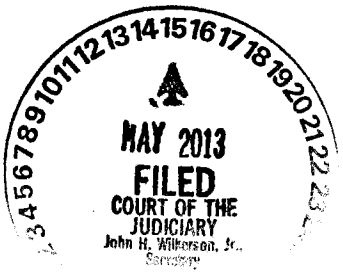
IN THE ALABAMA COURT OF THE JUDICIARY

In the Matter of:

DOROTHEA BATISTE,
Jefferson County Circuit Judge

Case No. 43



ANSWER TO COMPLAINT

COMES now the respondent, Judge Dorothea Batiste, and, as Answer to the Complaint against her before the Alabama Court of the Judiciary, states:

1. Admits the allegations of paragraph 1.

2. Denies the allegations of paragraph 2 of the Complaint, for reasons set forth more fully in my responses to paragraphs 9-117 of the Complaint; further avers that the entire proceeding against her by the AJIC is an abuse of process and travesty of justice spurred on by retaliation by Judge Scott Vowell against her for Batiste's having rejected Vowell's sexual advances during the first year-and-one-half of her judgeship in Jefferson County, 2011-2012. Judge Batiste also asserts that she is a victim of race discrimination because of the disparate way she, as a black person, has been treated for her use of the contempt power of the judiciary, when compared to certain other white circuit court judges in Jefferson and Chilton Counties who have used, and/or abused, the contempt power for far greater lengths of time and under much more questionable circumstances. Judge Batiste also believes that her identification as a "colored Republican," so derisively referred to by Scott Vowell as such, has also factored into Scott Vowell's actions against her.

3-7. Denies the allegation of paragraph 3-7 of this Complaint.

A.

Contempt Proceedings Against Sonja Bell

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

8. Admits that the AJIC realleges paragraphs 1-7 of the Complaint.

9. Denies paragraph 9, because the returned subpoena states that it was personally served upon Ms. Bell.

10. Admits the subpoena was served on Ms. Bell.

11. Denies knowledge or information sufficient to form a belief as to the truth of this allegation of paragraph 11.

12. Denies knowledge or information sufficient to form a belief as to the truth of this allegation of paragraph 12.

13. Denies knowledge or information sufficient to form a belief as to the truth of this allegation of paragraph 13, but maintains that the subpoena was valid on its face, and gave Ms. Bell notice of an obligation to be present in court.

14. Denies knowledge or information sufficient to form a belief as to the truth of this allegation of paragraph 14, but admits that it is routine for my staff to tell litigants what time they are supposed to be in court.

15. Denies the allegation of paragraph 15, but avers that the subpoena for her to appear in court on August 10, 2011, reflected that Ms. Bell had been personally served with said subpoena. As to what advice Ms. Bell received from her attorney, I do not know.

16. Admits that Ms. Bell did not appear in court, but denies knowledge or information sufficient to form a belief as to the truth of this allegation of paragraph 16.

17. Denies knowledge or information sufficient to form a belief as to the truth of this allegation of paragraph 17.

18. Admits that the Bearden case was not tried on August 10, 2011, and was continued because of the refusal of Ms. Bell as it was continued because of the refusal of Ms. Bell to be present in court. Ms. Bell was the key witness, and numerous previous attempts to have Ms. Bell in court for depositions, court appearances, etc., to which she had been subpoenaed had failed. Further, the contempt power was only exercised at the request of the opposing party's counsel "due to numerous failures to appear by the witness." (Also, denies Footnote No. 7).

19. Denies the allegation of paragraph 19, and avers that pursuant to Code of Ala.12-21-182 and Alabama case law, Palmer vs. Palmer, 556 So. 2d 39011989, I had the discretion to exercise the contempt power that I did.

20. Admits that I issued a writ of attachment with a proviso that Ms. Bell "not be released on bond" but vigorously deny that it violates any state law, including the Alabama Constitution, or Sullivan v. Sullivan.

21. Denies knowledge or information sufficient to form a belief as to the truth of this allegation of paragraph 21.

22. Denies knowledge or information sufficient to form a belief as to the truth of the first phrase of paragraph 22, but admits that Ms. Walls filed some motion on Ms. Bell's behalf, but is not sure when said Motion was filed.

23. Admits that Mr. Walls attempted to come by my office, but I am not sure what date that was.

24. Denies knowledge or information sufficient to know what conversations my judicial assistant was having with Mr. Walls.

25. Denies knowledge or information what Mr. Walls relayed to Ms. Bell, and denies knowledge or information of what management position Ms. Bell may have had at Blue Cross-Blue Shield, and further denies knowledge or information as to what theories or mental machinations Ms. Bell had.

