examined and reorganized, and a draft written protocols and procedures document was generated. A stricter no-continuance policy was implemented, which "decreased significantly" the number of pending TPR orders. And, the dependency judges were meeting regularly with the Director and Assistant Director of DHR to discuss and identify key topics and information to be included in every court report. NCJFCJ Site Visit Report, dated June 1, 2016, at 4 (Bates no. 000054). Judge Kelly sometime thereafter also added more hearing days a month for her own dependency cases, and frequently used Fridays (otherwise planned as an administrative day, including for preparing decisions) as a hearing day for emergency matters.

JIC's criticism of Judge Kelly for not implementing NCJFCJ's recommendations during her short (approximately a year-and-a-half) term as presiding juvenile court judge, Complaint, at ¶142, is

disingenuous at best. Most of the recommendations JIC faults Judge Kelly for not implementing as presiding judge, *see id.* at ¶¶138-141, were made first in the site visit report dated January 20, 2016¹⁰ -- just days before Judge Reese removed Judge Kelly as presiding judge (on January 26, 2016). Omitted by JIC is that Judge Kelly drove the process that led to the expert recommendations for court practice changes that Judge Reese (after replacing Judge Kelly with himself as presiding judge of the family court) adopted in his March 2016 Administrative Order. *See id.* at ¶143.

More significantly, to the extent that JIC censures Judge Kelly for not implementing more of NCJFCJ's recommendations, or making greater headway against her alleged "pattern and practice of excessive continuances and delay in issuing orders," *id.* at ¶144, JIC ignores the structural factors noted above – such as "too many cases, not enough hearing time, too few judges and staff, cases that take longer than the available time" – that impede Judge Kelly, and the other Montgomery County family court judges, in reducing scheduling, hearing, and disposition delays.

The last area to be addressed in this introduction is what JIC's complaint terms "Losing the Department of Youth Services Grant Funding," Complaint, at ¶¶124-130, which earned its own separate charge. *Id.* at pp. 148-49 (Charge 6). First, the Complaint converts a bona fide policy dispute over whether to renew a three-year contract for a treatment program (the Davis Treatment Center) in excess of \$500,000 to a vendor of questionable effectiveness (The Bridge), following a process from which Judge Kelly – even though presiding judge – was largely excluded until just before the previous contract's expiration date, into an alleged ethical violation. Equally important, the events alleged in the Complaint bear little resemblance to the reality Judge Kelly experienced.

As a threshold matter, although omitted by JIC, DYS never canceled its juvenile diversion program grant to Montgomery County. *See* e-mail from Steven Lafreniere (DYS) to Judge Kelly dated

¹⁰ Or later. *See* Complaint, at ¶141 ("develop a 'back-up' plan to prevent the unnecessary cancellation of dockets") (June 1, 2016 report). One exception is the alternate option for reducing continuances of time-certain calendaring, *see id.* at ¶139, which was raised in March 2015. *See* NCJFCJ site visit report, dated June 1, 2016, at 3 (Bates no. 000053).

Feb. 1, 2016 (attached as Exhibit 18). Rather, DYS held the grant while the RFP was being re-worked by Montgomery County. At least twice previously during Judge Kelly's tenure as a circuit court judge, the Montgomery County Youth Facility had changed vendors, purportedly to seek a better structured program and one with Medicaid number for direct billing, causing the facility temporarily to be without a vendor in place for the Davis Treatment Center to provide services to children and their families. She also was aware of other counties, including Houston and Dallas, where DYS did not terminate its grant while the county was working on its RFP and was without a vendor contract in place.

Given that the Bridge had been the vendor for the diversion program at the Montgomery County Youth Facility for several years, it was clear to Judge Kelly that although the chief probation officer and his assistant were satisfied with the services provided by the Bridge, most judges (including Judge Kelly) were not. That dissatisfaction had caused two of the three family court judges (Judge Kelly and Judge Williams) to stop making referrals for services to the Bridge.

