

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)



MOTION TO DISMISS

Judge Anita Kelly, pursuant to Rule 12, Alabama Rules of Civil Procedure, and Rule 10, Rules of Procedure for the Alabama Court of the Judiciary, moves to dismiss the complaint of the Judicial Inquiry Commission ("JIC") in this matter on the following grounds:

1. The complaint fails to state a claim upon which relief may be granted or a violation of any Canon of the Alabama Canons of Judicial Ethics.
2. The complaints to JIC on which this complaint is based, including but not necessarily limited to the complaints of Sharon Ficquette, general counsel of the Alabama Department of Human Resources, and of members of the commission staff (expanding the investigation into a pattern and practice investigation), were not verified as required by Rule 6, Rules of Procedure of the Judicial Inquiry Commission. The lack of a verified complaint deprives this Court of jurisdiction or alternatively shows the lack of a mandatory precondition to suit, requiring dismissal.
3. The complaint fails to allege facts showing bad faith, i.e., malice, ill will, or improper motive, on the part of Judge Kelly, and thus fails to state a violation of any Canon of the Alabama Canons of Judicial Ethics. *E.g., In re Sheffield*, 465 So.2d 350, 357-58 (Ala. 1984).
4. The complaint fails to allege facts showing bad faith, i.e., malice, ill will, or improper motive, on the part of Judge Kelly, and thus fails to state a violation of Canon 1 of the Alabama Canons of Judicial Ethics. *E.g., In re Sheffield*, 465 So.2d 350, 357-58 (Ala. 1984).

5. The complaint fails to allege facts showing bad faith, i.e., malice, ill will, or improper motive, on the part of Judge Kelly, and thus fails to state a violation of Canon 2 of the Alabama Canons of Judicial Ethics. *E.g., In re Sheffield*, 465 So.2d 350, 357-58 (Ala. 1984).

6. The complaint fails to allege facts showing bad faith, i.e., malice, ill will, or improper motive, on the part of Judge Kelly, and thus fails to state a violation of Canon 2A of the Alabama Canons of Judicial Ethics. *E.g., In re Sheffield*, 465 So.2d 350, 357-58 (Ala. 1984).

7. The complaint fails to allege facts showing bad faith, i.e., malice, ill will, or improper motive, on the part of Judge Kelly, and thus fails to state a violation of Canon 2B of the Alabama Canons of Judicial Ethics. *E.g., In re Sheffield*, 465 So.2d 350, 357-58 (Ala. 1984).

8. The complaint fails to allege facts showing bad faith, i.e., malice, ill will, or improper motive, on the part of Judge Kelly, and thus fails to state a violation of Canon 3 of the Alabama Canons of Judicial Ethics. *E.g., In re Sheffield*, 465 So.2d 350, 357-58 (Ala. 1984).

9. The complaint fails to allege facts showing bad faith, i.e., malice, ill will, or improper motive, on the part of Judge Kelly, and thus fails to state a violation of Canon 3A(1) of the Alabama Canons of Judicial Ethics. *E.g., In re Sheffield*, 465 So.2d 350, 357-58 (Ala. 1984).

10. The complaint fails to allege facts showing bad faith, i.e., malice, ill will, or improper motive, on the part of Judge Kelly, and thus fails to state a violation of Canon 3B(1) of the Alabama Canons of Judicial Ethics. *E.g., In re Sheffield*, 465 So.2d 350, 357-58 (Ala. 1984).

11. The complaint fails to allege facts showing bad faith, i.e., malice, ill will, or improper motive, on the part of Judge Kelly, and thus fails to state a violation of Canon 3B(2) of the Alabama Canons of Judicial Ethics. *E.g., In re Sheffield*, 465 So.2d 350, 357-58 (Ala. 1984).

12. To the extent that the complaint includes charges that exceed the scope of the investigation of which Judge Kelly was advised by JIC, including but not limited to conduct relating to juvenile delinquency cases (section II.B), domestic relations cases (section III), referee recommendations (section

IV), “losing the Department of Youth Services grant funding” (section V), and Canon 3A(5) Six-Month Reports (section VI.E), Judge Kelly has been deprived of notice of those charges and an opportunity to respond in front of JIC, in violation of Rule 6, Rules of Procedure of the Judicial Inquiry Commission, and due process under both the United States and Alabama constitutions.

