

IN THE ALABAMA COURT OF THE JUDICIARY



In the Matter of:

DOROTHEA BATISTE,
Jefferson County Circuit Judge

Case No. 43

AMENDED COMPLAINT

Comes now the Judicial Inquiry Commission and pursuant to leave of court granted in the June 18, 2013 pretrial order to amend the complaint, files this amended complaint against Circuit Judge Dorothea Batiste. The Commission alleges and charges as follows:

Nature of the Charges

1. Dorothea Batiste is a Circuit Judge for Jefferson County, Alabama. She was elected in 2010 and took office in January, 2011. Judge Batiste is one of three judges assigned to the Domestic Relations Division of the Jefferson County Circuit Court.

2. This Complaint is based upon Judge Batiste’s violation of Alabama Canons of Judicial Ethics through her repeated failure in 2011 and 2012 to comply with both Alabama and federal law regarding her exercise of contempt power, and more specifically, her failure to comply with Rule 70A, Alabama Rules of Civil Procedure, Alabama case law, § 12-21-182, Code of Alabama, 1975, and the Due Process Clauses of the Alabama Constitution and the Fourteenth Amendment to the U.S. Constitution in a series of domestic relations cases¹ in Jefferson County Circuit Court (“the subject cases”)

¹ *Barry Bearden v. Nolanda H. Bearden*, DR-2009-1269; *Comelia Austin v. Curtis Austin*, DR-2004-421.01; *Allan Isom v. Cynthia Isom*, DR-2010-803; *Materia J. Gipson v. Michael A. Gipson*, DR-2010-1395; and *Richard Ingram Kyle v. Barbara Dill Kyle*, DR-2009-1260.

in which Judge Batiste entered unauthorized, unwarranted, and unlawful orders for the arrest and jailing or incarceration of litigants or witnesses.

3. In each of the subject cases, as is alleged more specifically hereinafter, Judge Batiste entered an order or orders in which she found or held a litigant or witness in constructive² contempt of court and ordered the arrest of that litigant or witness pursuant to a writ of attachment without prior thereto:

- a. filing a written contempt petition which
 1. stated the essential facts alleged to constitute contempt of court,
 2. set a hearing on the contempt charge, and
 3. notified the alleged contemnor:
 - (a) of the time and place for a hearing on the contempt petition,
 - (b) that failure to appear at the hearing may result in the issuance of a writ of arrest pursuant to Rule 70A to compel the presence of the alleged contemnor;
- b. serving the alleged contemnor with this petition; and
- c. holding a hearing on the contempt charge at which the alleged contemnor was given the opportunity to be heard on the charge of contempt.

² The contempt alleged by Judge Batiste in four of the five subject cases was failure to appear in court pursuant to a subpoena or court order. A charge of contempt predicated upon failure to appear is a constructive contempt, *In re Tarpley*, 300 So. 2d 409 (1974); *Quick v. State*, 699 So. 2d 1300, 1302 (Ala. Crim. App. 1997); *Ingram v. Allred*, [Ms. 2110636, October 19, 2012, as modified on denial of rehearing on January 4, 2013] ___ So. 3d ___, (Ala. Civ. App. 2013); *Ex parte Billy J. Sheffield II*, [Ms. 2110913, February 15, 2013] ___ So. 3d ___, (Ala. Civ. App. 2013).

The contempt alleged by Judge Batiste in the fifth of the subject cases was either failure to appear or failure to make court-ordered child support payments. A party's failure to make court-ordered payments, where willful, is also a constructive contempt, *Lee v. Lee*, 608 So. 2d 1383 (Ala. Civ. App. 1992).

4. All of the foregoing actions are required by Rule 70A, Ala. R. Civ. Proc.³, Alabama case law, and/or the Due Process Clauses of the Alabama Constitution and the Fourteenth Amendment to the U.S Constitution to lawfully initiate constructive contempt charges in Alabama.⁴

³ Rule 70A(c)(1) and (2) provide:

(1) Initiation of action. A proceeding based on constructive contempt, whether criminal or civil, shall be subject to the rules of civil procedure. The proceeding shall be initiated by the filing of a petition seeking a finding of contempt (the petition may be in the form of a counterclaim or cross-claim authorized under Rule 13). The petition shall provide the alleged contemnor with notice of the essential facts constituting the alleged contemptuous conduct.

(2) Issuance of process and notice. Upon the filing of a contempt petition, the clerk shall issue process in accordance with these rules, unless the petition is initiated by counterclaim or cross-claim authorized under Rule 13. In any case, the person against whom the petition is directed shall be notified (1) of the time and place for the hearing on the petition and (2) that failure to appear at the hearing may result in the issuance of a writ of arrest pursuant to Rule 70A(d) (Interim), to compel the presence of the alleged contemnor.

⁴ Although Rule 70A, Ala. R. Civ. Proc., is a rule of procedure, its purpose is to safeguard one of the most important and fundamental of citizens' substantive rights — freedom from arbitrary physical restraint or confinement by the government — guaranteed by the Due Process Clauses of the Alabama and U.S. Constitutions, e.g., *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992):

Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action. *Youngberg v. Romeo*, 457 U.S. 307, 316, 73 L. Ed. 2d 28, 102 S. Ct. 2452 (1982). "It is clear that commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection." *Jones [v. United States]*, 463 U.S. 354, 77 L. Ed. 2d 694, 103 S. Ct. 3043 (1983), *supra*, at 361 (internal quotation marks omitted). We have always been careful not to "minimize the importance and fundamental nature" of the individual's right to liberty. [*United States v. Salerno*, [481 U.S. 739, 95 L. Ed. 2d 697, 107 S. Ct. 2095], *supra*, at 750.

5. Judge Batiste further violated state law in most of the subject cases by expressly providing in these writs of attachment that the contemnors could not be released on bond. With the exception of a limited group of persons arrested and charged with capital offenses, Section 16 of the Alabama Constitution⁵ guarantees the right to persons who are arrested to be released upon posting of bail set at a reasonable amount. See also *Sullivan v. State*, 939 So. 2d 58 at 64, n.4 (Ala. Civ. App. 2006): “A constructive-contempt proceeding is bondable.”

6. As a result of Judge Batiste’s repeated failure to comply with the law, litigants or witnesses in the subject cases were denied due process of law, which Rule 70A was intended to afford them; many of them were required to retain counsel to obtain the recall or rescission of these unauthorized and unlawfully issued writs of attachment; and several of them were unlawfully arrested and deprived of their liberty for periods of time ranging from several days to almost two weeks.

- a. bad faith, malice, ill will, or improper motive, or a state of mind driven by a furtive design or
- b. incompetence or lack of knowledge of the law of contempt—knowledge that is essential to the office of circuit judge and to the protection of one of the most basic rights guaranteed by the Alabama and U.S. Constitutions: the right not to be deprived of liberty without due process of law.

⁵ Article I, Section 16, Alabama Constitution, 1901:

That all persons shall, before conviction, be bailable by sufficient sureties, except for capital offenses, when the proof is evident or the presumption great; and that excessive bail shall not in any case be required.

Facts

A.

Contempt proceedings against Sonja Bell

Barry Bearden v. Nolanda H. Bearden, DR-2009-1269

8. The Commission realleges the allegations of paragraphs 1. through 7. of this Complaint.

9. On Monday, August 8, 2011, a subpoena for Sonja Bell to appear at the trial of a divorce case, *Barry Bearden v. Nolanda H. Bearden*, DR-2009-1269, Jefferson County Circuit Court, was left at the front door of Ms. Bell's unoccupied apartment in Birmingham. Ms. Bell discovered this subpoena when she returned home from work on the evening of Monday, August 8, 2011.

10. The subpoena was directed to Ms. Bell and sought her appearance as a witness at the trial of the *Bearden* divorce case at 8:45 AM on Wednesday, August 10, 2011.

11. Several weeks earlier, in late July, 2011, Ms. Bell, the single mother of a 6-year old daughter, reserved a condominium in Destin, Florida, for a summer beach vacation beginning Wednesday, August 10, 2011, and ending Sunday, August 14, 2011. Ms. Bell pre-paid the condo rental of \$725.00 with her check #744, dated July 28, 2011 and drawn on Ms. Bell's Wells Fargo bank account. That check was negotiated on August 1, 2011.

12. Three other persons planned to accompany Ms. Bell and her daughter on this vacation — Ms. Bell's mother, one of Ms. Bell's co-workers, and her young daughter. Rental for the condominiums for Ms. Bell's mother, her co-worker, and her daughter had also been pre-paid for August 10th through 14th.

13. On either August 8th or 9th, Ms. Bell consulted with her lawyer about the subpoena left at the door of her unoccupied apartment and was told by her attorney that this purported service of that subpoena was not valid and did not obligate her to appear.⁶

14. Ms. Bell called Judge Batiste's office on Tuesday, August 9, 2011, to try to determine if the *Bearden* case was again being continued. She was not told by Judge Batiste's office staff whether the case would be continued or not, but only that Ms. Bell "needed to be in court" on Wednesday, August 10, 2011.