Rule 3 of the Alabama Rules of Juvenile Procedure vests administrative authority over the juvenile court in the presiding juvenile court judge (at that time, Judge Kelly), and Rule 5 places the chief probation officer directly responsible to, and under the authority of, the presiding judge. Under Rule 3, the presiding juvenile court judge's responsibilities specifically include initiating and carrying on programs. Despite that, the chief probation officer ran the application process for the grant and selection process for the vendor largely without any input from or supervision by – and mostly outside the knowledge of – Judge Kelly, the presiding judge.

The chief probation officer developed the RFP for the vendor selection without input from, or the knowledge of, Judge Kelly. Furthermore, the chief probation officer, his assistant, and the compliance director of The Bridge had prepared the diversion grant application to DYS without review and/or approval by the presiding judge, Judge Kelly. In Judge Kelly's view, this gave The Bridge access to insider information that gave it an unfair advantage in the bid process.

Although the existing contract between the Montgomery County Commission and the Bridge was to expire on December 31, 2015, Judge Kelly did not even learn of the RFP until between December 9

and December 14, when the chief probation officer mentioned the need to appoint members to the Review Committee, provided for in the RFP (exclusively developed by the chief probation officer). Judge Kelly never met with the Review Committee, and received from the committee (through the chief probation officer) only its score card.

Judge Kelly did not know the responses to the RFP were due December 15 until the chief probation officer mentioned it on December 15. And, not until December 31, 2015 did the chief probation officer advise Judge Kelly of the expiration *that day* of the contract between the County Commission and The Bridge, which obviously impaired Judge Kelly's ability to address the issue reasonably before the contract's expiration.

Based on her own observations of the Bridge over several years, the observations of at least one other juvenile court judge, the probation staff, and a school official, and the poor success rate of The Bridge, Judge Kelly questioned continuing to award the contract to The Bridge. Judge Kelly was dissatisfied or concerned with The Bridge on several counts. The contract did not include any performance requirements before payment to the Bridge for services rendered, meaning The Bridge would continue to be paid, notwithstanding poor performance. There was no accountability. Records of performance by the Bridge or program participants were not available for review. No objective evidence to justify continuation of contract was presented. The Bridge claimed to have a jobs program. Based on information and belief, one student was employed through the program at Church's Fried Chicken. The program at The Bridge had a high employee turnover rate; the program lacked stability, and struggled to meet the needs of at-risk children. The 40 percent "success rate" (i.e., of children successfully completing The Bridge's program) touted by the program's cheerleaders, Judge Kelly and Judge Williams considered a failure. Judge Kelly believed that this contract was a financial gain to the Bridge without benefit to children and families in Montgomery.

Rather than refusing or failing to act timely on the proposed contract, Judge Kelly held up the chief probation officer from recommending to the County Commission to renew its contract with The

Bridge.¹¹ Judge Kelly then agreed with the chief probation officer on a target date of March 1, 2016, to retool their work for the Davis Treatment Program. In that process she communicated repeatedly with DYS and other stakeholders, including the DYS Executive Director on multiple occasions. Indeed, in her view, Judge Kelly would have breached her responsibility to the at-risk children and families referred for services if she *had* approved the selection of The Bridge.

As noted above, on January 26, 2016, Judge Reese removed Judge Kelly as presiding juvenile court judge, apparently believing Judge Kelly had lost the grant funding for the Davis Treatment Center. That reason was not correct. The Davis Treatment Center had not lost its grant, and Judge Kelly (and others) had simply questioned providing that funding to The Bridge to operate the Center, given the poor evaluation of the Bridge's operation of the Center and its services to children and families. Affidavit of John F. Knight, Jr.; Affidavit of Alvin Holmes (attached as Exhibits 1(1) and 1(2), respectively).

Viewed in proper context, it's hard to see how Judge Kelly's good faith, fiscally responsible, client centered (at-risk children and families) decision not to approve recommending renewal of the vendor contract with The Bridge could be considered a violation of any Canon of Judicial Ethics.