26. Denies knowledge or information of the exact time when Ms. Bell reported to jail and exactly how long she stayed. Refer the AJIC to court records.

27. Objects to the symantic phrase, "[I]n return," but admits there was a motion hearing in my courtroom.

28. Denies that I did not allow Ms. Walls to be heard in arguing the law or facts concerning the motion or that I refused to hear any testimony. The AJIC has misleadingly quoted only a small portion (less than a page) of a hearing with a 26-page transcript. During the course of that hearing, Ms. Bell's counsel argued at great length (at least 14 pages) espousing why his client has been treated wrongly.

29. Admit the allegations of paragraph 29.

B.

Contempt Proceedings Against Curtis Austin

Camelia Austin vs. Curtis Austin, DR 2004-421.01 and CU2012-0949

30. Admits that AJIC realleges its allegations.

31. Admits that the Austins were earlier divorced, and that a petition to modify child support payments was made and that other things, like health insurance and medical support, were also requested. Admits that Curtis Austin was actually served on March 20, 2012, **not** April 5, 2012.

32. Denies knowledge or information sufficient to form a belief as to the truth of this allegation of paragraph 32.

33. Admits that I entered a scheduling order, but deny that the motion was not served on Mr. Austin, or that he did not receive a copy of it, or have prior knowledge. On the contrary, in his complaint to the AJIC, Mr. Austin admits, in paragraph 3 of his complaint, that he knew about the conference date, called, and said he missed it. Since the trial date was on the same piece of paper as the conference date, which paper was May 11, 2012, it is a

blatant falsehood for Mr. Austin to deny he knew about the trial date, since it was staring him in the face on the same paper.

34. Admits that the caption of the motion from the attorney for Amanda Austin should have given Mr. Austin or his attorney ample notice of the contempt portion of the hearing.

35. Denies that the motion did not seek new or additional relief, which is one reason why the Alabama Court of Civil Appeals upheld my ruling.

36. Denies the AJIC's interpretation of Rule 5, ARCP, but admits that the motion was served on Mr. Austin, one way or the other, and therefore he should have had knowledge of it, if he had bothered to take a look at it.

37. Admits that there was a hearing on June 21, 2012, but denies that Mr. Austin did not have notice or knowledge of the hearing, such that he should have been present.

38. Admits the allegations of paragraph 38.

39. Admits that I did issue a Decree Ordering Attachment. However, it is misleading for the AJIC to refer to my former order as unspecified. Instead, Mr. Austin had first violated Judge Pate's order of 2004, and he had also violated my previous order, and the Alabama Court of Civil Appeals upheld my order that Mr. Austin owed back child support and should pay it.

40. Denies that I did not comply with the appropriate rule concerning contempt petitions, as I understood them, but I quote Judge McLaughlin of the AJIC as stating to me as follows on January 18, 2013:

> **"Judge, regardless of what comes of this proceeding, I would urge you to do a careful study of the law of contempt. I think you have a misunderstanding of some of the aspects of contempt. A lot of judges do. It's sort of a difficult aspect of the law; and we don't deal with it as much as we do some other aspects; and, consequently, we don't - - just not as familiar with it as we need to be."**

Further, I followed the case of Hayes v. Hayes, 472 So. 2d 646 (1985), which stated that service by mail was valid, since this was not the initial proceeding but a continuation of prior proceedings.

41. Admits that Mr. Austin was arrested, but the AJIC has stated the incorrect date.

42. Admits that Mr. Austin did eventually have an attorney who sought certain relief, but is unsure of the exact date.

43. Denies knowledge or information as to if, or when, Mr. Wess may have contacted my office, but admits that a hearing was not initially set, because the two sets of attorneys appeared to be resolving the matter between themselves. However, a later hearing date was scheduled on July 26, 2012, in the afternoon.

44. Vigorously denies the allegations of paragraph 44.

45. Vigorously denies the allegations of paragraph 45, and believes it would have been improper to have ex-parte conversations with an attorney.

46. Denies knowledge or information sufficient to form a belief as to the truth of this allegation of paragraph 46.

47. Admits that some kind of legal paperwork made its way to Judge Vance, apparently due to the intervention of Scott Vowell on July 20; admits that I had some conversations with Judge Vance in which I expressed my dismay at my case being taken away from me. I further informed him that the attorneys were to appear in my court. Judge Vance replied that he did not care, and that he was going to hear the case anyway.

48. Admits that Judge Vance's writ allowed Mr. Austin to be released from jail (denies knowledge or information concerning Footnote No. 8).