15. Prior to 8:45 A.M., Wednesday, August 10, 2011, Ms. Bell had not received any subpoena, notice, or order to appear on August 10, 2011, other than the subpoena she found left at the front door of her unoccupied apartment on the evening of Monday, August 8, 2011, which she had been advised was not a validly served subpoena.

16. On Wednesday, August 10, 2011, Ms. Bell did not appear in court, but left for Destin, Florida, on her previously planned and pre-paid vacation with her daughter, her co-worker and her daughter, and Ms. Bell's mother.

17. On either Thursday, August 11th or Friday, August 12th, while Ms. Bell was on vacation in Destin, she was notified that a warrant for her arrest had been issued.

18. Despite the fact that the *Bearden* divorce case was not tried on August 10, 2011, but was again continued to a later date, Judge Batiste entered an order on August 10, 2011, in which, without any inquiry into why Ms. Bell did not appear, Judge Batiste:

- a. "finds the Sonja Bell, a Witness to this action, in criminal contempt of Court for willful failure to comply with the provisions of [unspecified] previous orders of this Court";

⁶ The exception to personal service of subpoenas that is authorized in Rule 45(b), Ala. R. Civ. Proc., permits service to be made by "leaving a copy [of the subpoena] at the person's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein." The subpoena in question was not left with anyone, but simply placed at or attached to the door to Ms. Bell's unoccupied apartment.

- b. ordered that “Sonja Bell is sentenced to five (5) days in the Jefferson County Jail for her criminal and civil contempt of this Court’s specific order and failing to abide by this Court’s Order of August 9, 2011⁷ in this case and may not be released on bond,” and
- c. directed the Clerk to “forthwith deliver a copy of this Order to the Sheriff of Jefferson County, Alabama, for the attachment of Sonja Bell.”

19. Prior to entry of Judge Batiste’s August 10th order holding Ms. Bell in contempt of court and ordering her arrest and jailing for five days without bond, Judge Batiste had not complied with Rule 70A in that she had not:

- a. filed a written contempt petition which:
 - 1. stated the essential facts alleged to constitute contempt of court,
 - 2. set a hearing on the contempt charge, and
 - 3. notified Ms. Bell:
 - (a) of the time and place for a hearing on the contempt petition,
 - (b) that failure to appear at the hearing may result in the issuance of a writ of arrest pursuant to Rule 70A to compel the presence of the alleged contemnor,
- b. served Ms. Bell with this petition, and
- c. held a hearing on the contempt charge at which Ms. Bell was given the opportunity to be heard on the charge of contempt. Nor did Judge Batiste follow the procedural protections in §12-21-182 of the Code of Alabama. She continues to fail to understand the necessity of following such procedures, defending her actions against Ms. Bell by citing *Ex parte Tarpley*, 300 So. 2d 409, 413-414 (Ala. 1974) as authority for finding a witness in indirect contempt of court where the witness fails to attend court. Judge Batiste fails to note the Court’s holding in *Tarpley* that those charged with constructive

⁷ At 12:19 P.M., August 9, 2011, acting on Ms. Bearden’s attorney’s motion, Judge Batiste entered an order for Ms. Bell to appear in court for trial of the *Bearden* case at 8:45 A.M., the next morning, August 10th. There is no evidence in the *Bearden* case file that any attempt was made to serve this order on Ms. Bell prior to 8:45 A.M., August 10th, nor any indication that Ms. Bell was notified of this order; and, in fact, Ms. Bell did not know of the August 9th order’s entry until well after 8:45 A.M., August 10, 2011.

contempt must be given notice of that charge and an opportunity to be heard and that these requirements must be rigidly adhered to, regardless of the frustration of the trial court judge. *Tarpley* at pp 413-414. See, Batiste Response to the Commission pp. 30-31. Despite this holding in *Tarpley*, Judge Batiste stated her understanding of the law relative to contempt and attachment to the Commission:

Q. Do you understand – you – in the decree ordering attachment, you sentenced her to five days in Jefferson County jail, correct?

A. That is correct.

Q. All right. Had she had a hearing at that point on the contempt?

A. No. And it's not necessary.

Q. And at that time, had she been served with a petition starting a contempt proceeding?

A. That you don't – that's not necessary in regards to witnesses. Case law is quite clear on how you deal with witnesses. And your assertion thereof is incorrect.

Q. She had not been – she had not had a hearing and not been heard on the matter at that point, right?

A. That is correct.

JIC: I'd be interested in hearing the case law that she says authorizes what she did.

JUDGE BATISTE: Sure.

A. In regards to — the court can subpoena witness to appear by holding them without bond until specific hearing date. The legislature has given the court the power to compel witnesses to appear when they fail to do so. A failure to appear can be deemed as a contempt of court by the defaulting witness. The witness has – the court has the ability to issue writs of attachment directing the sheriff's office to apprehend subpoenaed witness when they fail to appear. Legislature gives the court this power under Alabama Rules of Civil Procedure 45(e). Contempt, failure by a party

without adequate excuse to obey a subpoena served upon that person may be deemed in contempt of court from which the subpoena issued. An adequate cause for failure to obey exists when subpoena purports to require a nonparty to attend or to produce at the place not within the limits provided by the cause and so on and so forth. And I have several pages of case law that supports that thereof.

Q. Those are rather general. We are talking about the specific instance where there is a contempt proceeding commenced or initiated against a witness for failure to appear. Is there any case law that indicates to you that you do not have to initiate a contempt proceeding, inform the alleged contemnor of the basis for the charges in writing, provide them with notice and an opportunity to be heard before sentencing them – finding them in contempt and sentencing them? Do you –

A. She was served – I understand what you are saying. She was served the subpoena – the August 8th subpoena –

Q. No ma'am, I'm not talking about served with a subpoena. I'm talking about served with a petition initiating a contempt proceeding.

A. That is not proper. That is incorrect. Your understanding is incorrect. Again, as I state, in the Alabama Rules of Civil Procedures 45(e), that I have the right to have a subpoenaed witness just as anybody else does in criminal court. When a witness does not appear, you have the right to go get that witness.

Batiste Commission Appearance at pp. 236-239

20. Judge Batiste issued the August 10, 2011 writ of attachment for Ms. Bell with the express provision that Ms. Bell “may not be released on bond,” thereby again violating state law. Article I, §16, Alabama Constitution, 1901, and *Sullivan v. State*, 939 So. 2d 58 at 64, n.4 (Ala. Civ. App. 2006).

21. Ms. Bell, who was on vacation in Destin, was greatly distressed to hear that a warrant for her arrest had been issued. She telephoned her aunt who suggested that she contact Roderick Walls, a Birmingham attorney, for advice and representation.

22. Ms. Bell contacted Mr. Walls by phone from Destin on August 11th or 12th and explained to him the situation, after which Mr. Walls filed a motion on Ms. Bell's behalf in the *Bearden* case on Friday, August 12, 2011, requesting that Judge Batiste reconsider and purge the contempt order issued against Ms. Bell.

23. After Ms. Bell returned to Birmingham, Mr. Walls contacted Judge Batiste's office on several occasions, beginning on Monday, August 15, 2011, both by phone and in person, requesting a hearing on his motion to reconsider or to purge the outstanding warrant for Ms. Bell's arrest. This motion was denied by Judge Batiste on August 16, 2011, without a hearing. On the same date Judge Batiste entered a "Nunc Pro Tunc" Order changing the contempt from criminal to civil, even though she had sentenced Ms. Bell to a specific term of incarceration. She stated to the Judicial Inquiry Commission:

A. Well, she shouldn't be held in criminal contempt. She should be held in civil contempt.

Q. And what do you – what was the reason?

A. Because she's purging herself on not showing up for court.

Q. How could she purge herself for failure to show up on the 10th at some later date?

A. Clearly again, as I establish in the case law, that you – they are held in civil contempt. It's a correction properly made by the court that she was to be held in civil contempt and not criminal contempt.

Q. But you had given her a five-day sentence, hadn't you?

A. Yes, I had.

Q. Is it your understanding that civil contempt you give sentences?

A. I can only go on what the court thought was proper. According to the case law –

Q. What court did?

A. Me. I did.

Q. Okay.

A. My Court. That it was not proper to held her in criminal contempt as the case law clearly shows that a failure to show up in court is civil contempt. It is not criminal contempt.

Q. That is your understanding of the law?

A. No that is what I just stated what the law is according to the Alabama Court of Civil Appeals.

Batiste Commission Appearance at pp. 244-246

24. After several unsuccessful attempts to contact Judge Batiste, Mr. Walls was finally told by Judge Batiste's Judicial Assistant that Judge Batiste intended for Ms. Bell to "spend some time in the jail" before Judge Batiste would hear his motion to recall the writ of attachment Judge Batiste had entered against Ms. Bell.

25. Mr. Walls relayed this information to Ms. Bell. Ms. Bell, the manager of approximately 20 employees at Blue-Cross Blue-Shield's Birmingham office, was concerned about being arrested at work. In order to (a) minimize or eliminate the possibility that Ms. Bell's employer would learn of her being arrested and jailed, and (b) minimize the amount of time during a work-week that Ms. Bell would spend in jail, Ms. Bell reluctantly decided to turn herself in at the Jefferson County Jail on Friday, August 19th and spend the week-end — from late Friday afternoon until Monday morning — in the Jefferson County Jail.