ANSWER

Subject to the foregoing introduction, Judge Kelly responds to the individual paragraphs of the Complaint as follows:

1. Judge Kelly admits the allegations of paragraph 1 of the Complaint.
2. Judge Kelly denies the allegations of when she took office as stated in paragraph 2 of the Complaint. Judge Kelly admits the remaining allegations of paragraph 2 of the

¹¹ When the highest composite evaluation score reported to Judge Kelly was 65 out of a possible 100 points, Judge Kelly felt compelled to advise the chief probation officer to hold up on going forward to the County Commission with a recommendation favoring The Bridge. In fact, the Review Committee performing the valuation never rated The Bridge on its past performance under the evaluation form/scorecard created by the chief probation officer. Instead, the score evaluated only the content of The Bridge's application.

Complaint; however, she denies that said paragraph details all of the matters she regularly presided over or duties performed in her official capacity as a circuit court judge.

3. Judge Kelly admits the allegations of paragraph 3 of the Complaint that she was appointed Presiding Judge of the Montgomery County Family Court in 2014 and that she was removed from that position. She denies all other allegations of paragraph 3 of the Complaint and asserts that Exhibit 18, (attached hereto), show clearly that the program funding was not lost and that she did not cause the Department of Youth Services (“DYS”) Davis Treatment Center aka Bridges to fail or refused to maintain the grant funding juvenile-rehabilitative program, where approximately 90% or more of whom were Africa-American at-risk-teens.
4. Judge Kelly denies all the allegations of paragraph 4 of the Complaint and she asserts that her response to JIC dated May 18, 2017 (Exhibit 1, attached hereto) offers clear and convincing evidence which refutes the allegations stated in paragraph 4 of this Complaint.
5. Judge Kelly denies all the allegations of paragraph 5 of the Complaint and demands strict proof thereof.

II. Delays in Juvenile Court

A. Dependency Cases, Including Termination-of-Parental-Rights Cases

6. Judge Kelly denies the allegations of paragraph 6 of the Complaint and demands strict proof of the same.
7. Admit that in 1997 Congress passed ASFA. Judge Kelly otherwise denies the remaining allegations of paragraph 7 of the Complaint and demands strict proof of the same.

8. Judge Kelly avers that provisions of Code of Alabama speak for themselves. She otherwise denies the remaining allegations of paragraph 8 of the Complaint and demands strict proof of the same.
9. Judge Kelly avers that provisions of Code of Alabama speak for themselves. She otherwise denies the remaining allegations of paragraph 9 of the Complaint and demands strict proof of the same.
10. Judge Kelly avers that provisions of Code of Alabama speak for themselves. She otherwise denies the remaining allegations of paragraph 10 of the Complaint and demands strict proof thereof.
11. Judge Kelly denies the allegations of paragraph 11 of the Complaint and demands strict proof of the same.
12. Judge Kelly avers that provisions of Code of Alabama speak for themselves. She otherwise denies the remaining allegations of paragraph 12 of the Complaint and demands strict proof of the same.
13. Judge Kelly denies the allegations of paragraph 13 of the Complaint and demands strict proof of the same.
14. Judge Kelly denies the allegations of paragraph 14 of the Complaint and demands strict proof of the same.
15. Judge Kelly denies the allegations of paragraph 15 of the Complaint and demands strict proof of the same.
16. Judge Kelly denies the allegations of paragraph 16 of the Complaint and demands strict proof of the same.

17. Judge Kelly avers that opinions of the Alabama Supreme Court and Alabama Court of Civil Appeals speak for themselves. She otherwise denies the remaining allegations of paragraph 17 of the Complaint and demands strict proof of the same.
18. Judge Kelly avers that court rules of procedure speak for themselves. She otherwise denies the remaining allegations of paragraph 18 of the Complaint and demands strict proof of the same.
19. Judge Kelly denies the allegations of paragraph 18 of the Complaint and demands strict proof of the same.
20. Judge Kelly denies the allegations of paragraph 19 of the Complaint and demands strict proof of the same.
21. Judge Kelly denies the allegations of paragraph 20 of the Complaint and demands strict proof of the same.
22. Judge Kelly denies the allegations of paragraph 22 of the Complaint and demands strict proof of the same.
23. Judge Kelly denies the allegations of paragraph 22 of the Complaint
24. Judge Kelly denies the allegations of paragraph 24 of the Complaint and demands strict proof of the same.
25. Judge Kelly denies the allegations of paragraph 25 of the Complaint and demands strict proof of the same.