49. Admits that Mr. Austin appealed his case to the Alabama Court of Civil Appeals and that said court reversed my ruling. I disagree, however, with several of the purported quotes attributed to the Alabama Court of Civil Appeals by the AJIC. I do acknowledge, however, that the issue of contempt was not substantially addressed in the opinion, and I believe that is the case because the Alabama Court of Civil Appeals agrees with what Judge McLaughlin said quoted in paragraph 40 above.

50. Denies knowledge or information sufficient to form a belief as to the truth of this allegation of paragraph 50.

C.

Contempt Proceedings Against Kizzy Lacey,

Kimberly Clark, and Candace Gray Franklin

Allan Isom v. Cynthia Isom, DR 2010-803

51. Admits that AJIC realleges its allegations.

52. Admits the allegations of paragraph 52.

53. Admits the allegations of paragraph 53.

54. Denies knowledge or information sufficient to form a belief as to the truth of this allegation of paragraph 54.

55. Admits the allegations of paragraph 55.

56. Admits the allegations of paragraph 56.

57. Denies that the affidavit of Mr. Isom's attorney says anything about August 18 and 19, 2011, but admits that the affidavit acknowledges both a September 12 and a September 13 court date.

58. Admits that the affidavit purports to make certain attributions of fact, but denies knowledge or information sufficient to confirm the truth of said facts.

59. Denies knowledge or information sufficient to form a belief as to the truth of this allegation of paragraph 59.

60. Denies knowledge or information of the allegations of paragraph 60, except to say that at no time did I release Ms. Lacy as a witness.

61. Denies knowledge or information sufficient to form a belief as to the truth of this allegation of paragraph 61, except avers that the affidavit of attorney Virginia Meigs states that she notified her witnesses to be present at a continued trial date.

62. Denies knowledge or information sufficient to form a belief as to the truth of this allegation of paragraph 61, except avers that the affidavit of attorney Virginia Meigs states that she notified her witnesses to be present at a continued trial date.

63. Admits the allegations of paragraph 63.

64. Admits that I did issue an attachment order for the three witnesses, and denies that I incorrectly stated that subpoenas were served, because I have seen, and have in my possession, the initial subpoenas, copies of which have already been provided to the AJIC.

65. Admits that the three decrees directed attachment of the three witnesses, but the correct word was not "bail" but "bond."

66. Denies that I did not comply with Rule 70A, because I was following the authority of Code of Alabama, §12-21-182 and Palmer v. Palmer, 556 So. 2d 390 (1989).

67. Denies that I violated state law, and AJIC attorney Sikes has mis-cited Sullivan v. State, 939 So. 2d 5-8 at 64 (Al. Civ. App. 2006), because that case was not concerning a subpoenaed witness but was instead in regards to an attorney named Sullivan, who was charged with obstructing justice, because she had allegedly prevented a witness from

coming to court. As a result, the Court found said attorney in direct contempt, and put her (the attorney) in jail.

68. Denies knowledge or information sufficient to form a belief as to the truth of this allegation of paragraph 68.

69. Admits that these witnesses may have hired attorneys to represent them, but denies any further knowledge about the allegations of the complaint.

70. Denies that I recalled the attachment order due to a lack of knowledge. Instead, I put it on the record that said witnesses were aware of the next court day, and I received the witnesses' assurances that they would be present.

D.

Contempt Proceedings Against Deva Walker

Materia S. Gipson v. Michael A. Gipson. DR 2010-1395

71. Admits that the AJIC realleges its allegations.

72. Admits that Deva Walker was served with a subpoena to be present in court.

73. Admits that the case was not tried on September 12, 2011, but disagrees that it was continued to January 25, 2012.

74. Denies that Ms. Walker was ever told that the case had been settled or resolved. I am sure I did not tell her such a thing. Ms. Walker was an essential witness for an unresolved custody battle, with many important issues, and she greatly prejudiced and inconvenienced everyone by her continued absences.

75. Denies that Ms. Walker ever in good faith believed that the case had been concluded. She may have wishfully hoped that, because she had a number of embarrassing vulnerabilities, including having a baby out of wedlock for the husband, Mr. Gibson, in the divorce case, and because Ms. Walker took the children of the husband, Mr. Gibson, to a "shot house" (where gambling, prostitution, etc. occurs), and Mr. Gibson had even been arrested for that. Because Ms. Walker failed to appear as a witness, it forced two young kids to have to get on the witness stand and testify to some of the foregoing, including pornography and then seeing the father doing certain things to himself. The father's conduct was outrageous, and Ms. Walker's repeated absence only complicated matters, especially for the children. I even took a 30-minute recess during trial to give Mr. Gibson a chance to have the witness present, but she did not show up.