26. Ms. Bell reported to the Jefferson County Jail in the early afternoon of August 19th where she was taken into custody and was incarcerated at the Jail for the remainder of Friday, all of Saturday and Sunday, and the early morning hours of Monday.

27. In return for Ms. Bell's turning herself in to the Jefferson County Jail and being confined over that week-end, Judge Batiste set a hearing on the motion to reconsider or purge the contempt finding and sentence for the morning of Monday,

August 22, 2011, and ordered Ms. Bell to be brought from the Jail to her courtroom on that morning for this hearing.

28. Judge Batiste held a hearing on Mr. Wall's motion on Monday morning, August 22, 2011. At this hearing, Judge Batiste did not allow Mr. Walls to be heard in arguing the law or facts concerning his motion and Judge Batiste refused to hear any testimony from Ms. Bell or any other witnesses on the contempt issue, e.g., the following colloquy between Judge Batiste and Mr. Walls occurred when Mr. Walls attempted to present argument and testimony that Ms. Bell had not received notice of the Court's orders directing her to appear:

MR. WALLS: [I]f there was an order that went directly to her [Ms. Bell] that she did not comply with, I don't have that, Judge. And I will fast forward for a second. Even on August 10th, this case was continued. And when it was continued, Mr. Wheeler made a comment about us prejudging or this witness prejudging what the testimony—or what the question is going to be.

Obviously, someone prejudged that she was not going to be here, filed a motion to have her put in contempt for a case that never went out.

THE COURT: Did she show up?

MR. WALLS: Well —

THE COURT: No, don't interrupt the Court.

MR. WALLS: Okay.

THE COURT: Did she show up?

MR. WALLS: No.

THE COURT: She did not. She violated this Court's order. I don't want to hear anything about an explanation why she was not here. The only thing I want to hear is that she's going to abide by the Court's order. That's what the Court wants to hear. I don't want to hear anything about what either side has regarding testimony. (underlining supplied)

Even when, at her voluntary appearance before the Commission, the Judicial Inquiry Commission attempted to point out Judge Batiste's errors, Batiste refused to consider any other position.

JIC: Is it your position that you can issue this writ and have somebody arrested, regardless of how many times she wasn't there, and put in jail without giving them a hearing before you put them in jail, for them to explain why they weren't there?

JUDGE BATISTE: That I just went, again based on Alabama Rules of Civil Procedure, 45.

JIC: But do you have to have a hearing before you put them in jail?

JUDGE BATISTE: Not – no. Not before I –

JIC: That's your interpretation. Is that your interpretation?

MR. MCPHILLIPS: That's what appears to be in the rules as she reads them in the case law that has been cited.

JIC: You're reading it incorrectly.

MR. SIKES: Well, let me –

Mr. MCPHILLIPS: I can see some rationale for it, and I've actually seen it happen in court before.

JIC: Wouldn't that be due process to say why you weren't there –

Mr. MCPHILLIPS: It raises –

JIC: --if they have a --if they have a good reason –

MR. MCPHILLIPS: Yeah. Certainly it does raise an issue of due process no doubt. But at the same time, I can also see how a court's broad contempt powers could put it in a position where it might at least temporarily need to send somebody to jail and maybe pull it for a hearing shortly – as shortly as possible.

JUDGE BASTISTE: I mean my processes –

MR. MCPHILLIPS: May not have been –

JUDGE BATISTE: I'm going to do nothing differently.

Batiste appearance before the Commission pp. 262-264.

29. Judge Batiste entered an order dated August 24th, which, inter alia, “continued” the contempt proceeding, directed Ms. Bell’s “conditional” release from jail, and ordered Ms. Bell to pay a \$950.00 attorneys’ fee award to Ms. Bearden’s attorney.

B.

Contempt proceedings against Curtis Austin

Comelia Austin v. Curtis Austin, DR-2004-421.01 and CV-2012-0949

30. The Commission realleges the allegations of paragraphs 1. through 7. of this Complaint.

31. Curtis Austin and Comelia Austin were divorced in July, 2004. On December 29, 2011, Comelia Austin filed a pro se petition requesting an unspecified amount of increase in the monthly child support payments ordered to be paid by Mr. Austin in the couple’s 2004 divorce decree. The petition did not assert any prior failure to pay child support payments nor make any claim therefor. Curtis Austin was served with this petition on April 5, 2012.

32. On April 26, 2012, Comelia Austin sent a handwritten, one-sentence letter to the Court requesting a hearing on her petition. This letter was not served on Mr. Austin, was not mailed to him, and he had no contemporaneous knowledge of it.

33. On May 11, 2012, Judge Batiste entered a scheduling order setting a “settlement conference” in the case for May 21, 2012, and trial of the case for June 21, 2012. This Order was not served on Mr. Austin, he did not receive a copy of it, and he had no prior knowledge of it.

34. On May 22, 2012, an attorney hired by Comelia Austin filed a pleading that is captioned “AMENDED MODIFICATION OF FINAL JUDGEMENT [sic] OF DIVORCE AND PETITION FOR CONTEMPT.” This pleading, despite its caption, was not an amendment of the Austins’ divorce decree, but was a motion seeking a modification of the couples’ divorce decree. Also, despite the caption, the text of the motion did not request a finding of contempt, nor did the motion mention or reference “contempt,” other than in its caption.

35. This motion sought new or additional relief that was not sought in Ms. Austin’s original pro se petition, i.e., in addition to reiterating the same prayer for relief contained in Ms. Austin’s original pro se filing, this May 22, 2012 motion also asserted several new claims for relief against Mr. Austin, including requests for an order requiring Mr. Austin to pay (a) past due child support and interest, (b) “non-covered medical expenses for the minor children,” and (c) an attorneys’ fee to Ms. Austin’s attorney.

36. Because the May 22, 2012 motion asserted new, additional claims against Mr. Austin, Rule 5, Ala. R. Civ. Proc., required that this motion be served on Mr. Austin. However, this motion was not served on Mr. Austin, nor was it received by mail or otherwise delivered to him, and he had no prior knowledge of it. When questioned about service of this motion on Mr., Austin, Judge Batiste again showed her lack of understanding and her unwillingness to accept controlling law. She admitted the motion asked for new or additional things that were not asked for in the original petition for modification, but continued to insist that Rule 5A, A.R.C.P., did not require service of the Rule 5A ARCP .

Q. No. My question was, do you see that the amended petition asked for new or additional things that were not asked for in the original petition for modification?

A. (Batiste) Yes, I presume that’s why they did the amended petition —

Q. Right.

A. — for modification rule nisi.

Q. All right. Look at [Rule 5(a), A.R.C.P.] It indicates when service has got to be made. Service —again, service of process has got to be made when there is a new or additional claims for relief asserted.

A. (Batiste) That is incorrect.

Q. I'm sorry.

A. That is incorrect.

Q. What is incorrect?

A. That assertion. That is incorrect.

Q. That isn't what it states?

A. You said your — I mean, that is incorrect, I mean, that assertion.

Q. I'm just — do you see the sentence that I've underlined there [in Rule 5(a), A.R.C.P.]?

A. It's in paragraph what?

Q. Paragraph (a).

A. Okay. Paragraph (a)?

Q. It says, no service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for services of summons in Rule 4.

A. That's — this is — yeah. But this is not — again, this is you putting this in. This is not in the pleadings before the court. This is incorrect. Like I said, that's incorrect. That is inapplicable to this case.

Batiste appearance before the Commission at pp.176-177.

The Court of Civil appeals reversed the trial court on this very issue. See *Austin v. Austin* ___ So.3d ___ 2013 WL 1926333, (Ala. Civ. App., 2013) May 10, 2013.

37. On June 21, 2012, Judge Batiste held a hearing on this petition to modify. Mr. Austin, who had not been served with any order setting this hearing for June 21, 2012, or notified of this hearing in any other less formal manner, had no prior knowledge of the hearing, was not present at the hearing, and had no opportunity to be heard on the petition to modify his child support obligations.

38. On June 29, 2012, Judge Batiste issued an order which, inter alia, increased Mr. Austin's monthly child support payments from \$400.00 per month to \$1,115.00 per month and ordered Mr. Austin to pay \$7,900.00 plus accrued interest as past due child support and medical expenses for his two minor children.

39. Also on June 29, 2012, Judge Batiste issued a Decree Ordering Attachment, which found Mr. Austin "in contempt of Court for failure to comply with this Court's [unspecified] former orders" and directed the Sheriff to "attach the said Defendant, Curtis Austin where he shall remain in the Jefferson County Jail [sic] until further Order of this Court to show cause, if any he has, why he should not be held in contempt of Court for failure to comply with the former Orders thereof."