1. **Failure to Complete TPR Trial within 90 days after Perfection of Service**

And

Failure to Issue TPR Order within 30 days of Hearing

26. Judge Kelly denies the allegations of paragraph 26 of the Complaint and demands strict proof of the same.
27. Judge Kelly denies the allegations of paragraph 27 of the Complaint and demands strict proof of the same.
28. Judge Kelly denies the allegations of paragraph 28 of the Complaint and demands strict proof of the same.
29. Judge Kelly denies the allegations of paragraph 29 of the Complaint and demands strict proof of the same.
30. Judge Kelly denies the allegations of paragraph 30 of the Complaint and demands strict proof of the same.
31. Judge Kelly denies the allegations of paragraph 31 of the Complaint and demands strict proof of the same.
32. Judge Kelly denies the allegations of paragraph 32 of the Complaint and demands strict proof of the same.
33. Judge Kelly denies the allegations of paragraph 33 of the Complaint and demands strict proof of the same.
34. Judge Kelly denies the allegations of paragraph 34 of the Complaint and demands strict proof of the same.
35. Judge Kelly denies the allegations of paragraph 35 of the Complaint and demands strict proof of the same.
36. Judge Kelly denies the allegations of paragraph 36 of the Complaint and demands strict proof of the same.

2. Failure to Complete TPR Trial within 90 Days after Service of Process Perfected

37. Judge Kelly denies the allegations of paragraph 37 of the Complaint and demands strict proof of the same.

38. Judge Kelly denies the allegations of paragraph 38 of the Complaint and demands strict proof of the same.

39. Judge Kelly denies the allegations of paragraph 39 of the Complaint and demands strict proof of the same.

3. Failure to Issue TPR Order within 30 Days of Hearing

40. Judge Kelly denies the allegations of paragraph 40 of the Complaint and demands strict proof of the same.

41. Judge Kelly denies the allegations of paragraph 41 of the Complaint and demands strict proof of the same.

42. Judge Kelly denies the allegations of paragraph 42 of the Complaint and demands strict proof of the same.

4. Other Delays in Rulings in TPR Cases

43. Judge Kelly denies the allegations of paragraph 43 of the Complaint and demands strict proof of the same.

44. Judge Kelly denies the allegations of paragraph 44 of the Complaint and demands strict proof of the same.

45. Judge Kelly denies the allegations of paragraph 45 of the Complaint and demands strict proof of the same.

46. Judge Kelly denies the allegations of paragraph 46 of the Complaint and demands strict proof of the same.

47. Judge Kelly denies the allegations of paragraph 47 of the Complaint and demands strict proof of the same.

B. Juvenile-Delinquency Cases

48. Judge Kelly denies the allegations of paragraph 48 of the Complaint and demands strict proof of the same.

49. Judge Kelly avers that the provisions of the Code of Alabama speak for themselves. She otherwise denies the remaining allegations of paragraph 49 of the Complaint and demands strict proof of the same.

50. Judge Kelly avers that the provisions of the Code of Alabama speak for themselves. She otherwise denies the remaining allegations of paragraph 50 of the Complaint and demands strict proof of the same.

