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IN THE MATTER OF:  
DOROTHEA BATISTE  
Circuit Judge of Jefferson County,  
Tenth Judicial Circuit of Alabama

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**FINAL JUDGMENT AND SANCTIONS**

On April 19, 2013, the Alabama Judicial Inquiry Commission (the "JIC"), filed a complaint with the Alabama Court of the Judiciary ("the Court" or "this Court") charging Judge Dorothea Batiste ("Judge Batiste") with violating the Canons of Judicial Ethics while in her capacity as a circuit judge in Jefferson County, Alabama. Judge Batiste is a circuit judge in the Birmingham Division of the Jefferson County Circuit Court; she was elected in 2010 and took office in January 2011.

The JIC's complaint--as amended in June 2013--alleges that

"Judge Batiste[] violat[ed] [the] Alabama Canons of Judicial Ethics through her repeated failures 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[, Ala. R. Civ. P.] ... in a series of domestic relations cases in [the] Jefferson County Circuit Court ... in which Judge Batiste entered unauthorized, unwarranted, and unlawful orders for the arrest and jailing of incarceration of litigants or witnesses."

(The JIC's amended complaint, pp. 1-2.) As a threshold matter, we briefly address the nature of contempt proceedings in Alabama.

"Since July 11, 1994, all contempt proceedings in civil actions have been governed by Rule 70A, Ala. R. Civ. P. See Savage v. Ingram, 675 So. 2d 892, 893 (Ala. Civ. App. 1996); Ex parte Boykin, 656 So. 2d 821, 828 n.5 (Ala. Civ. App. 1994)." T.L.D. v. C.G., 849 So. 2d 200, 204 (Ala. Civ. App. 2002).

Rule 70A--which govern all contempt proceedings--states the following scope and definitions:

"(1) Scope. This rule shall apply to all civil or criminal contempt proceedings arising out of civil actions.

"(2) Definitions.

"(A) 'Direct contempt' means disorderly or insolent behavior or other misconduct committed in open court, in the presence of the judge, that disturbs the court's business, where all of the essential elements of the misconduct occur in the presence of the court and are actually observed by the court, and where immediate action is essential to prevent diminution of the court's dignity and authority before the public.

"(B) 'Constructive contempt' means any criminal or civil contempt other than a direct contempt.

"(C) 'Criminal contempt' means either

"(i) Misconduct of any person that obstructs the administration of justice and that is committed either in the court's presence or so near thereto as to interrupt, disturb, or hinder its proceedings, or

"(ii) Willful disobedience or resistance of any person to a court's lawful writ, subpoena, process, order, rule, or command, where the dominant purpose of the finding of contempt is to punish the contemnor.

"(D) 'Civil contempt' means willful, continuing failure or refusal of any person to comply with a court's lawful writ, subpoena, process, order, rule, or command that by its nature is still capable of being complied with."

Rule 70A(a), Ala. R. Civ. P.

"A party's actions can support both criminal contempt and civil contempt. See State v. Thomas, 550 So. 2d 1067 (Ala. 1989).

"'Civil contempt seeks to compel or coerce compliance with orders of the court, while a criminal contempt is one in which the purpose of the proceeding is to impose punishment for disobedience of orders of the court ....

"'The sanction for civil contempt continues indefinitely until the contemnor performs as ordered. A critical distinction is that the sanction for criminal contempt is limited in Alabama district and circuit courts to a maximum fine of \$100 and imprisonment not to exceed five days.'

"State v. Thomas, 550 So. 2d at 1072."

T.L.D., 849 So. 2d at 205.

On July 29, 30, and 31, 2013, this Court conducted a hearing upon the complaint ("the trial") and, based on the testimony presented at the trial, this Court hereby finds as follows:

I. Bearden v. Bearden, (DR-09-1269)

A. Factual Findings

A subpoena was issued to compel Sonja Bell--a witness in the Bearden matter--to appear at a divorce trial set for August 10, 2011; that subpoena was left on the front door of Bell's residence on August 8, 2011.<sup>1</sup> On August 9, 2011--following a motion filed by the attorney seeking to compel Bell's appearance--Judge Batiste entered an order requiring "[t]he witness ... to appear at the August 10, 2011 trial