40. Prior to the entry of Judge Batiste's June 29, 2012 decree holding Mr. Austin in contempt of court and ordering his arrest and jailing, Judge Batiste had not complied with Rule 70A in that she had not:

- a. filed a written contempt petition which
 1. stated the essential facts alleged to constitute contempt of court,
 2. set a hearing on the contempt charge, and
 3. notified Mr. Austin:
 - (a) of the time and place for a hearing on the contempt petition,
 - (b) that failure to appear at the hearing may result in the issuance of a writ of arrest pursuant to Rule 70A to compel the presence of the alleged contemnor,
- b. served Mr. Austin with this petition, and
- c. held a hearing on the contempt charge at which Mr. Austin was given the opportunity to be heard on the charge of contempt.

41. On July 11, 2012, Mr. Austin was arrested pursuant to Judge Batiste's June 29, 2012, Decree Ordering Attachment and detained in the Jefferson County Jail.

42. Mr. Austin's second wife hired an attorney, Everett Wess, who on July 15 and July 16, 2012, filed several motions which sought to vacate Judge Batiste's prior orders and decrees in the case, including the decree ordering Mr. Austin's arrest and detention, and sought Mr. Austin's immediate release from jail.

43. Mr. Wess contacted Judge Batiste's office several times on July 15 and July 16, 2012, seeking to obtain a date for a hearing on these motions, but Judge Batiste never issued an order setting these motions for a hearing.

44. On July 17, 2012, Mr. Wess, whose client Mr. Austin, had been incarcerated in the Jail since July 11th, filed a Petition for Writ of Habeas Corpus in the Austins' divorce case, DR 2004-421.01, delivered this petition to Judge Batiste's chambers, and asked Judge Batiste to set a hearing on this petition for habeas corpus.

45. Judge Batiste refused to discuss setting a hearing of the habeas petition with Mr. Wess when he came to her office and would not take Mr. Wess' phone calls about setting a hearing. Judge Batiste's Judicial Assistant told Mr. Wess that Judge Batiste had instructed her to tell him that "this is not criminal court, Mr. Wess," and conveyed to Mr. Wess that Judge Batiste did not believe that his petition for writ of habeas corpus was cognizable in her court and she did not intend to hear or act on it. Judge Batiste had stated in an Order in another case that as pertains to setting bail for a contemnor, "Improper Motion. This is not criminal court." She failed to recognize that the purpose of both the right to habeas corpus and the right to bail is to protect citizens against incarceration without due process and that citizens have the right to have a reasonable bail set in indirect criminal contempt cases and that habeas corpus petitions are cognizable in her court.

46. Concluding that Judge Batiste was not going to act on his petition for habeas corpus filed in DR 2004-421.01, on Friday, July 20, 2012, Mr. Wess filed a second habeas corpus petition in a separate action, CV 2012-949.⁸

47. On July 23, 2012, the second habeas petition was presented to Jefferson County Circuit Judge Robert S. Vance. After unsuccessfully attempting to contact Judge Batiste, Judge Vance entered a Writ of Habeas Corpus on July 23, 2012, ordering Mr. Austin's immediate release from jail. In his order granting the writ, Judge Vance stated:

That order [Judge Batiste's June 29, 2012 Decree Ordering Attachment] does not appear to contain an actual finding of contempt, yet commands incarceration that is open-ended in nature. Further, even if that order could be characterized as a finding of criminal contempt, continued incarceration would violate *Ala. Code*, § 12-11-30(5) and Rule 70A of the Alabama Rules of Civil Procedure.

48. Pursuant to this writ, Mr. Austin, who had been incarcerated in the Jefferson County Jail since July 11, 2012, was released from the Jail on July 23, 2012.

49. Mr. Austin filed an appeal in the case, and on May 10, 2013, on the Court of Civil Appeals reversed Judge Batiste's order granting all relief awarded to Ms. Austin in the amended petition filed against Mr. Austin. The Court held in its opinion that "service of the amended petition (which the Court observed "did not specifically mention the word contempt" but which the Court construed to have "stated a claim for contempt against the father") was never attempted, much less effected"; that "strict compliance regarding service of process is required"; and that the failure to serve the contempt petition on Mr. Austin "deprive[d] the trial court of jurisdiction" to award relief under the amended petition citing and quoting *Shaddix v. Shaddix*, 603 So.2d 1096, 1099 (Ala. Civ.

⁸ Along with this second habeas corpus petition, Mr. Wess also filed sworn affidavits signed by Mr. Austin and his employer stating that Mr. Austin was employed as an apprentice barber and had a monthly income of \$745.00. Mr. Austin's affidavit further stated that he had total assets valued at \$500.00, and had monthly expenses of over \$2,000.00 per month; and thus, would have been indigent and unable to pay the increase in the monthly child support payments ordered by Judge Batiste.

App. 1990). The issue of contempt was not substantively addressed in the opinion other than in a footnote which noted Mr. Austin's release from jail pursuant to Judge Vance's order of July 23, 2013 granting the writ of habeas corpus.

50. Mr. Austin's wife, Kendra Austin, paid Mr. Wess \$1,500 in attorney's fees to obtain her husband's release from jail and paid the \$300 filing fee for the writ of habeas corpus.

C.

Contempt proceedings against Kizzy Lacey, Kimberly Clark, and Candice Gray Franklin
Allan Isom v. Cynthia Isom, DR-2010-803

51. The Commission realleges the allegations of paragraphs 1. through 7. of this Complaint.

52. In late November, 2010, in the divorce case, *Allan Isom v. Cynthia Isom*, DR-2010-803, Jefferson County Circuit Court, Ms. Isom's attorney served three witnesses, Kizzy Lacey, Kimberly Clark, and Candice Gray Franklin ("the *Isom* witnesses") with subpoenas to appear at the December 7, 2010 trial of that case.

53. These witnesses appeared for trial on December 7, 2010, but the *Isom* divorce case was not tried on that date. Trial of the *Isom* case was continued and reset for trial a number of times in the Winter of 2010-2011, and again in the Spring and Summer of 2011.

54. The *Isom* witnesses appeared at the courthouse at these trial settings, only to learn that the case had been again continued.

55. Several of the orders which continued and/or reset the trial of the *Isom* case contained the following language:

[T]he subpoenas issued in this cause are hereby continued to the aforesaid date, time, and place. The witnesses' failure to appear could result in the issuance of a Writ of Attachment. The Plaintiff

and Defendant . . . are hereby directed to forward a copy of this Order to each of the subpoenaed witnesses.

56. On July 26, 2011, Judge Batiste entered an order containing the above language which set the *Isom* divorce case for trial on September 12, 2011.

57. On August 18 and 19, 2011, according to an affidavit of Ms. Isom's attorney, filed in the case, she either left phone messages or had letters hand delivered to the three *Isom* witnesses advising them of the new trial date and time of 8:45 A.M., September 12, 2011, and advising them that, according to Ms. Isom's attorney, they were each "court ordered to be present."

58. However, the address on the letter to Ms. Franklin, which was alleged by Ms. Isom's attorney to have been hand-delivered to Ms. Franklin's "property," contained an incorrect Newcastle, Alabama address, rather than Ms. Franklin's correct address in Gardendale, Alabama, and was never received by Ms. Franklin; accordingly, Ms. Franklin, who had not received notice of the September 12th trial setting, or its continuance to September 13th, was not present at either trial setting.

59. Similarly, the address on the letter to Ms. Clark, which was also alleged by Ms. Isom's attorney to have been hand-delivered to Ms. Clark's "property," contained an incorrect street address; was never received by Ms. Clark; and accordingly, Ms. Clark, who had not received notice of the September 12th trial setting, or its continuance to September 13th, was not present at either trial setting.

60. Ms. Lacey received Ms. Isom's attorney's letter and appeared at the Jefferson County Courthouse at or around 8:45 A.M. on September 12th, but was advised that Judge Batiste was late and that the *Isom* case had again been continued whereupon she left the courthouse.

61. In an order entered at 3:47 P.M. on September 12, 2011, Judge Batiste again continued the trial of the *Isom* case to the following day, September 13th at 1:30 P.M. That order contains no provision for any "carry-over" of witnesses' obligation to appear,

nor direction for service of the order or notice to the witnesses to appear 22 hours later at the *Isom* trial.

62. None of the three *Isom* witnesses received oral or written notice of the continuance of the *Isom* trial from September 12 to September 13, 2011, nor any subpoena, notice or order directing them to appear on September 13, 2011, and none of the three *Isom* witnesses had knowledge of the 1:30 P.M., September 13, 2011 trial setting prior to its commencement.

63. None of these three *Isom* witnesses appeared in court on September 13, 2011.

64. On September 13, 2011, at 3:15 and 3:16 P.M., Judge Batiste entered three “Decrees Ordering Instant Attachment” of the three *Isom* witnesses, Kizzy Lacey, Kimberly Clark, and Candice Gray Franklin, each of which decrees incorrectly states that each of these witnesses:

was duly served with a subpoena at the request of the Defendant to appear as a witness in this cause on the 12th day of September at 1:30 P.M. and said witness did not appear or otherwise respond to the subpoena.

65. The three decrees also directed the attachments of Ms. Lacey, Ms. Clark, and Ms. Franklin, and further directed that they “may not be released on bail.”

