

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 EXTEND TIME AND ALLOW OUT-OF-TIME FILING
OF BRIEF IN SUPPORT OF MOTION TO DISMISS**

Judge Anita Kelly respectfully moves for an order extending the time for her to file, allowing her to file out-of-time, or otherwise deeming timely filed her already-filed brief in support of her motion to dismiss and the accompanying exhibits. In support of her request, Judge Kelly shows the following:

1. The Judiciary Inquiry Commission filed its complaint in this Court (the COJ complaint) and served Judge Kelly with the complaint on August 16, 2017.
2. Pursuant to Rule 12, Alabama Rules of Civil Procedure, and Rule 10, Rules of Procedure for the Alabama Court of the Judiciary, Judge Kelly filed a Motion to Dismiss and her separate Answer and Defenses on September 15, 2017.
3. By order entered September 25, 2017, this Court entered a scheduling order regarding the motion to dismiss, under which Judge Kelly was to file any brief in support of her motion by October 10, 2017. Order entered Sept. 25, 2017, at 1.
4. Despite undersigned counsel's best efforts, having worked on drafting the brief for several full days (including all night overnight from October 9 through October 10), counsel was not able to file Judge Kelly's brief by the end of October 10. Instead, after a second consecutive

all-night stint, undersigned counsel e-filed Judge Kelly's brief (and simultaneously e-mailed it to JIC counsel) at approximately 7:09 a.m. on yesterday, October 11, 2017.

5. In addition, Judge Kelly's brief cited numerous exhibits (Exhibits A through R). All of these exhibits consist of correspondence between JIC and Judge Kelly, several of which include extensive enclosures (e.g., discovery materials produced in this investigation, the complaints and other information related to three (3) other complaints not a part of the COJ complaint, etc.). These voluminous exhibits, totaling probably 400 to 500 pages, all are part of the confidential proceedings before JIC and contain information made confidential by law.

6. Although cited in Judge Kelly's brief, copies of these exhibits were not e-filed with the brief. Instead, to protect the confidentiality of those documents and such information, it was necessary for counsel to draft a motion for leave to file all the exhibits under seal. In light of the time required to pull those exhibits and prepare them for filing (with the participation of Judge Kelly's entire team), and for undersigned counsel to draft the motion, Judge Kelly's counsel collectively were not able to finalize the motion and exhibits for filing until this afternoon, October 12, 2017. Accordingly, counsel is filing Judge Kelly's motion to leave to file the exhibits under seal and the accompanying exhibits today, at the same time as this motion to extend time.¹

7. Counsel respectfully suggests that JIC will not be unfairly prejudiced by an order extending the time for filing, accepting the late filing of, and/or *nunc pro tunc* deeming timely-filed Judge Kelly's brief in support of her motion to dismiss (e-filed early yesterday morning) and the exhibits cited in her brief (being filed today with her motion for leave to file under seal). As noted above, undersigned counsel e-filed Judge Kelly's brief, simultaneously e-mailing it to

¹ Judge Kelly's brief noted as to each exhibit that it would be submitted under seal.

all of JIC's counsel, shortly after 7:00 a.m. on October 11, a matter of hours after the deadline -- likely either before or very shortly after the beginning of JIC counsel's workday. And although the exhibits are not being delivered (in this instance by hand-delivery, given the volume) to JIC counsel until today, all the exhibits -- all of which the brief clearly identifies -- consist of previous correspondence between JIC and Judge Kelly and their enclosures, either in this matter or in one instance (composite Exhibit I) in a separate matter in which both parties in an individual case each made a complaint against Judge Kelly to JIC. Accordingly, if JIC counsel needed or wanted to review any of those exhibits before their hand-delivery this afternoon, all such documents were already available to JIC counsel through JIC's own files.

8. On the other hand, counsel respectfully suggests that Judge Kelly would be significantly prejudiced if her brief in support of her motion to dismiss and the accompanying exhibits are not accepted and considered by this Court, as a result of being filed shortly after the prescribed due date. Throughout the course of his work on Judge Kelly's supporting brief, undersigned counsel in good faith (although obviously mistakenly) believed he could complete and file the brief timely. It did not become apparent to undersigned counsel until late in the evening of October 10 that he would not be able to finish drafting, finalize, and electronically file Judge Kelly's brief by midnight that date, at which point counsel decided to plow ahead to finish it as soon as he could after the midnight deadline.

9. Furthermore, counsel believes the grounds for Judge Kelly's motion to dismiss (including but not limited to lack of jurisdiction and failure to meet mandatory pre-conditions to suit) are well-founded, and support dismissal of all or at least a substantial part of the COJ complaint. But, fair consideration of those grounds requires consideration of the detailed underlying factual and legal arguments as set out in the supporting brief.

10. In sum, JIC would not be unfairly prejudiced by an order granting the modest requested relief. But, Judge Kelly would be significantly prejudiced, and her substantial rights would be impaired, if her supporting brief (as e-filed early yesterday morning) and the accompanying exhibits (being filed and served this afternoon) are not accepted as timely filed and given due consideration in connection with the Court's decision on her motion to dismiss.

WHEREFORE, PREMISES CONSIDERED, Judge Kelly requests that this motion be granted, and that the Court enter an order extending the time for filing, accepting the late filing of, and/or *nunc pro tunc* deeming timely-filed Judge Kelly's brief in support of her motion to dismiss and the exhibits cited in her brief as of the time each were filed in this matter.

Respectfully submitted this 12th day of October, 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 October, 2017, as follows:

Mr. Billy C. Bedsole – Chairman
Mrs. Jenny Garrett – Executive Director
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