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<sup>1</sup>The return of service shown on Bell's subpoena--the JIC's exhibit 1--reflects that the subpoena was personally served on Bell, and pursuant to Rule 4(i)(1)(C), Ala. R. Civ. P., this is prima facie evidence of service. Bell testified, however, that the subpoena was not, in fact, served on her. Additionally, the individual who served the subpoena on Bell could not testify whether he personally served the subpoena on Bell; likewise, the attorney who sought to compel Bell's appearance indicated in a motion subsequent to service--the JIC's exhibit 2--that the "subpoena was served on [Bell] by posting a trial subpoena at the residence of [Bell]." This Court heard no evidence to contradict Bell's testimony or the assertion of counsel referenced above.

date" and noting that "[y]our failure to appear may result in the issuance of a writ of arrest." (The JIC's exhibit 5.) No attempt was made to serve Bell with this order and there was no evidence that Bell was aware of this order. Bell, following the advice of counsel that she was not properly served with the subpoena, did not appear at the August 10, 2011, trial date.<sup>2</sup>

On August 10, 2011, Judge Batiste entered a "Decree Ordering Attachment" in which Bell was "sentenced to five (5) days in the Jefferson County jail for her criminal and civil contempt" for Bell's failure to comply with "the [c]ourt's specific order and failing to abide by the [c]ourt's order of August 9, 2011." The order also reflected that Bell "may not be released on bond." It is undisputed that, prior to the entry of the contempt order, no written contempt petition was filed, Bell was not served with a contempt petition, and there was no hearing on the contempt charge at which Bell was given the opportunity to be heard on the charge.

When Bell discovered that a warrant had been issued for her arrest, she retained attorney Roderick Walls. On August

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<sup>2</sup>On August 10, Bell left for a prearranged, out-of-state vacation.

12, 2011, Walls filed an "Emergency Motion to Reconsider or Purge Criminal and Civil Contempt Order." Despite numerous attempts by Walls, he was unable to get Judge Batiste to consider the motion or set a hearing on the motion. In fact, Walls was told by Judge Batiste's then judicial assistant--Teresa Love--that Judge Batiste's position was that Bell needed to "spend some time in jail" and that Judge Batiste would not consider the motion until Bell surrendered herself to the Jefferson County Jail.

On August 19, 2011, Bell reported to the Jefferson County Jail; shortly thereafter, on that same date, Judge Batiste entered an "Order Bringing Prisoner from Jail," requiring Bell to be brought to Judge Batiste's courtroom on Monday, August 22, 2011, at 8:45 am. Although that hearing was held--and a subsequent order issued--Judge Batiste was insistent at that hearing that Bell did not appear for trial and that she, Judge Batiste, did not "want to hear anything about an explanation why [Bell] [did] not [appear]." Following the hearing, Judge Batiste entered an "Order on Civil Contempt" in which Judge Batiste ordered that "[t]he pending civil contempt order of Sonja Bell [was] continued ... to November 9, 2011," that Bell was required to appear at a deposition and answer "all

questions propounded to her," that Bell was required to appear at a subsequent trial in the Bearden matter, that Bell was required to pay a sum of \$950 to the defendant in the Bearden matter, and, finally, that Bell was "conditionally released from the Jefferson County Jail" which was "conditioned upon [Bell's] full and absolute compliance with [the] [c]ourt's [o]rder."

#### B. Legal Conclusions

Judge Batiste's order--although styled as a "Decree Ordering Attachment"--is actually a contempt order. As the language of the order reflects, Bell was held in "criminal and civil contempt," and received a 5-day jail sentence as a sanction. Judge Batiste did not comply with Rule 70A, Ala. R. Civ. P., before holding Bell in contempt.

### II. Austin v. Austin, (DR-04-421.01 and CV-12-0949)

#### A. Findings of Fact

Curtis Austin and Comelia Austin were divorced in July 2004; Curtis was required to pay child support pursuant to the final divorce judgment. In December 2011, Comelia filed a pro se petition requesting an increase in Curtis's court-ordered child support; that petition did not raise any other matters related to child support. That petition was served on

Curtis on April 5, 2012. In a letter filed April 26, 2012, Comelia asked Judge Batiste to set her petition for child-support modification for a hearing; that letter was not served on Curtis.

Judge Batiste subsequently entered a "Scheduling Order" setting a "settlement conference" for May 21, 2012, and a "trial" on the pro se petition on June 21, 2012. This order was not served on Curtis, and Curtis testified before this Court that he was not aware of the order or the trial setting. Comelia subsequently retained counsel who filed an "Amended Modification of Final Judgement of Divorce And Petition for Contempt" alleging, among other things, that Curtis had "failed to pay child support in the amount of \$400.00 per month beginning July 8, 2011" and, further, had "failed to pay medical expenses not covered by medical insurance for the minor children of the parties from ... July 8, 2011 to present."

