



IN THE ALABAMA COURT OF THE JUDICIARY

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

**JUDGE ANITA KELLY’S OBJECTIONS TO
THE JUDICIAL INQUIRY COMMISSION’S EXHIBIT LIST**

Judge Anita Kelly, pursuant to the scheduling order entered January 29, 2018, submits her objections to the Judicial Inquiry Commission’s Trial Exhibit List¹ as follows:

1. Complaint

1. Judge Kelly objects to all documents in every subsection/complaint paragraph (or subparagraph) in the Complaint section of JIC’s exhibits as irrelevant and as addressing matters beyond this Court’s jurisdiction. The only verified complaint in this investigation, as transmitted to Judge Kelly by letter from JIC dated May 9, 2016 (identified by JIC as Exhibit 1 on its Exhibit List, although omitting the verified complaint itself), involves a matter that was not made part of any Complaint in this Court. Furthermore, there is *no* case or substantive allegation of liability in any Complaint that is supported by a verified complaint or the scope of any reasonably foreseeable investigation of the sole verified complaint. The lack of any verified complaint (as required by JIC’s procedural rules as adopted by the Alabama Supreme Court) supporting all – or any – of the charges or substantive allegations supporting liability is a jurisdictional defect

¹ These objections follow the format of JIC’s trial exhibit list, which identifies the exhibits filed with the Court as organized in two separate sections, “Complaint” and “Exhibits.” JIC’s Complaint section “is subdivided into numbered sections, each number representing a numbered paragraph in the Second Amended Complaint.” JIC’s Trial Exhibit List, at 1. Each numbered subsection of “Complaint” as produced electronically contains copies of certain documents filed in that particular case. *Id.* The “Exhibits” section of JIC’s trial exhibits refers to the individual exhibits specifically identified in JIC’s Trial Exhibit List. *Id.*

depriving this Court of jurisdiction to hear any of the charges, or alternatively is a failure of a mandatory precondition to the initiation of charges, likewise requiring dismissal of the charges.²

2. In addition, Judge Kelly objects to all documents in every subsection/complaint paragraph (or subparagraph) in the Complaint section of JIC's exhibits from paragraph 57 through paragraph 59, and paragraph 79 through paragraph 187,³ as irrelevant and beyond the permissible scope of charges in this matter, in that all such areas of JIC's complaints in this Court extend beyond the scope of any investigation of which JIC gave Judge Kelly notice at any time before the filing of formal charges in August 2017. Even if jurisdiction were present, trial of Judge Kelly as to any matters in these paragraphs would violate JIC's Rules and Judge Kelly's due process rights.

3. Judge Kelly also objects to all documents in every subsection/complaint paragraph (or subparagraph) in the Complaint section of JIC's exhibits for the reasons set out in Judge Kelly's Second Motion for Continuance, filed February 20, 2018 (and denied the next day), which reasons Judge Kelly adopts and incorporates by reference here.

In brief, JIC's original complaint included approximately 350+ cases in areas outside the scope of the investigation (i.e., dependency cases, specifically petitions for termination of parental rights) of which Judge Kelly had any notice to that point. JIC's initial amended complaint, filed just four (4) weeks before the original trial date in this matter, added another 160

² JIC has been on notice of Judge Kelly's position that any extension of its investigation beyond the sole verified complaint, involving an individual litigant in a single case, must itself be supported by a verified complaint, since at least the letters from Judge Kelly's counsel to the Commission dated January 5, 2017 (Exhibit 8 on JIC's Exhibit List, although minus the attachments, at 4 and n. 4 & 5) and May 18, 2017 (Exhibit 1 on Judge Kelly's Exhibit List, at 2 and n.2). But, JIC has never cured this defect.

³ This includes paragraphs 57-59 (delinquency), 79-91 (divorce), 92 (uncontested divorce), 95-97 (joint petition to modify divorce decree), 103-166 (child support, custody, alimony, visitation), 171-180 (protection from abuse), and 182-187 (various motions).

cases, most of which likewise were outside the scope of the pre-COJ-complaint investigation of which Judge Kelly had notice.⁴ And, JIC's second amended complaint, offered February 5, 2018 and allowed February 14, 2018 (again, approximately just 1 month before the rescheduled trial), added (as best as we can determine) approximately 107 new cases, all but a handful of which likewise appear to be in the same areas of which JIC gave Judge Kelly no notice during the investigative phase. See Second Amended Complaint, at ¶¶ 36, 41, 44-45, 63-65, 89-90, 153-165, 209, 211-222.