66. Prior to the entry of these three writs of attachment directing Ms. Lacey, Ms. Clark, and Ms. Franklin be attached and held without bail, Judge Batiste had not complied with Rule 70A in that she had not:

- a. filed written contempt petitions which
 1. stated the essential facts alleged to constitute these contempts of court,
 2. set hearings on the contempt charges, and
 3. notified Ms. Lacey, Ms. Clark, and Ms. Franklin:
 - (a) of the time and place for a hearing on their contempt petition,

(b) that failure to appear at the hearing may result in the issuance of a writ of arrest pursuant to Rule 70A to compel the presence of Ms. Lacey, Ms. Clark, and Ms. Franklin,

b. served these three witnesses with these petitions, and

c. held a hearing on the contempt charge at which Ms. Lacey, Ms. Clark, and Ms. Franklin were given the opportunity to be heard on the charges of contempt.

67. Judge Batiste issued the September 13, 2011 writs of attachment for Ms. Lacey, Ms. Clark, and Ms. Franklin with the express provision that each of them “may not be released on bond,” thereby again violating state law. Article I, §16, Alabama Constitution, 1901, and *Sullivan v. State*, 939 So. 2d 58 at 64, n.4 (Ala. Civ. App. 2006).

68. On the afternoon of September 13, 2011, Ms. Lacey telephoned Judge Batiste’s office to inquire about whether the *Isom* case had been rescheduled for trial. In that call, Ms. Lacey was told that a warrant for Ms. Lacey’s arrest for failure to appear had been issued.

69. Ms. Lacey and Ms. Clark hired attorneys who filed motions on September 16 and September 19, 2011, seeking the recall or rescission of Ms. Lacey and Ms. Clark’s attachment orders. Ms. Lacey and Ms. Clark paid their attorneys six hundred dollars and two hundred fifty dollars, respectively, to represent them in this matter, which included filing motions to recall the attachment order and appearing at a hearing of this motion on September 20, 2011.

70. On September 20, 2011, after a hearing on these motions, in which the attorneys for Ms. Lacey and Ms. Clark argued their clients’ lack of knowledge or notice of the September 13th trial setting and the lack of any obligation for them to appear in court on that date, Judge Batiste entered orders which “recalled” the attachment orders for Ms. Lacey, Ms. Clark, and Ms. Franklin and directed all Sheriffs “to disregard [the attachment orders]” and “not to attach” these witnesses.

D.

Contempt proceedings against Deva Walker

Materia J. Gipson v. Michael A. Gipson, DR-2010-1395

71. The Commission realleges the allegations of paragraphs 1. through 7. of this Complaint.

72. In August or early September, 2011, Deva Walker was served with a subpoena to appear on September 12, 2011 and give testimony at the trial of a divorce case, *Materia J. Gipson v. Michael A. Gipson*, DR-2010-1395, Jefferson County Circuit Court, in which Judge Batiste was the presiding judge.

73. However, the *Gipson* case was not tried on September 12, 2011, but continued to October 11, 2011, at which time the case was again not tried, but continued to January 25, 2012.

74. On one of these trial settings occasions, Ms. Walker arrived at the courthouse prepared to testify, but was told that the case had been settled or resolved and that her attendance in the proceeding was no longer needed.

75. Ms. Walker, who believed that the case had been concluded, was never thereafter served with any subpoena and was never notified by mail or otherwise of any further proceedings in the *Gipson* case, nor of any obligation for her to appear in court in that case to give testimony.

76. The *Gipson* divorce case had not been concluded on that occasion.

77. On January 25, 2012, the *Gipson* divorce case was again not tried and on February 15, 2012, Judge Batiste entered an order resetting the case for trial on June 27, 2012.

78. On February 21, 2012, counsel for the plaintiff *Materia Gipson*, who had requested the issuance and service of subpoenas for six witnesses, including Deva Walker, to appear at the January, 2012 trial, filed a "Motion to Extend Trial Subpoena,"

in which he requested that Judge Batiste issue a Rule Nisi against these six witnesses, including Ms. Walker, if they failed to appear at June 27, 2012 trial.

79. On February 28, 2012, Judge Batiste entered an order granting Plaintiff's Motion to Extend Trial Subpoena, stating:

The witnesses are hereby commanded to be and appear at the trial . . . after being duly served. Should a witness fail to appear . . . a contempt order will be entered and the witness will be subject to arrest and incarceration. Plaintiff and Defendant, by and through their attorneys of record, are hereby directed to forward a copy of this Order to each of the subpoenaed witnesses.

80. Also on February 28, 2012, Judge Batiste issued six Orders Setting Rule Nisi Hearing, which ordered the six witnesses, including Ms. Walker, to appear at 8:45 a.m. on June 27, 2012, and show cause why they should not be held in civil and criminal contempt. The order did not allege any contemptuous conduct and contained no explanation of what the six witnesses were being required to show at their hearings.

81. Ms. Walker was not served with this Rule Nisi order or any other order or subpoena directing her to appear on June 27, 2012, and Ms. Walker had no prior knowledge of the June 27, 2012 trial setting or the Rule Nisi hearing; accordingly, Ms. Walker did not appear in court on June 27, 2012.

82. On June 27, 2012, during the trial of the *Gipson* divorce case, Judge Batiste issued a Decree Ordering Instant Attachment, ordering Ms. Walker to be arrested and held without bond for failing to obey the subpoena. (While this order states that Plaintiff's Affidavit for Attachment and Witness Walker's subpoena are attached as Exhibits A and B, those documents are not attached to Order on the Alacourt website. And, in fact, the Alacourt website contains the notation that Exhibits A and B were not attached to the Order when it was delivered to Sheriff on July 3, 2012.)

83. Prior to entry of Judge Batiste's June 27th order holding Ms. Walker in contempt of court and ordering her arrest and jailing for five days without bond, Judge Batiste had not complied with Rule 70A in that she had not:

- a. filed a written contempt petition which:
 1. stated the essential facts alleged to constitute contempt of court,
 2. set a hearing on the contempt charge, and
 3. notified Ms. Walker:
 - (a) of the time and place for a hearing on the contempt petition,
 - (b) that failure to appear at the hearing may result in the issuance of a writ of arrest pursuant to Rule 70A to compel the presence of the alleged contemnor,
- b. served Ms. Walker with this petition, and
- c. held a hearing on the contempt charge at which Ms. Walker was given the opportunity to be heard on the charge of contempt.

84. Judge Batiste issued the June 27, 2012 writ of attachment for Ms. Walker with the express provision that Ms. Walker “may not be released on bond,” thereby again violating state law. Article I, §16, Alabama Constitution, 1901, and *Sullivan v. State*, 939 So. 2d 58 at 64, n.4 (Ala. Civ. App. 2006). In her voluntary response to the Judicial Inquiry Commission, Judge Batiste again cites the general rule authorizing courts to exercise contempt power, but overlooks that part of the same rule and case law which requires that the contemnor be afforded due process. She continues to insist that neither notice of the contempt proceeding, a right to be heard, nor admission to bail pending that hearing, is required for those she incarcerates using this power, stating in her written response to the Commission:

[t]he Court is clearly acting within its discretion when it incarcerates a defaulting witness until such time as the matter can be reset for hearing. The statutes, which guide the Courts in these matters, make no mention of a bond requirement for defaulting witnesses. The Court has the power to hold a witness, who has committed civil constructive contempt, until such time as that witness can purge themselves of contempt.

Batiste Response at p. 28.

As the Court of Civil Appeals recognized in *Sullivan*, the rules and the statutes, cannot be read to abrogate the constitutional right to bail.

85. Ms. Walker was never served with a subpoena to appear in court on June 27, 2012, nor mailed any order or notice to appear, nor otherwise notified of the June 27, 2012 trial setting of the *Gipson* divorce case. Ms. Gipson first learned of the June 27th trial setting when a sheriff's deputy came to the home of Ms. Walker's grandmother, with whom Ms. Walker was living, to arrest Ms. Walker for failure to appear at that trial. Judge Batiste did not give Ms. Walker an opportunity to offer this reasonable excuse for her failure to appear before ordering Ms. Walker's arrest. Judge Batiste made no inquiry at all.

86. Ms. Walker was not at home at the time the deputy came to her mother's house, but upon learning of the deputy coming to her grandmother's house to arrest her, made a series of calls to try to determine what the arrest order was based upon, including calls to the Clerk's office and Judge Batiste's office.

87. On July 13, 2012, Judge Batiste entered an order withdrawing and dismissing her Decree Ordering Attachment of Ms. Walker, but taxed court costs to Ms. Walker.

88. On July 31, 2012, Judge Batiste issued Final Judgment of Divorce in the *Gipson* case.

E.

Contempt proceedings against Barbara D. Kyle

Richard Ingram Kyle v. Barbara Dill Kyle, DR-2009-1260

89. The Commission realleges the allegations of paragraphs 1. through 7. of this Complaint.

90. On October 12, 2011, Judge Batiste entered a final judgment of divorce in the divorce case, *Richard Ingram Kyle v. Barbara Dill Kyle*, DR-2009-1260. In paragraph 5c. of that decree, Barbara D. Kyle was ordered to "catch up the mortgage [on the Kyles' marital residence] within 45 days from the date of this order."