Although the certificate of service on the amended petition for modification indicates that Curtis was "served" with the amended petition by "serving" a copy of the pleading "to the attorney of record for the defendant by utilization of the ECF filing system and by placing a copy of the same in the

U.S. mail," Curtis was not represented by counsel, Curtis did not have access to the "ECF filing system," and Curtis never received a copy of the amended petition for modification. In fact, there was no evidence presented to this Court indicating that Curtis was ever served with the amended petition to modify. Notably, the attorney who filed the amended petition to modify could not testify that the notice was ever mailed to Curtis and he acknowledged that his legal assistant--who usually handled such matters--likewise could not say whether the amended petition was ever mailed to Curtis.

On June 29, 2012, Judge Batiste entered an "Order of Modification" in which Judge Batiste modified the amount of monthly child support required from Curtis and, also, found Curtis to be in arrears of his monthly child support and his payment of medical expenses. According to the order, Curtis was required to "purge himself of contempt for his willful failure to pay child support and medical expenses for the minor children by payment of \$7,900.00 [the arrears] plus interest for all past due arrearages."

On that same date--after the disposition of the initial and amended petition for modification--Judge Batiste entered a "Decree Ordering Attachment" in which Judge Batiste found

Curtis "in contempt of [c]ourt for failure to comply with this [c]ourt's former orders" and ordered the Jefferson County Sheriff's Department "to attach ... Curtis ... where he shall remain in the Jefferson County Jail until further [o]rder of this [c]ourt to show cause, if he has any, why he should not be held in contempt of [c]ourt for failure to comply with the former [o]rders thereof." It is undisputed that, prior to the entry of the contempt order, no written contempt petition was filed, Curtis was not served with a contempt petition, and there was no hearing on the contempt charge at which Curtis was given the opportunity to be heard on the charge.

Curtis was arrested on July 11, 2012, pursuant to Judge Batiste's order. Everett Wess was retained to represent Curtis; on, July 15, 2012, Wess filed a "Motion to Vacate All Prior Orders and Decrees and Motion for Immediate Release of Defendant," and, the next day, filed two amended motions. Despite numerous attempts to have Judge Batiste set a hearing on the motions, Judge Batiste failed to set a hearing or otherwise address the issues raised in the motions. Wess subsequently filed a petition for a writ of habeas corpus; like the motions, Judge Batiste refused to entertain the petition or set it for a hearing. After concluding that Judge

Batiste would not act on the petition, Wess filed, as a separate civil matter, a petition for a writ of habeas corpus that was presented to a different circuit judge; that circuit judge concluded that Curtis was not afforded due process and granted the writ. Curtis was released from custody on July 23, 2012.

#### B. Legal Conclusions

Reading Judge Batiste's modification order--which states that Curtis "shall purge himself of contempt" by paying his arrears--in conjunction with the subsequent "attachment order"--which, after the disposition of the modification, holds Curtis in contempt for his "failure to comply with the [c]ourt's former orders" and orders him to jail for an indeterminate period--we conclude that Judge Batiste was holding Curtis in civil contempt as a result of his child-support arrears.

First, although Curtis never answered the pro se petition filed by Comelia--and therefore was, pursuant to Rule 55, Ala. R. Civ. P., in default--the amended petition for modification was a "pleading[] asserting new or additional claims for relief against [Curtis]" and, thus, that amended petition was required to have been "served upon [him] in the manner

provided for service of summons in Rule 4[, Ala. R. Civ. P.]." Rule 5(a), Ala. R. Crim. P. That was not done in this case and, thus, the matter of the arrears was not before Judge Batiste. See Austin v. Austin, [Ms. 2120102, July 19, 2013] \_\_\_ So. 3d \_\_\_, \_\_\_ (Ala. Civ. App. 2013) ("Thus, the father, because he did not answer the mother's petition, was a party 'in default for failure to appear,' and, pursuant to Rule 5(a), the mother's amended petition had to be personally served on the father in compliance with Rule 4.").