76. Admits that the Gibson divorce case was not concluded on that initial occasion.

77. Admits that the Gibson divorce case was not tried until June 27, 2012.

78. Denies that counsel for Materea Gibson requested issuance and service of six subpoenas, but that he asked me to extend the trial subpoenas, which I did. I did not issue a Rule NISI against these witnesses, but instead issued a Rule NISI hearing.

79. Admits the allegations of paragraph 79.

80. Admits the allegations of paragraph 80.

81. Admits that back in February 28, 2012, I issued an order in open court for all witnesses to be present, and the attorney for Mr. Gibson attested in open court that he had contacted the witnesses. That is why the 30-minute recess was taken.

82. Admits that I issued an order on June 27, 2012 for attachment, because witness Deva Walker was not there, contrary to my earlier orders that she be present. I have no knowledge as to why exhibits A and B were not attached to an order on the Alacourt website.

83. Deny that I did not comply with Rule 70 (A). Indeed, as in answer to paragraph 66, I was following the authority of the Code of Alabama, § 12-21-182 and Palmer v. Palmer, 556 So. 2d 390 (1989).

84. Admits that I issued a writ of attachment for Ms. Walker, but vehemently deny that I violated state law. Further, I believe that Sullivan v. State, as stated in my answer to paragraph 67, is inapplicable.

85. Denies knowledge or information sufficient to form a belief as to the truth of this allegation of paragraph 85, but insists that my earlier order in court, and confirmation from counsel, that witnesses had been notified is what I relied upon.

86. Denies knowledge or information sufficient to form a belief as to the truth of this allegation of paragraph 86.

87. Denies the allegation of paragraph 87. I did not discover that this order had been issued until recently. In hindsight, I now suspect that my judicial assistant Teresa Love may have issued this order without telling me, shortly before she quit. This was after I warned her, upon discovering that this had happened in another case, that she would be terminated if it happened again. I told her this was "unacceptable behavior, and I would not tolerate her" doing it again. I made Ms. Love repeat these words back to me.

88. Admits the allegations of paragraph 88.

E.

Contempt Proceedings Against Barbara Kyle

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

89. Admits that the AJIC realleges its allegations.

90. Admits the allegations of paragraph 90, except adds that Barbara Kyle was also ordered to make her monthly payments on the house.

91. Denies the allegation of paragraph 91; Ms. Kyle was ordered to continue making payments on all marital debts jointly owned by the parties. This was the same as Judge Pate's order, and included the mortgage payments, among others.

92. Denies knowledge or information sufficient to form a belief as to the truth of this allegation of paragraph 92.

93. Denies that the divorce decree did not require Ms. Kyle to "pay and catch up the mortgage" and admits that Mr. Kyle's attorney did file two Emergency Motions.

94. Admits that I did set an order as an emergency motion, but that was on defendant's motion to alter, amend, or vacate.

95. Denies knowledge or information sufficient to form a belief as to the truth of this allegation of paragraph 95.

96. Denies knowledge or information sufficient to form a belief as to the truth of the allegations concerning the existence, or extent, of Ms. Kyle's fear or what airline reservations she attempted to make.

97. Denies knowledge or information sufficient to form a belief as to the truth of any allegations of what Ms. Kyle attempted to email to her now-deceased attorney.

98. Admits that a hearing was held on November 3, 2011 but denies knowledge as to where Ms. Kyle was.

99. Denies that Mr. Wright informed me anything as to where Ms. Kyle was. In fact, I deliberately quizzed him as to her whereabouts, and he either evasively, or due to his lack of knowledge, would not tell me. Further, Mr. Wright's motion complaining about Ms. Kyle's being sick or out of state was not filed until a day after I had issued the writ of attachment.

100. Admits the allegations of paragraph 100.

101. Denies that I did not comply with Rule 70(A). As stated in my answer to paragraphs 66 and 83, I was following the authority of the Code of Alabama, § 12-21-182 and Palmer v. Palmer, 556 So. 2d 390 (1989) and Alabama Rules of Civil Procedure 5(d), and no objection was made to service at the November 3 hearing.