51. Judge Kelly denies the allegations of paragraph 51 of the Complaint and demands strict proof of the same.

52. Judge Kelly denies the allegations of paragraph 52 of the Complaint and demands strict proof of the same.

53. Judge Kelly denies the allegations of paragraph 53 of the Complaint and demands strict proof of the same.

54. Judge Kelly denies the allegations of paragraph 54 of the Complaint and demands strict proof of the same.

55. Judge Kelly denies the allegations of paragraph 55 of the Complaint and demands strict proof of the same.

C. Permanency and Dependency Cases

56. Judge Kelly avers that the provisions of the Code of Alabama speak for themselves. She otherwise denies the remaining allegations of paragraph 56 of the Complaint and demands strict proof of the same.
57. Judge Kelly denies the allegations of paragraph 57 of the Complaint and demands strict proof of the same.
58. Judge Kelly denies the allegations of paragraph 58 of the Complaint and demands strict proof of the same.
59. Judge Kelly denies the allegations of paragraph 59 of the Complaint and demands strict proof of the same.
60. Judge Kelly denies the allegations of paragraph 60 of the Complaint and demands strict proof of the same.
61. Judge Kelly denies the allegations of paragraph 61 of the Complaint and demands strict proof of the same.
62. Judge Kelly denies the allegations of paragraph 62 of the Complaint and demands strict proof of the same.
63. Judge Kelly denies the allegations of paragraph 63 of the Complaint and demands strict proof of the same.
64. Judge Kelly denies the allegations of paragraph 64 of the Complaint and demands strict proof of the same.
65. Judge Kelly denies the allegations of paragraph 65 of the Complaint and demands strict proof of the same.
66. Judge Kelly denies the allegations of paragraph 66 of the Complaint and demands strict proof of the same.

67. Judge Kelly denies the allegations of paragraph 67 of the Complaint and demands strict proof of the same.

III. Delays in Domestic-Relations Cases

68. Judge Kelly denies the allegations of paragraph 68 of the Complaint and demands strict proof of the same.

A. Uncontested Divorces

69. Judge Kelly denies the allegations of paragraph 69 of the Complaint and demands strict proof of the same.

70. Judge Kelly denies the allegations of paragraph 70 of the Complaint and demands strict proof of the same.

71. Judge Kelly denies the allegations of paragraph 71 of the Complaint and demands strict proof of the same.

72. Judge Kelly denies the allegations of paragraph 72 of the Complaint and demands strict proof of the same.

73. Judge Kelly denies the allegations of paragraph 73 of the Complaint and demands strict proof of the same.

74. Judge Kelly denies the allegations of paragraph 74 of the Complaint and demands strict proof of the same.

75. Judge Kelly denies the allegations of paragraph 75 of the Complaint and demands strict proof of the same.

76. Judge Kelly denies the allegations of paragraph 76 of the Complaint and demands strict proof of the same.

77. Judge Kelly denies the allegations of paragraph 77 of the Complaint and demands strict proof of the same.

B. Joint Petitions for Modification of Divorce Decrees

78. Judge Kelly denies the allegations of paragraph 78 of the Complaint and demands strict proof of the same.

79. Judge Kelly denies the allegations of paragraph 79 of the Complaint and demands strict proof of the same.

80. Judge Kelly denies the allegations of paragraph 80 of the Complaint and demands strict proof of the same.

C. Child-Support, Custody, Alimony, & Visitation Cases

81. Judge Kelly denies the allegations of paragraph 81 of the Complaint and demands strict proof of the same.

82. Judge Kelly denies the allegations of paragraph 82 of the Complaint and demands strict proof of the same.

83. Judge Kelly denies the allegations of paragraph 83 of the Complaint and demands strict proof of the same.

84. Judge Kelly denies the allegations of paragraph 84 of the Complaint and demands strict proof of the same.

85. Judge Kelly denies the allegations of paragraph 85 of the Complaint and demands strict proof of the same.

86. Judge Kelly denies the allegations of paragraph 86 of the Complaint and demands strict proof of the same.

87. Judge Kelly denies the allegations of paragraph 87 of the Complaint and demands strict proof of the same.
88. Judge Kelly denies the allegations of paragraph 88 of the Complaint and demands strict proof of the same.
89. Judge Kelly denies the allegations of paragraph 89 of the Complaint and demands strict proof of the same.
90. Judge Kelly denies the allegations of paragraph 90 of the Complaint and demands strict proof of the same.
91. Judge Kelly denies the allegations of paragraph 91 of the Complaint and demands strict proof of the same.
92. Judge Kelly denies the allegations of paragraph 92 of the Complaint and demands strict proof of the same.
93. Judge Kelly denies the allegations of paragraph 93 of the Complaint and demands strict proof of the same.
94. Judge Kelly denies the allegations of paragraph 94 of the Complaint and demands strict proof of the same.
95. Judge Kelly denies the allegations of paragraph 95 of the Complaint and demands strict proof of the same.
96. Judge Kelly denies the allegations of paragraph 96 of the Complaint and demands strict proof of the same.
97. Judge Kelly denies the allegations of paragraph 97 of the Complaint and demands strict proof of the same.