91. Thus, the terms of the divorce decree did not require Ms. Kyle to “pay and catch up the mortgage” on the Kyles’ marital residence until November 26, 2011 (forty five days from October 12, 2011).

92. On October 18, 2011, Barbara Kyle traveled to Alta Loma, California, to visit her brother, James Kyle. Ms. Kyle made this trip with the approval and recommendation of her doctor, who had been treating her for physical and emotional stress caused by the year and a half long divorce proceedings.

93. Although the divorce decree did not require Ms. Kyle to “pay and catch up the mortgage” on the Kyles’ marital residence until November 26, 2011, on October 31, 2011 and November 1, 2011, Richard Kyle’s attorney filed two “Emergency Motions for Expedited Hearing” alleging as follows in ¶¶ 2. and 3. of these motions:

2. This Honorable Court issued an Order on October 12, 2011 ordering the Defendant pay and catch up the mortgage payments on the marital residence

3. The Defendant has failed to make the monthly mortgage payments on the marital residence, and in turn, the marital home will foreclose on Friday, November 4, 2011.

94. On November 1, 2011, at 4:36 P.M., Judge Batiste entered an order setting this emergency motion for a hearing on November 3, 2011, at 1:30 P.M.

95. Ms. Kyle’s lawyer, Ernest “Rusty” Wright⁹, first became aware of the order setting a hearing on November 3rd on November 2, 2011. He telephoned Ms. Kyle in California and advised her that Judge Batiste had scheduled a hearing in her divorce case at 1:30 P.M. the next day, and that she needed to attend the hearing, if possible.

96. Ms. Kyle, who had been held in contempt by Judge Batiste several months previously and incarcerated for five days in the Jefferson County Jail, was fearful of what Judge Batiste might do if Ms. Kyle did not appear at the hearing. Accordingly, Ms. Kyle

⁹ Mr. Wright died on June 16, 2012.

attempted to book airline reservations to Birmingham for the hearing, but could not secure reservations on the series of flights necessary for her to arrive in Birmingham in time for the next day's hearing.

97. Ms. Kyle emailed Mr. Wright the materials that she generated in attempting to book airline reservations back to Birmingham for Mr. Wright to present to Judge Batiste at the hearing if her non-attendance became an issue.

98. A hearing was held on November 3, 2011, at which Mr. Kyle, his attorney, and Mr. Wright appeared. Ms. Kyle, who was in California, was not present.

99. Mr. Wright informed Judge Batiste at the November 3, 2011 hearing and alleged in a subsequently filed motion for new trial and to reconsider the order of incarceration that "Ms. Kyle was in California for health reasons" on November 3rd; and that Mr. Wright had attempted to contact Ms. Kyle in California on November 2nd, but there was not enough time between Mr. Wright's receipt on November 2, 2011, of Judge Batiste's 4:36 P.M. November 1, 2011 order, setting the 1:30 P.M. November 3, 2011 hearing to permit Ms. Kyle to travel back to Alabama in time to attend the hearing.

100. On November 3, 2011, Judge Batiste entered a "Decree Ordering Attachment" reciting Ms. Kyle's failure to appear at the November 3, 2011 hearing pursuant to the November 1, 2011 order, and "citing" Ms. Kyle "for CIVIL [sic] CONTEMPT," and ordering any sheriff in the State of Alabama to "incarcerate [Ms. Kyle]."

101. Prior to the entry of Judge Batiste's November 3rd order holding Ms. Kyle in contempt of court and ordering her arrest and jailing, Judge Batiste had not complied with Rule 70A in that she had not:

a. filed a written contempt petition which

1. stated the essential facts alleged to constitute contempt of court,
2. set a hearing on the contempt charge, and
3. notified Ms. Kyle:

(a) of the time and place for a hearing on the contempt petition,

(b) that failure to appear at the hearing may result in the issuance of a writ of arrest pursuant to Rule 70A to compel the presence of the alleged contemnor,

- b. served Ms. Kyle with this petition, and
- c. held a hearing on the contempt charge at which Ms. Kyle was given the opportunity to be heard on the charge of contempt.

102. Judge Batiste issued the November 3, 2011 decree ordering Ms. Kyle's attachment with the express provision that Ms. Kyle "may not be released on bond," thereby again violating state law. Article I, §16, Alabama Constitution, 1901, and *Sullivan v. State*, 939 So. 2d 58 at 64, n.4 (Ala. Civ. App. 2006).

103. This November 3, 2011 decree also ordered the Sheriff of Jefferson County to "enter this Decree into the National Crime Information Computer (NCIC), or any other database available nationwide for the potential arrest of those with attachments or warrants for their arrest" and "to notify the Sheriff's Department in the State of California of this Decree Ordering Attachment, and inform said sheriff that this Decree had been entered on the National Crime Information Center."

104. On November 4, 2011, Mr. Wright filed a "Motion to Reconsider Motion for New Trial and Motion to Reconsider Incarceration" in which regarding the contempt citation and attachment order, he alleged, among other things, that:

- a. entry of the order at 4:37 P.M., November 1, 2012, directing Ms. Kyle to attend a hearing at 1:30 P.M., November 3, 2012, did not provide sufficient notice or allow Ms. Kyle sufficient time to return from California for the hearing;
- b. Judge Batiste's order holding Ms. Kyle in civil contempt for failure to appear at the November 3, 2012 hearing is "clearly not within the legal limits of Civil Contempt";
- c. Judge Batiste was "without jurisdiction to enter a misdemeanor warrant into the National Crime Information Computer."

Judge Batiste's response to this complaint before the Judicial Inquiry Commission recognized no wrong doing or denial of due process. Instead, Judge Batiste stated that giving notice on November 1st of a hearing on November 3rd to a party in California was sufficient notice and likely to be upheld on appeal stating

. . . The notice was served on the Defendant's attorney, who then instructed the trial Court that his client had fled to California. The trial Court then issued a writ of attachment on the Defendant for her failure to appear.

. . . The Court of Civil Appeals would likely reason that the Defendant was given adequate notice of the contempt hearing date.

Batiste Response 21-22.

Judge Batiste gave no credence to Ms. Kyle's counsel's statements that Ms. Kyle was in California when the notice was given and tried to get back for the hearing. Instead she characterized Ms. Kyle's visit to California, which began before the November 3 hearing was set and even before the petition for that hearing was filed, as Ms. Kyle having "fled" to California.

105. On November 7, 2011, Judge Batiste denied Mr. Wright's motions for new trial and to reconsider the attachment order.

106. On November 9, 2011, Mr. Wright filed a notice of appeal in the case.

107. On February 23, 2012, Mr. Wright filed a motion in the circuit court in which he "removed" his request for transcripts in the appeal, alleging that he had ordered and paid Rebecca Harris, the court reporter who took testimony in the divorce, for a transcript of the trial proceedings, but that she had not provided a transcript and had failed to respond to his repeated attempts to contact her, and could not be located.

108. On March 8, 2012, Mr. Wright filed an appellant's brief on Ms. Kyle's behalf in the Court of Civil Appeals, but on the same date, the Clerk of the Court of Civil Appeals notified Mr. Wright that his brief was prematurely filed, as the record on appeal had not been completed.

109. On March 26, 2012, Mr. Wright filed a motion to require the court reporter, Ms. Harris, to show cause why she should not be held in contempt of court for failure to complete the Kyle divorce case transcript.

110. Judge Batiste did not set this motion for a hearing prior to Mr. Wright's death on June 16, 2012.

111. On November 14, 2012, attorney Randall W. Nichols filed a notice of appearance in the case for Ms. Kyle, and requested issuance of a subpoena duces tecum for Rebecca Harris for the Kyle transcript, but no return of service for this subpoena on Ms. Harris appears in Alacourt.

112. On January 21, 2013, Mr. Nichols filed a copy of the late Mr. Wright's firm's check payable to Rebecca Harris for \$1,012.00, dated January 5, 2012. The copy of the check filed with the court shows on its reverse side that Ms. Harris endorsed and negotiated that check on January 10, 2012.

113. On January 22, 2013, Mr. Kyle's attorney filed a "Renewed Motion to Dismiss Defendant's Motion for Good Cause." This motion, which characterizes Ms. Kyle's motion to show cause filed against Ms. Harris, as a "motion for good cause" to extend the time for the filing of the court reporter's transcript, pursuant to Rule 11 of the Alabama Rules of Appellate Procedure, sought to have the motion to show cause dismissed.

114. On February 8, 2013, Judge Batiste granted this motion.

115. On May 17, 2013, the Alabama Court of Appeals reversed Judge Batiste's attachment order holding that she had no jurisdiction in that contempt proceeding.

116. From the date of Judge Batiste's entry on November 3, 2011 of the "Decree Ordering Attachment" directing that Ms. Kyle be incarcerated and held without bond until the date of the vacation of that order by the Court of Appeals on May 17, 2013—a period of 18 months and 14 days—the decree ordering Ms. Kyle's arrest and detention

remained outstanding and posted in the NCIC's database which was available to all law enforcement agencies and personnel nationwide.