In short, JIC's inclusion of 350+ cases in its original complaint in this Court outside the area of which Judge Kelly had previous notice, and its expansion of those cases through the two amended complaints (in early December and last month) to currently more than 610+ cases outside the scope of JIC's pre-COJ-filing investigation of which Judge Kelly had any notice (and over approximately 670 cases total), have effectively prevented Judge Kelly and counsel (by the sheer numbers and burdensomeness of the cases and case files) from reviewing a substantial number of the cases to which she must respond and be prepared to defend against. This necessarily means Judge Kelly and counsel have been unable to review all (or many) of the case files as needed to assert all good faith objections to JIC's exhibits, particularly in JIC's Complaint section of exhibits. To require Judge Kelly to defend at trial under the current trial setting (beginning next Monday, March 19) against allegations based on all these cases deprives her counsel of the ability to effectively prepare and defend her against all the charges in the second amended complaint, and would violate her rights to due process.

⁴ Forty-two (42) of these JIC identified in its motion for leave as "summaries of ... additional cases the Commission intends to use as evidence at trial." The other 118 individual cases were included in a new count alleging violations of the 6-month report requirement of Canon 3A(5). See Amended Complaint, at ¶¶ 75-81 (7 new cases), 88 (1 new case), 94-95 (2 new cases), 117-143 (27 new cases), 157-158 (2 new cases), 160-162 (3 new cases), and 186 (118 new cases).

4. Judge Kelly further objects to each compilation of documents in every subsection/complaint paragraph (or subparagraph) in the Complaint section of JIC's exhibits: incomplete; violation of Ala.R.Evid. 106; lack of foundation; not a proper summary of voluminous documents (Ala.R.Evid. 1006); hearsay and not within any hearsay exception.

5. Judge Kelly objects to every case action summary (typically identified as CAS) in any compilation of documents in every subsection/complaint paragraph (or subparagraph) in the Complaint section of JIC's exhibits: incomplete; lack of foundation; not a proper summary of voluminous documents (Ala.R.Evid. 1006); hearsay and not within any hearsay exception, and lacking in circumstances that show trustworthiness, regularity, and/or completeness.

6. Judge Kelly objects to each document in any compilation of documents in every subsection/complaint paragraph (or subparagraph) in the Complaint section of JIC's exhibits that references but does not include a referenced attachment or attachments (including but not limited to a proposed order): incomplete; lack of foundation; violation of Ala.R.Evid. 106.

7. Judge Kelly reserve right to object based on hearsay as to any pleading or other document in the Complaint section of JIC's exhibits that is offered for the truth of any matters asserted therein.

II. Exhibits

As to the exhibits identified in the "Exhibit List" section of JIC's Trial Exhibit List, Judge Kelly objects to the following numbered exhibits on the following grounds:

1. Incomplete (document itself); incomplete (lacking referenced attachments); Ala.R.Evid. 106; hearsay and not within any exception; lack of relevance.⁵

⁵ All objections based on lack of relevance are dependent on the purpose(s) for which the exhibit is offered. Also, as to every exhibit to which she objects based on lack of relevance, Judge Kelly also objects any probative value is substantially outweighed by the danger of unfair prejudice

2. Incomplete (lacking referenced attachments); Ala.R.Evid. 106; hearsay and not within any exception; lack of relevance.

3. Not a verified complaint, and expanding scope beyond reasonable scope of investigation of original verified complaint submitted to JIC; hearsay and not within any exception; lack of relevance.

4. Not a verified complaint; hearsay and not within any exception; lack of relevance.

5. Incomplete (lacking referenced attachments, although identified as “with attachments”); Ala.R.Evid. 106; not a verified complaint, and expanding scope beyond reasonable scope of investigation of original verified complaint; hearsay and not within any exception, and (as to omitted attachments) also lacking in circumstances that show trustworthiness; lack of relevance.

6. Lack of relevance; referencing matters not a verified complaint; hearsay and not within any exception.

7. Incomplete (lacking referenced attachment); Ala.R.Evid. 106.

8. Incomplete (lacking referenced attachments); Ala.R.Evid. 106; not a verified complaint, and expanding scope beyond reasonable scope of investigation of original verified complaint; hearsay and not within any exception, and (as to omitted attachments) also lacking in circumstances that show trustworthiness; lack of relevance; legal conclusions.

9. Incomplete (lacking referenced attachments); Ala.R.Evid. 106; not a verified complaint, and expanding scope beyond reasonable scope of investigation of original verified complaint; hearsay and not within any exception, and (as to omitted attachments) also lacking in circumstances that show trustworthiness; lack of relevance; legal conclusions.

(Ala.R.Evid. 403). Depending on the purpose, and any proper limiting instruction, Judge Kelly reserves the right to withdraw any such objections when the exhibit is offered.

10. Lack of relevance; hearsay and not within any exception.

11. Lack of relevance; hearsay and not within any exception.

12. Lack of relevance; hearsay and not within any exception.

13. Lack of relevance; hearsay and not within any exception.

14. Incomplete (lacking referenced attachments); Ala.R.Evid. 106; not a verified complaint, and expanding scope beyond reasonable scope of investigation of original verified complaint; hearsay and not within any exception, and (as to omitted attachments) also lacking in circumstances that show trustworthiness; lack of relevance; (as to omitted attachments) legal conclusions.