98. Judge Kelly denies the allegations of paragraph 98 of the Complaint and demands strict proof of the same.
99. Judge Kelly denies the allegations of paragraph 99 of the Complaint and demands strict proof of the same.
100. Judge Kelly denies the allegations of paragraph 100 of the Complaint and demands strict proof of the same.
101. Judge Kelly denies the allegations of paragraph 101 of the Complaint and demands strict proof of the same.
102. Judge Kelly denies the allegations of paragraph 102 of the Complaint and demands strict proof of the same.
103. Judge Kelly denies the allegations of paragraph 103 of the Complaint and demands strict proof of the same.
104. Judge Kelly denies the allegations of paragraph 104 of the Complaint and demands strict proof of the same.
105. Judge Kelly denies the allegations of paragraph 105 of the Complaint and demands strict proof of the same.
106. Judge Kelly denies the allegations of paragraph 106 of the Complaint and demands strict proof of the same.
107. Judge Kelly denies the allegations of paragraph 107 of the Complaint and demands strict proof of the same.

D. Protection from Abuse Cases

108. Judge Kelly avers that provisions of the Code of Alabama speak for themselves. She otherwise denies the allegations of paragraph 108 of the Complaint and demands strict proof of the same.
109. Judge Kelly denies the allegations of paragraph 109 of the Complaint and demands strict proof of the same.
110. Judge Kelly avers that the provisions of the Code of Alabama speak for themselves. She otherwise denies the allegations of paragraph 110 of the Complaint and demands strict proof of the same.
111. Judge Kelly denies the allegations of paragraph 111 of the Complaint and demands strict proof of the same.
112. Judge Kelly denies the allegations of paragraph 112 of the Complaint and demands strict proof of the same.
113. Judge Kelly denies the allegations of paragraph 113 of the Complaint and demands strict proof of the same.
114. Judge Kelly denies the allegations of paragraph 114 of the Complaint and demands strict proof of the same.
115. Judge Kelly denies the allegations of paragraph 115 of the Complaint and demands strict proof of the same.
116. Judge Kelly denies the allegations of paragraph 116 of the Complaint and demands strict proof of the same.
117. Judge Kelly denies the allegations of paragraph 117 of the Complaint and demands strict proof of the same.