102. Denies that I violated any law, and I repeat again that Sullivan v. State is not applicable to this case.

103. Admits the allegations of paragraph 103.

104. Admits that Mr. Wright filed a motion, but I deny the allegations contained in his motion.

105. Admits that I denied the motion, but states that the initial order to Ms. Kyle was issued by Judge Pate on December 10, 2009, and he issued a subsequent order on February 24, 2010, and I issued another order on August 10, 2011, that she did not follow. Thus, Ms. Kyle was in violation of numerous orders of two judges. Contrary to our orders, and in prejudice of the rights of other parties, Ms. Kyle disposed of $184,000 in marital assets, and for 99% of what she disposed of, she had no receipts for, or other proof of, what she spent the money on.. Further, in open court (which is in a transcript), Ms. Kyle stated that her health was good. With a smirk on her face, and looking directly at me, Ms. Kyle answered opposing counsel by saying she was "going to make sure that he (her ex-husband) will never see a dime of my inheritance."

106. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 106.

107. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 107.

108. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 108.

109. Denies knowledge or information sufficient to form a belief as to what motion Ms. Wright filed on March 26, 2012, but I later learned that some such motion had been filed. These alleged complaining parties against me before the AJIC wanted me to issue a writ of attachment on the court reporter, even though she did not for me, and a subpoena had not been served on her.

110. Admits that Randall W. Nichols filed a notice of appearance in court, but he did not issue a subpoena duces tecum, but only a subpoena.

111. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 111.

112. Admits that Mr. Kyle's attorney filed some kind of motion, but does not recall the timing or substance, as a copy of said order is not in my file.

113. Admits that I can neither admit nor deny this allegation because I cannot recall the same, and I do not have a copy of said order in my file. Further, the AJIC's suspension of me from my office prevents me from looking at Alacourt records.

114. Admits to the best of my knowledge (which is limited since I am now denied access to my office), the allegations of paragraph 114.

115. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 115.

116. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 116.

117. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 117.

118-
147. Denies the allegations of paragraphs 118-147 and demands strict proof thereof.

AFFIRMATIVE DEFENSES

As further affirmative defenses, the respondent, Dorothea Batiste, shows:

1. The Complaint fails to state a claim upon which relief can be granted.

2. The entire Complaint is an abuse of process, and travesty of justice, as set forth more fully in Respondent Batiste's Rule 19 Petition for Relief for Violation of AJIC Rules by the Alabama Judicial Inquiry Commission, etc. ("Rule 19 Petition"), being filed contemporaneously with this Answer, in the Supreme Court of Alabama.

3. This entire Complaint, in its original instance, was wrongfully motivated by a sexual harassment retaliation by Judge Scott Vowell due to Respondent Batiste's having rejected Vowell's sexual advances early in her judgeship (See copy of Batiste's EEOC charge No. 420-2013–01858 attached to Batiste's Discovery Responses).

4. This Complaint also amounts to a form of race discrimination by the AJIC and Scott Vowell, due to the disparate treatment of Judge Batiste when compared to at least two other white Circuit Court judges, Susan Childers of Jefferson County, and Sibley Reynolds of Chilton County, who have engaged in far more lengthy, frequent, and draconian uses of the contempt power without penalty or discipline by the AJIC. (See copy of Batiste's EEOC charge No. 420-2013-01858 attached to Batiste's Discovery Responses).

5. The Complaint violates the AJIC's own handbook entitled "Judicial Conduct and Ethics" (A Reference Manual for Alabama Judges) by failing to allege, or prove, bad faith by Batiste, in connection with her alleged abuse of judicial discretion.

6. The Complaint, or at least parts of it, also violates the AJIC's afore-mentioned handbook by its failure to have been instituted by verified complaints filed by a member of the public, instead of simply letters forwarded by the afore-referenced Scott Vowell for highly-biased and improper reasons.

7. The Complaint also violates respondent Batiste's right of due process of law because it has denied Batiste an opportunity to confront her accusers, and even take the deposition of Scott Vowell, which deposition was requested by her attorney before the AJIC's Complaint was issued, all before respondent Batiste was suspended by the AJIC. (See Exhibit A). The AJIC ignored attorney McPhillips' request to take Scott Vowell's deposition, or did not answer it, but instead rushed to file its complaint against Batiste before the Court of the Judiciary.

8. The Complaint also violates respondent Batiste's right to equal protection of the laws guaranteed by the 14th Amendment's equal protection clause, because the Complaint treats Batiste in a disparate manner, in seeking to sanction and punish Batiste for alleged misuse of her contempt power when far greater misuses of said powers have been exercised by white circuit judges in Alabama without penalty or sanction by the AJIC.

Respectfully submitted,

By **s/Julian McPhillips**
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Attorney for Plaintiff

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CERTIFICATE OF SERVICE

I hereby certify that I have e-filed the foregoing, and have served the same, via e-file, upon the following, on this the 14th day of May, 2013:

Griffin Sikes, Esq.
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Alabama Judicial Inquiry Commission
401 Adams Street
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JULIAN L. McPHILLIPS