117. During this 18 month period Ms. Kyle during which she was in fear of being arrested on Judge Batiste's November 3, 2011 Decree Ordering Attachment, she did not return to Alabama or otherwise travel by airline and drastically curtailed her travel by automobile, e.g., during this period Ms. Kyle did not travel to Georgia for her daughter's college graduation for fear of being arrested on the outstanding writ of attachment at the airport.

Charges 1 through 5

Contempt proceedings against Sonja Bell

in *Barry Bearden v. Nolanda H. Bearden*, DR-2009-1269

Charge 1

(*Canon 2A*)

118. By failing to comply with Alabama and federal law regarding her exercise of contempt power against Sonja Bell in *Barry Bearden v. Nolanda H. Bearden*, DR-2009-1269 and by entering an order or orders in that case directing the unauthorized, unwarranted, and unlawful arrest and jailing or incarceration of Sonja Bell, Judge Batiste violated Canon 2A which provides:

A judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Charge 2

(*Canon 3A(1)*)

119. By failing to comply with Alabama and federal law regarding her exercise of contempt power against Sonja Bell in *Barry Bearden v. Nolanda H. Bearden*, DR-2009-1269 and by entering an order or orders in that case directing the unauthorized, unwarranted, and unlawful arrest and jailing or incarceration of Sonja Bell, Judge Batiste violated Canon 3A(1) which provides:

A judge should be faithful to the law and maintain professional competence in it.

Charge 3

(Canon 3A(4))

120. By failing to comply with Alabama and federal law regarding her exercise of contempt power against Sonja Bell in *Barry Bearden v. Nolanda H. Bearden*, DR-2009-1269 and by entering an order or orders in that case directing the unauthorized, unwarranted, and unlawful arrest and jailing or incarceration of Sonja Bell, Judge Batiste violated Canon 3A(4) which provides:

A judge should accord to every person who is legally interested in a proceeding, or his lawyer, full right to be heard according to law[.]

Charge 4

(Canon 1)

121. By failing to comply with Alabama and federal law regarding her exercise of contempt power against Sonja Bell in *Barry Bearden v. Nolanda H. Bearden*, DR-2009-1269 and by entering an order or orders in that case directing the unauthorized, unwarranted, and unlawful arrest and jailing or incarceration of Sonja Bell, Judge Batiste violated Canon 1 which provides:

A judge should . . . observe high standards of conduct so that the integrity and independence of the judiciary may be preserved.

Charge 5

(Canon 2B)

122. By failing to comply with Alabama and federal law regarding her exercise of contempt power against Sonja Bell in *Barry Bearden v. Nolanda H. Bearden*, DR-2009-1269 and by entering an order or orders in that case directing the unauthorized, unwarranted, and unlawful arrest and jailing or incarceration of Sonja Bell, Judge Batiste violated Canon 2B which provides:

A judge . . . should avoid conduct prejudicial to the administration of justice which brings the judicial office into disrepute.

Charges 6 through 10

Contempt proceedings against Curtis Austin
in *Comelia Austin v. Curtis Austin*, DR-2004-421.01 and CV-2012-0949

Charge 6
(*Canon 2A*)

123. By failing to comply with Alabama and federal law regarding her exercise of contempt power against Curtis Austin in *Comelia Austin v. Curtis Austin*, DR-2004-421.01 and by entering an order or orders in that case directing the unauthorized, unwarranted, and unlawful arrest and jailing or incarceration of Curtis Austin, Judge Batiste violated Canon 2A which provides:

A judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Charge 7
(*Canon 3A(1)*)

124. By failing to comply with Alabama and federal law regarding her exercise of contempt power against Curtis Austin in *Comelia Austin v. Curtis Austin*, DR-2004-421.01 and by entering an order or orders in that case directing the unauthorized, unwarranted, and unlawful arrest and jailing or incarceration of Curtis Austin, Judge Batiste violated Canon 3A(1) which provides:

A judge should be faithful to the law and maintain professional competence in it.

Charge 8
(Canon 3A(4))

125. By failing to comply with Alabama and federal law regarding her exercise of contempt power against Curtis Austin in *Comelia Austin v. Curtis Austin*, DR-2004-421.01 and by entering an order or orders in that case directing the unauthorized, unwarranted, and unlawful arrest and jailing or incarceration of Curtis Austin, Judge Batiste violated Canon 3A(4) which provides:

A judge should accord to every person who is legally interested in a proceeding, or his lawyer, full right to be heard according to law[.]

Charge 9
(Canon 1)

126. By failing to comply with Alabama and federal law regarding her exercise of contempt power against Curtis Austin in *Comelia Austin v. Curtis Austin*, DR-2004-421.01 and by entering an order or orders in that case directing the unauthorized, unwarranted, and unlawful arrest and jailing or incarceration of Curtis Austin, Judge Batiste violated Canon 1 which provides:

A judge should . . . observe high standards of conduct so that the integrity and independence of the judiciary may be preserved.

Charge 10
(Canon 2B)

127. By failing to comply with Alabama and federal law regarding her exercise of contempt power against Curtis Austin in *Comelia Austin v. Curtis Austin*, DR-2004-421.01 and by entering an order or orders in that case directing the unauthorized, unwarranted, and unlawful arrest and jailing or incarceration of Curtis Austin, Judge Batiste violated Canon 2B which provides:

A judge . . . should avoid conduct prejudicial to the administration of justice which brings the judicial office into disrepute.

Charges 11 through 15

Contempt proceedings against Kizzy Lacey, Kimberly Clark, and Candice Gray Franklin

Allan Isom v. Cynthia Isom, DR-2010-803

Charge 11

(Canon 2A)

128. By failing to comply with Alabama and federal law regarding her exercise of contempt power against Kizzy Lacey, Kimberly Clark, and Candice Gray Franklin in *Allan Isom v. Cynthia Isom*, DR-2010-803 and by entering an order or orders in that case directing the unauthorized, unwarranted, and unlawful arrest and jailing or incarceration of Kizzy Lacey, Kimberly Clark, and Candice Gray Franklin, Judge Batiste violated Canon 2A which provides:

A judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Charge 12

(Canon 3A(1))

129. By failing to comply with Alabama and federal law regarding her exercise of contempt power against Kizzy Lacey, Kimberly Clark, and Candice Gray Franklin in *Allan Isom v. Cynthia Isom*, DR-2010-803 and by entering an order or orders in that case directing the unauthorized, unwarranted, and unlawful arrest and jailing or incarceration of Kizzy Lacey, Kimberly Clark, and Candice Gray Franklin, Judge Batiste violated Canon 3A(1) which provides:

A judge should be faithful to the law and maintain professional competence in it.

Charge 13

(Canon 3A(4))

130. By failing to comply with Alabama and federal law regarding her exercise of contempt power against Kizzy Lacey, Kimberly Clark, and Candice Gray Franklin in

Allan Isom v. Cynthia Isom, DR-2010-803 and by entering an order or orders in that case directing the unauthorized, unwarranted, and unlawful arrest and jailing or incarceration of Kizzy Lacey, Kimberly Clark, and Candice Gray Franklin, Judge Batiste violated Canon 3A(4) which provides:

A judge should accord to every person who is legally interested in a proceeding, or his lawyer, full right to be heard according to law[.]

Charge 14

(Canon 1)

131. By failing to comply with Alabama and federal law regarding her exercise of contempt power against Kizzy Lacey, Kimberly Clark, and Candice Gray Franklin in *Allan Isom v. Cynthia Isom*, DR-2010-803 and by entering an order or orders in that case directing the unauthorized, unwarranted, and unlawful arrest and jailing or incarceration of Kizzy Lacey, Kimberly Clark, and Candice Gray Franklin, Judge Batiste violated Canon 1 which provides:

A judge should . . . observe high standards of conduct so that the integrity and independence of the judiciary may be preserved.

Charge 15

(Canon 2B)

132. By failing to comply with Alabama and federal law regarding her exercise of contempt power against Kizzy Lacey, Kimberly Clark, and Candice Gray Franklin in *Allan Isom v. Cynthia Isom*, DR-2010-803 and by entering an order or orders in that case directing the unauthorized, unwarranted, and unlawful arrest and jailing or incarceration of Kizzy Lacey, Kimberly Clark, and Candice Gray Franklin, Judge Batiste violated Canon 2B which provides:

A judge . . . should avoid conduct prejudicial to the administration of justice which brings the judicial office into disrepute.

Charges 16 through 20

Contempt proceedings against Deva Walker
in *Materia J. Gipson v. Michael A. Gipson*, DR-2010-1395

Charge 16

(Canon 2A)

133. By failing to comply with Alabama and federal law regarding her exercise of contempt power against Deva Walker in *Materia J. Gipson v. Michael A. Gipson*, DR-2010-1395 and by entering an order or orders in that case directing the unauthorized, unwarranted, and unlawful arrest and jailing or incarceration of Deva Walker, Judge Batiste violated Canon 2A which provides:

A judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Charge 17

(Canon 3A(1))

134. By failing to comply with Alabama and federal law regarding her exercise of contempt power against Deva Walker in *Materia J. Gipson v. Michael A. Gipson*, DR-2010-1395 and by entering an order or orders in that case directing the unauthorized, unwarranted, and unlawful arrest and jailing or incarceration of Deva Walker, Judge Batiste violated Canon 3A(1) which provides:

A judge should be faithful to the law and maintain professional competence in it.