13. To the extent that the complaint claims a violation of any Canon of the Alabama Canons of Judicial Ethics for unreasonable and unjustifiable delay based on Judge Kelly’s failure to strictly comply with a specific statutory or procedural rule time standard, including but not limited to failure to complete a termination of parental rights (TPR) trial within 90 days after service of process is perfected or failure to issue a TPR order within 30 days of completion of the trial (section II.A(1) through (3)), in either an individual case or as part of an alleged pattern and practice, the complaint fails to state a claim on which relief may be granted. Such claims are based on an error of law; such provisions are not mandatory, but directory; JIC has failed to allege facts that would violate a time standard deemed directory; and Judge Kelly lacks fair notice as to what conduct constitutes unreasonable and unjustifiable delay so as to support judicial discipline, in violation of due process under both the United States and Alabama constitutions.

14. To the extent that the complaint claims a violation of any Canon of the Alabama Canons of Judicial Ethics for unreasonable and unjustifiable delay by Judge Kelly where there is *no* specific applicable statutory or procedural rule, any proposed definition of unreasonable and unjustifiable delay would be arbitrary and capricious and void for vagueness, and Judge Kelly would be deprived of fair notice as to what conduct constitutes unreasonable and unjustifiable delay so as to support judicial discipline, in violation of due process under both the United States and Alabama constitutions.

15. The complaint against Judge Kelly selects her for disciplinary prosecution without prosecuting similarly-situated persons for the same or similar conduct; that selection of Judge Kelly for such prosecution was intentional; and it was undertaken for impermissible, invidious, or discriminatory

reasons, or otherwise to impair her protected rights, and accordingly constitutes selective prosecution in violation of the First and/or Fourteenth Amendments to the United States Constitution.

16. Canon 1, on its face and as applied to Judge Kelly, is unconstitutionally vague as to any conduct by Judge Kelly that is alleged to violate it, and fails to give Judge Kelly fair notice of prohibited conduct, in violation of due process under both the United States and Alabama constitutions.

17. Canon 2, on its face and as applied to Judge Kelly, is unconstitutionally vague as to any conduct by Judge Kelly that is alleged to violate it, and fails to give Judge Kelly fair notice of prohibited conduct, in violation of due process under both the United States and Alabama constitutions.

18. Canon 2A, on its face and as applied to Judge Kelly, is unconstitutionally vague as to any conduct by Judge Kelly that is alleged to violate it, and fails to give Judge Kelly fair notice of prohibited conduct, in violation of due process under both the United States and Alabama constitutions.

19. Canon 2B, on its face and as applied to Judge Kelly, is unconstitutionally vague as to any conduct by Judge Kelly that is alleged to violate it, and fails to give Judge Kelly fair notice of prohibited conduct, in violation of due process under both the United States and Alabama constitutions.

20. Canon 3, on its face and as applied to Judge Kelly, is unconstitutionally vague as to any conduct by Judge Kelly that is alleged to violate it, and fails to give Judge Kelly fair notice of prohibited conduct, in violation of due process under both the United States and Alabama constitutions.

21. Canon 3A(1), on its face and as applied to Judge Kelly, is unconstitutionally vague as to any conduct by Judge Kelly that is alleged to violate it, and fails to give Judge Kelly fair notice of prohibited conduct, in violation of due process under both the United States and Alabama constitutions.

22. Canon 3A(5), on its face and as applied to Judge Kelly, is unconstitutionally vague as to any conduct by Judge Kelly that is alleged to violate it, and fails to give Judge Kelly fair notice of prohibited conduct, in violation of due process under both the United States and Alabama constitutions.

23. Canon 3B(1), on its face and as applied to Judge Kelly, is unconstitutionally vague as to any conduct by Judge Kelly that is alleged to violate it, and fails to give Judge Kelly fair notice of prohibited conduct, in violation of due process under both the United States and Alabama constitutions.

24. Canon 3B(2), on its face and as applied to Judge Kelly, is unconstitutionally vague as to any conduct by Judge Kelly that is alleged to violate it, and fails to give Judge Kelly fair notice of prohibited conduct, in violation of due process under both the United States and Alabama constitutions.

Judge Kelly will, or alternatively seeks leave to, file a memorandum in support of her motion to dismiss forthwith or by a date to be set by the Court.

WHEREFORE, PREMISES CONSIDERED, Judge Kelly respectfully requests that her motion be granted, and that the Court enter an order dismissing JIC's complaint as set out herein.

Respectfully submitted this 15th day of September, 2017.

/s/ H. Lewis Gillis

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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 15th day of September, 2017, as follows:

Mr. Billy C. Bedsole – Chairman
Mrs. Jennie Garrett – Executive Director
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/s/ H. Lewis Gillis _____
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