Moreover, the matter was not properly before Judge Batiste because Austin had not received notice of the amended petition alleging child-support arrearage; accordingly, Judge Batiste entered a contempt order based on a pleading that was not served on Austin and of which he had no notice. "In Alabama, a willful failure to pay child support is a civil contempt" and, as such, Judge Batiste was required to comply with Rule 70A, Ala. R. Civ. P.<sup>3</sup> See generally T.L.D. v. C.G., 849 So. 2d 200, 204 (Ala. Civ. App. 2002) ("Since July 11, 1994, all contempt proceedings in civil actions have been

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<sup>3</sup>Although the Austin decision from the Court of the Civil Appeals is a recent decision, the requirements of Rule 5(a), Ala. R. Civ. P., along with Rule 70A, Ala. R. Civ. P., are not novel.

governed by Rule 70A, Ala. R. Civ. P.") (emphasis added). Alternatively, to the extent that Judge Batiste's "attachment order" could be determined to find Curtis in contempt for his failure to comply with some other unspecified order, she was likewise required to comply with Rule 70A(2)(D), Ala. Civ. R. P., but did not.

Additionally, to the extent that Judge Batiste contends that her order was an attachment of a witness pursuant to § 12-21-182, Ala. Code 1975,<sup>4</sup> this legal position is without

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<sup>4</sup>Section 12-21-182, Ala. Code 1975, states as follows:

"(a) Any witness who, after being subpoenaed, fails to attend pursuant to the mandate of the subpoena and remain until his testimony is given or he is discharged forfeits \$100.00 to the use of the party summoning him, and the attendance of such witness may be compelled by attachment.

"(b) A conditional judgment must, on motion of such party, be entered against such witness and a notice issued to him that such judgment will be made absolute unless he appears within 30 days from the date of the service of such notice and renders a good excuse for his default; and, if he fails to appear and render a satisfactory excuse for his default, such judgment may be made absolute or reduced, as the court may direct.

"(c) Witnesses failing to attend court may make their excuse by affidavit, or viva voce, in open court, which the court must hear at any time, unless engaged in the trial of a case, and, if the excuse is sufficient, release the party from any fine imposed, without the payment of costs."

merit; specifically, the plain language of § 12-21-182 speaks to "any witness ... being subpoenaed"; here, however, even if this Court were to deem Curtis a "witness"--which we do not--he had not been subpoenaed and, accordingly, this statute is inapplicable. Further, we note that she "attached" Curtis only after all matters pending were concluded.

III. Isom v. Isom, (DR-10-803)

A. Findings of Fact

In November 2010, two witnesses--Kizzy Lacey and Kimberly Clark<sup>5</sup>--were subpoenaed to appear for the divorce trial in Isom set for December 7, 2010; the matter, however, was continued from that trial date, and the divorce trial was subsequently continued numerous times. On July 26, 2011, Judge Batiste entered an order setting the divorce trial for September 12, 2011, at 8:45 am.

The attorney representing the defendant in the Isom matter drafted letters to both witnesses advising them of the September 12 trial setting. There is some dispute surrounding whether Clark--who did not appear for the trial setting--

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<sup>5</sup>The JIC charged Judge Batiste with violating the canons of judicial ethics relating to a third witness, Candice Gray Franklin; the Court granted Judge Batiste's motion for a judgment as a matter of law with respect to those allegations.

received the letter which was "placed on her property" or if the letter was even "placed" at the correct address. Lacey did receive the letter and appeared for the trial setting. Lacey testified, however, that when she appeared for trial, she was informed that Judge Batiste was absent and that the matter was again continued.

On September 12, 2011, at 3:47 pm, Judge Batiste entered an order setting the Isom divorce trial for the following day at 1:30 pm. Although various orders resetting respective trial dates purported to "continue" the "supboenas issued in this case," that language was not in the September 12 order, and the witnesses received only the November 2010 subpoena. None of the witnesses appeared for the September 13 trial date.

Acting on the "Defendant's Affidavit for Attachment"--in which the attorney for the defendant asserted that the witnesses were aware of the trial setting and failed to appear--Judge Batiste entered a "Decree Ordering Instanter Attachment" against both Lacey and Clark. According to the order, the respective witnesses were "duly served with a subpoena ... to appear as a witness in this cause on the 12th

day of September at 1:30 pm,<sup>61</sup> and said witness did not appear or otherwise respond to said subpoena." The respective orders "attached" Lacey and Clark, which resulted in arrest warrants being issued against both witnesses; the respective orders dictated that the respective witnesses "may not be released on bond."