Charge 18

(Canon 3A(4))

135. By failing to comply with Alabama and federal law regarding her exercise of contempt power against Deva Walker in *Materia J. Gipson v. Michael A. Gipson*, DR-2010-1395 and by entering an order or orders in that case directing the unauthorized,

unwarranted, and unlawful arrest and jailing or incarceration of Deva Walker, Judge Batiste violated Canon 3A(4) which provides:

A judge should accord to every person who is legally interested in a proceeding, or his lawyer, full right to be heard according to law[.]

Charge 19

(Canon 1)

136. By failing to comply with Alabama and federal law regarding her exercise of contempt power against Deva Walker in *Materia J. Gipson v. Michael A. Gipson*, DR-2010-1395 and by entering an order or orders in that case directing the unauthorized, unwarranted, and unlawful arrest and jailing or incarceration of Deva Walker, Judge Batiste violated Canon 1 which provides:

A judge should . . . observe high standards of conduct so that the integrity and independence of the judiciary may be preserved.

Charge 20

(Canon 2B)

137. By failing to comply with Alabama and federal law regarding her exercise of contempt power against Deva Walker in *Materia J. Gipson v. Michael A. Gipson*, DR-2010-1395 and by entering an order or orders in that case directing the unauthorized, unwarranted, and unlawful arrest and jailing or incarceration of Deva Walker, Judge Batiste violated Canon 2B which provides:

A judge . . . should avoid conduct prejudicial to the administration of justice which brings the judicial office into disrepute.

Charges 21 through 25

Contempt proceedings against Barbara D. Kyle
Richard Ingram Kyle v. Barbara Dill Kyle, DR-2009-1260

Charge 21

(*Canon 2A*)

138. By failing to comply with Alabama and federal law regarding her exercise of contempt power against Barbara D. Kyle in *Richard Ingram Kyle v. Barbara Dill Kyle*, DR-2009-1260 and by entering an order or orders in that case directing the unauthorized, unwarranted, and unlawful arrest and jailing or incarceration of Barbara D. Kyle, Judge Batiste violated Canon 2A which provides:

A judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Charge 22

(*Canon 3A(1)*)

139. By failing to comply with Alabama and federal law regarding her exercise of contempt power against Barbara D. Kyle in *Richard Ingram Kyle v. Barbara Dill Kyle*, DR-2009-1260 and by entering an order or orders in that case directing the unauthorized, unwarranted, and unlawful arrest and jailing or incarceration of Barbara D. Kyle, Judge Batiste violated Canon 3A(1) which provides:

A judge should be faithful to the law and maintain professional competence in it.

Charge 23

(*Canon 3A(4)*)

140. By failing to comply with Alabama and federal law regarding her exercise of contempt power against Barbara D. Kyle in *Richard Ingram Kyle v. Barbara Dill Kyle*, DR-2009-1260 and by entering an order or orders in that case directing the unauthorized,

unwarranted, and unlawful arrest and jailing or incarceration of Barbara D. Kyle, Judge Batiste violated Canon 3A(4) which provides:

A judge should accord to every person who is legally interested in a proceeding, or his lawyer, full right to be heard according to law[.]

Charge 24

(Canon 1)

141. By failing to comply with Alabama and federal law regarding her exercise of contempt power against Barbara D. Kyle in *Richard Ingram Kyle v. Barbara Dill Kyle*, DR-2009-1260 and by entering an order or orders in that case directing the unauthorized, unwarranted, and unlawful arrest and jailing or incarceration of Barbara D. Kyle, Judge Batiste violated Canon 1 which provides:

A judge should . . . observe high standards of conduct so that the integrity and independence of the judiciary may be preserved.

Charge 25

(Canon 2B)

142. By failing to comply with Alabama and federal law regarding her exercise of contempt power against Barbara D. Kyle in *Richard Ingram Kyle v. Barbara Dill Kyle*, DR-2009-1260 and by entering an order or orders in that case directing the unauthorized, unwarranted, and unlawful arrest and jailing or incarceration of Barbara D. Kyle, Judge Batiste violated Canon 2B which provides:

A judge . . . should avoid conduct prejudicial to the administration of justice which brings the judicial office into disrepute.

Charges 26 through 30

Contempt proceedings against Sonja Bell, Curtis Austin, Kizzy Lacey, Kimberly Clark,
Candice Franklin, Deva Walker, and Barbara Kyle in the subject cases

Pattern and practice

Charge 26

(Canon 2A)

143. By failing to comply with Alabama and federal law regarding her exercise of contempt power in the subject cases and by entering orders in those cases directing the unauthorized, unwarranted, and unlawful arrest and jailing or incarceration of litigants or witnesses, Judge Batiste through a repeated pattern and practice violated Canon 2A which provides:

A judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Charge 27

(Canon 3A(1))

144. By failing to comply with Alabama and federal law regarding her exercise of contempt power in the subject cases and by entering orders in those cases directing the unauthorized, unwarranted, and unlawful arrest and jailing or incarceration of litigants or witnesses, Judge Batiste through a repeated pattern and practice violated Canon 2A which provides:

A judge should be faithful to the law and maintain professional competence in it.

Charge 28

(Canon 3A(4))

145. By failing to comply with Alabama and federal law regarding her exercise of contempt power in the subject cases and by entering orders in those cases directing the unauthorized, unwarranted, and unlawful arrest and jailing or incarceration of litigants or

witnesses, Judge Batiste through a repeated pattern and practice violated Canon 2A which provides:

A judge should accord to every person who is legally interested in a proceeding, or his lawyer, full right to be heard according to law[.]

Charge 29

(Canon 1)

146. By failing to comply with Alabama and federal law regarding her exercise of contempt power in the subject cases and by entering orders in those cases directing the unauthorized, unwarranted, and unlawful arrest and jailing or incarceration of litigants or witnesses, Judge Batiste through a repeated pattern and practice violated Canon 2A which provides:

A judge should . . . observe high standards of conduct so that the integrity and independence of the judiciary may be preserved.

Charge 30

(Canon 2B)

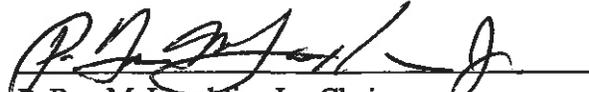
147. By failing to comply with Alabama and federal law regarding her exercise of contempt power in the subject cases and by entering orders in those cases directing the unauthorized, unwarranted, and unlawful arrest and jailing or incarceration of litigants or witnesses, Judge Batiste through a repeated pattern and practice violated Canon 2A which provides:

A judge . . . should avoid conduct prejudicial to the administration of justice which brings the judicial office into disrepute.

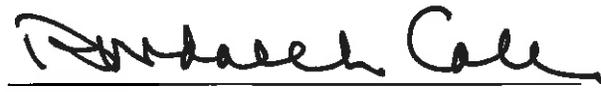
Done this 28th day of June, 2013.

BY ORDER OF THE COMMISSION

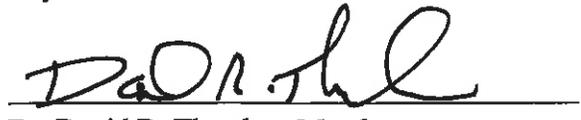
THE JUDICIAL INQUIRY COMMISSION

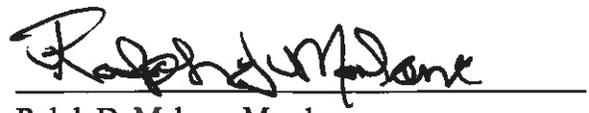

P. Ben McLauchlin, Jr., Chairman


Charles David Scott, First Vice Chairman


Randall L. Cole, Second Vice Chairman

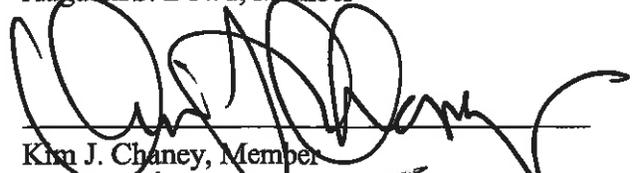

Craig S. Pittman, Member

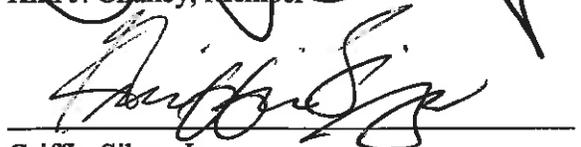

Dr. David R. Thrasher, Member


Ralph D. Malone, Member


Billy C. Bedsole, Member


Augusta S. Dowd, Member


Kim J. Chaney, Member


Griffin Sikes, Jr.
Attorney for the Commission