15. Lack of relevance; hearsay and not within any exception.

16. Lack of relevance; hearsay and not within any exception.

17. Lack of relevance; hearsay and not within any exception.

18. Lack of relevance; beyond reasonable scope of investigation of original verified complaint; beyond the time period of the complaints filed in the COJ; incomplete (lacking some of referenced attachments).

19. Lack of relevance; hearsay and not within any exception.

20. Lack of relevance; hearsay and not within any exception.

21. Lack of relevance; hearsay and not within any exception.

22. Lack of relevance; hearsay and not within any exception.

23. Lack of relevance (as to all); lack of relevance specifically as to any e-mails relating to Davis Treatment Center, personnel and other matters involving Andre Woods, NCJFCJ/Feno Project, removal of Judge Kelly as presiding judge and circumstances leading up to it; exhibit combines e-mails relating to multiple unrelated topics; authentication; hearsay and not within

any exception; as to any reported complaints or concerns, hearsay within hearsay; improper other acts evidence (Ala.R.Evid. 404(b)).

24. Lack of relevance; exhibit combines e-mails relating to multiple unrelated topics; hearsay and not within any exception; improper other acts evidence (Ala.R.Evid. 404(b)).

25. Lack of relevance; exhibit combines e-mails relating to multiple unrelated topics; hearsay and not within any exception; improper other acts evidence (Ala.R.Evid. 404(b)).

26. Lack of relevance; exhibit combines e-mails relating to multiple unrelated topics; hearsay and not within any exception; improper other acts evidence (Ala.R.Evid. 404(b)).

27. Lack of relevance; exhibit combines e-mails relating to multiple unrelated topics; hearsay and not within any exception; improper other acts evidence (Ala.R.Evid. 404(b)).

28. Lack of relevance; hearsay and not within any exception; lack of foundation for admission of former testimony (Ala.R.Evid. 804(b)(1)).

29. Lack of foundation.

30. Lack of relevance.

31. Lack of relevance; legal conclusion; beyond reasonable scope of investigation of original verified complaint.

32. Lack of relevance; beyond reasonable scope of investigation of original verified complaint.

33. Lack of relevance; beyond reasonable scope of investigation of original verified complaint.

34. Lack of relevance; beyond reasonable scope of investigation of original verified complaint.

35. Lack of relevance; beyond reasonable scope of investigation of original verified complaint.

36. Lack of relevance; beyond reasonable scope of investigation of original verified complaint.

37. Lack of relevance; beyond reasonable scope of investigation of original verified complaint; improper other acts evidence (Ala.R.Evid. 404(b)); probative value substantially outweighed by danger of unfair prejudice, confusing the issues, and/or misleading the finders of fact (Ala.R.Evid. 403).

38. Lack of relevance; beyond reasonable scope of investigation of original verified complaint; improper other acts evidence (Ala.R.Evid. 404(b)); probative value substantially outweighed by danger of unfair prejudice, confusing the issues, and/or misleading the finders of fact (Ala.R.Evid. 403).

39. Lack of relevance; beyond reasonable scope of investigation of original verified complaint; improper other acts evidence (Ala.R.Evid. 404(b)); probative value substantially outweighed by danger of unfair prejudice, confusing the issues, and/or misleading the finders of fact (Ala.R.Evid. 403).

40. Lack of relevance; beyond reasonable scope of investigation of original verified complaint; improper other acts evidence (Ala.R.Evid. 404(b)); probative value substantially outweighed by danger of unfair prejudice, confusing the issues, and/or misleading the finders of fact (Ala.R.Evid. 403).

41. Lack of relevance; beyond reasonable scope of investigation of original verified complaint; improper other acts evidence (Ala.R.Evid. 404(b)); probative value substantially

outweighed by danger of unfair prejudice, confusing the issues, and/or misleading the finders of fact (Ala.R.Evid. 403).

42. Lack of relevance; beyond reasonable scope of investigation of original verified complaint; improper other acts evidence (Ala.R.Evid. 404(b)); probative value substantially outweighed by danger of unfair prejudice, confusing the issues, and/or misleading the finders of fact (Ala.R.Evid. 403).

43. Lack of relevance; beyond reasonable scope of investigation of original verified complaint; improper other acts evidence (Ala.R.Evid. 404(b)); probative value substantially outweighed by danger of unfair prejudice, confusing the issues, and/or misleading the finders of fact (Ala.R.Evid. 403).

44. Lack of relevance, and specifically relating only to a charge previously dismissed with prejudice.

45. Lack of relevance.

In addition, Judge Kelly reserves the right to object to any exhibits on Rule 403 grounds (unfair prejudice, confusion of the issues, undue delay, waste of time, cumulative). Judge Kelly also reserves the right to amend or modify any objections based on future stipulations between the parties and/or following any ruling by this Court affecting admissibility.

Respectfully submitted this 12th day of March, 2017.

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Certificate of Service

I hereby certify that a copy of the foregoing has been FILED electronically 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 12th day of March, 2018, as follows:

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