118. Judge Kelly denies the allegations of paragraph 118 of the Complaint and demands strict proof of the same.

119. Judge Kelly denies the allegations of paragraph 119 of the Complaint and demands strict proof of the same.

IV. Failure to Timely Rule on Various Motions and Referee Recommendations

120. Judge Kelly denies the allegations of paragraph 120 of the Complaint and demands strict proof of the same.

121. Judge Kelly denies the allegations of paragraph 121 of the Complaint and demands strict proof of the same.

122. Judge Kelly denies the allegations of paragraph 122 of the Complaint and demands strict proof of the same.

123. Judge Kelly denies the allegations of paragraph 123 of the Complaint and demands strict proof of the same.

V. Losing the Department of Youth Services Grant Funding

124. Judge Kelly denies the allegations of paragraph 124 of the Complaint and demands strict proof of the same.

125. Judge Kelly denies the allegations of paragraph 125 of the Complaint and demands strict proof of the same.

126. Judge Kelly denies the allegations of paragraph 126 of the Complaint and demands strict proof of the same.

127. Judge Kelly denies the allegations of paragraph 127 of the Complaint and demands strict proof of the same.

128. Judge Kelly denies the allegations of paragraph 128 of the Complaint and demands strict proof of the same.

129. Judge Kelly denies the allegations of paragraph 129 of the Complaint and demands strict proof of the same.

130. Judge Kelly denies the allegations of paragraph 130 of the Complaint and demands strict proof of the same.

VI. Notice to Judge Kelly

131. Judge Kelly denies the allegations of paragraph 131 of the Complaint and demands strict proof of the same.

A. Casey Foundation

132. Judge Kelly denies the allegations of paragraph 132 of the Complaint and demands strict proof of the same.

133. Judge Kelly denies the allegations of paragraph 133 of the Complaint and demands strict proof of the same.

B. National Council for Juvenile and Family Court Judges Intervention

134. Judge Kelly denies the allegations of paragraph 134 of the Complaint and demands strict proof of the same.

135. Judge Kelly denies the allegations of paragraph 135 of the Complaint and demands strict proof of the same.

136. Judge Kelly denies the allegations of paragraph 136 of the Complaint and demands strict proof of the same.

137. Judge Kelly denies the allegations of paragraph 137 of the Complaint and demands strict proof of the same.

138. Judge Kelly denies the allegations of paragraph 138 of the Complaint and demands strict proof of the same.
139. Judge Kelly denies the allegations of paragraph 139 of the Complaint and demands strict proof of the same.
140. Judge Kelly denies the allegations of paragraph 140 of the Complaint and demands strict proof of the same.
141. Judge Kelly denies the allegations of paragraph 141 of the Complaint and demands strict proof of the same.
142. Judge Kelly denies the allegations of paragraph 142 of the Complaint and demands strict proof of the same.
143. Judge Kelly denies the allegations of paragraph 143 of the Complaint and demands strict proof of the same.
144. Judge Kelly denies the allegations of paragraph 144 of the Complaint and demands strict proof of the same.

C. Alabama Court of Civil Appeals Decisions

145. Judge Kelly avers that the opinions of the Alabama Supreme Court and Alabama Court of Civil Appeals speak for themselves. She otherwise denies the allegations of paragraph 145 of the Complaint and demands strict proof of the same.

D. The Judicial Inquiry Commission's Investigation

146. Judge Kelly denies the allegations of paragraph 146 of the Complaint and demands strict proof of the same.

147. Judge Kelly denies the allegations of paragraph 147 of the Complaint and demands strict proof of the same.

E. Canon 3A(5) Six-Month Reports

148. Judge Kelly denies the allegations of paragraph 148 of the Complaint and demands strict proof of the same.

149. Judge Kelly denies the allegations of paragraph 149 of the Complaint and demands strict proof of the same.

150. Judge Kelly denies the allegations of paragraph 150 of the Complaint and demands strict proof of the same.

151. Judge Kelly denies the allegations of paragraph 151 of the Complaint and demands strict proof of the same.

152. Judge Kelly denies the allegations of paragraph 152 of the Complaint and demands strict proof of the same.

153. Judge Kelly denies the allegations of paragraph 153 of the Complaint and demands strict proof of the same.

154. All allegations in the Complaint that are not expressly admitted are hereby denied, and Judge Kelly demands strict proof of the same.

CHARGES

Charge 1

Delay in Issuing TPR Orders

Judge Kelly denies the allegations of Charge 1 of the Complaint and demands strict proof of the same.

Charge 2

Delay in Completing TPR Trials

Judge Kelly denies the allegations of Charge 1 of the Complaint and demands strict proof of the same.

Charge 3

Failure to Manage Dockets

Judge Kelly denies the allegations of Charge 1 of the Complaint and demands strict proof of the same.

Charge 4

Delay in Final Divorce Decrees and Modifications

Judge Kelly denies the allegations of Charge 1 of the Complaint and demands strict proof of the same.

Charge 5

Comprehensive Delay, Including but not limited to, Matters Charged in Charges 1-4

Judge Kelly denies the allegations of Charge 1 of the Complaint and demands strict proof of the same.

Charge 6

Loss of Juvenile Treatment Funds

Judge Kelly denies the allegations of Charge 1 of the Complaint and demands strict proof of the same.

HAVING FULLY AND COMPLETELY ANSWERED THE ALLEGATIONS OF THE COMPLAINT, JUDGE KELLY HEREINAFTER SET FORTH HER DEFENSES TO THE COMPLAINT, AS FOLLOWS:

DEFENSES

DEFENSE NUMBER ONE

1. Judge Kelly pleads statutory/ case decisional compliance defense.

Exhibit(s) 1, 2, 41

DEFENSE NUMBER TWO

2. Judge Kelly pleads a Gender Bias defense

Exhibit(s) 27, 59, 60,

DEFENSE NUMBER THREE

3. Judge Kelly pleads Ex post facto defense

DEFENSE NUMBER FOUR

4. Judge Kelly pleads the Man-Power Study defense

Exhibit(s) 30, 30(a),

DEFENSE NUMBER FIVE

5. Judge Kelly pleads an imbalance in case assignments defense

Exhibit(s) 13, 6, 43, 52, 54, 58,

DEFENSE NUMBER SIX

6. Judge Kelly pleads the reduction in referee time defense

Exhibit(s) 24,

DEFENSE NUMBER SEVEN

7. Judge Kelly pleads the Out-Put Reports defense

DEFENSE NUMBER EIGHT

8. Judge Kelly pleads spoliation of evidence.

Exhibit(s) 23

DEFENSE NUMBER NINE

9. Judge Kelly pleads business necessity defense.

DEFENSE NUMBER TEN

10. Judge Kelly pleads a res judicata/waiver defense

DEFENSE NUMBER ELEVEN

11. Judge Kelly pleads a good faith defense.

Exhibit(s) 4, 5, 6, 7, 8, 9, 10, 12, 15, 17, 18, 19, 19(A), 20, 21, 22, 28, 29, 31, 32,
33, 34, 35, 37, 38, 39, 40, 41, 42, 44, 45, 46, 47, 48, 49, 50, 51, 55, 56, 57,

DEFENSE NUMBER TWELVE

12. Judge Kelly pleads a business judgment defense

DEFENSE NUMBER THIRTEEN

13. Judge Kelly pleads a justification defense.

Exhibit(s) 30,

DEFENSE NUMBER FOURTEEN

14. Judge Kelly pleads a selective enforcement defense.

DEFENSE NUMBER FIFTEEN

15. Judge Kelly pleads intervening/supervening causes defense

Exhibit(s) 30,

DEFENSE NUMBER SIXTEEN

16. Judge Kelly pleads a lack of actual injury defense

DEFENSE NUMBER SEVENTEEN

17. Judge Kelly pleads the equitable estoppels defense

Exhibit(s) 16, 6,

DEFENSE NUMBER EIGHTEEN

18. Judge Kelly pleads the out of time appeal defense

DEFENSE NUMBER NINETEEN

19. Judge Kelly pleads a public policy defense

Exhibit(s) 25, 30,

DEFENSE NUMBER TWENTY

20. Judge Kelly pleads failure to state a claim upon which relief can be granted defense

Exhibit(s) 1,

DEFENSE NUMBER TWENTY-ONE

21. Judge Kelly pleads a laches defense

DEFENSE NUMBER TWENTY-TWO

22. Judge Kelly pleads a lack of notice defense (see charge number 5 “..included but not limited to ..” language)

Exhibit(s) 1,

DEFENSE NUMBER TWENTY-THREE

23. Judge Kelly pleads the lack of adequate state funding to the judiciary defense

Exhibit(s) 3, 11, 52,

DEFENSE NUMBER TWENTY-FOUR

24. Judge Kelly pleads a lack of staffing resources from Montgomery County Commission.

Exhibit(s) 14, 6, 52,

DEFENSE NUMBER TWENTY-FIVE

25. Judge Kelly pleads breach of fiduciary duty and contributory negligence

DEFENSE NUMBER TWENTY-SIX

26. Judge Kelly pleads misrepresentation of fact by DHR.

**JUDGE KELLY RESERVES THE RIGHT TO BRING ADDITIONAL DEFENSES AS
ADDITIONAL DISCOVERY AND PRETRIAL PROCEEDINGS DETERMINE.**

Respectfully submitted, this 15TH day of September, 2017.

/s/ H. Lewis Gillis
H. LEWIS GILLIS (GIL 011)
KRISTEN J. GILLIS (GIL 078)

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ATTORNEYS FOR JUDGE ANITA KELLY

Certificate of Service

I hereby certify that a copy of the foregoing has been FILED with the Court of the Judiciary and a copy of the same emailed and/or hand delivered to the person(s) shown below on this 15TH day of September, 2017, as follows:

Court of the Judiciary
300 Dexter Avenue
Montgomery, AL 36104
coj@alappeals.gov

Judicial Inquiry Commission
401 Adams Avenue, Suite 720
Montgomery, AL 36104
Jenny.garrett@jic.alabama.gov

/s/ H. Lewis Gillis
OF COUNSEL