Both witnesses, through separate counsel, filed motions seeking to recall the attachment and warrants; in the respective motions, the witnesses claimed that they were unaware of the trial setting for which they did not appear. Following a hearing on September 20, 2011, Judge Batiste entered an order stating that the "Decree[s] Ordering Attachment dated the 13th day of September 2011 is hereby recalled and held to be of no effect."

#### B. Legal Conclusions

First, despite styling her orders as a "Decree[s] Ordering Instanter Attachment," Judge Batiste's orders are, in fact, citations for constructive contempt. This conclusion is bolstered by both the evidence that arrest warrants were issued and, also, by the provision in the orders that

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<sup>61</sup>This order appears to conflate the September 12 and September 13 trial settings.

prohibited bail; we note, however, that the order seemingly conflates the punishment of criminal contempt with the indefinite confinement of a civil contemnor. See T.L.D., 849 So. 2d at 205.

Second, to the extent that the "Decree[s] Ordering Instanter Attachment" are, in fact, writs of attachment, they were improper. As noted above, § 12-21-182, Ala. Code 1975-- which governs attachment--pertains to "any witness ... after being subpoenaed"; in this case, however, the witnesses were not notified of--let alone subpoenaed for--the September 13 trial setting. Although Judge Batiste entered various orders purporting to "continue" the witness subpoenas issued in November 2010, those orders had no effect. "Except in Jefferson County, witnesses, once subpoenaed, are 'bound to attend from session to session until the case is disposed of' and no new subpoena is required." William A. Schroeder & Jerome A. Hoffman, Schroeder & Hoffman on Alabama Evidence, § 1.9 (3d ed. 2012) (quoting § 12-21-184). See also § 12-21-184, Ala. Code 1975 ("[I]n the circuit court of counties having a population of 400,000 or more, according to the last or any subsequent federal census, the clerk of the said court must subpoena witnesses to attend court at each regular

setting of a case after said witnesses have once been ordered summoned by the party, unless otherwise directed by said party originally summoning them."). Accordingly, the witnesses were not subpoenaed and, thus, do not fall within the purview of § 12-21-182, Ala. Code 1975.

Third, even if the subpoena requirements of § 12-21-184, Ala. Code 1975, are ripe for varying interpretations, we still conclude that § 12-21-182, Ala. Code 1975, does not support Judge Batiste's orders, for two reasons. First, § 12-21-182, Ala. Code 1975, envisions due process as a part of the attachment process. See § 12-21-182 (b) and (c), Ala. Code 1975. No such process was provided here. Second, nothing in § 12-21-182, Ala. Code 1975, authorizes Judge Batiste to hold attached witnesses without bond for an indefinite period of time; Judge Batiste has not provided this Court with any authority that allows a judge to hold an attached witness for an indefinite period of time without bail in the absence of due process.

#### IV. Gipson v. Gipson, (DR-10-1395)

In August 2011, a subpoena was issued to Deva Walker requiring her appearance at a trial set for September 12, 2011. The Gibson matter, however, was not tried on that date

and was subsequently continued a number of times. According to Walker, she appeared for trial on one of these dates and was told that her attendance was no longer required.

On January 25, 2012, an attorney in the Gipson matter moved the circuit court to "extend[] the effects of trial subpoenas." According to the motion, Walker was properly served with the initial subpoena, but "[Walker] does not assert a voluntary willingness to appear at the trial in this matter and the Plaintiff will likely incur substantial expenses in her efforts to repeat service of process again in this matter." In February 2012, Judge Batiste granted the motion and ordered that "the subpoenas issued in [the] cause ... continued to the aforesaid date, time[,] and place." On that same date, Judge Batiste also entered an "Order Setting Rule Nisi Hearing" in which she ordered "Walker to appear before th[e] [c]ourt on 8:45 am, June 27, 2012 ... and show cause why she should not be held in civil and criminal contempt." Walker contends--and there is no evidence to indicate otherwise--that she was not served with either of the February 2012 orders--the order granting continuance of subpoenas or the order setting a Rule Nisi hearing--or alerted to the June 27 court date. Walker did not appear on June 27,

2012.

Acting on a "Plaintiff's Affidavit for Attachment," Judge Batiste entered a "Decree Ordering Instanter Attachment" against Walker.<sup>7</sup> According to the order, Walker "was duly served with a subpoena ... to appear as a witness in this cause on the 27th day of June 2012, at 8:45 am, and said witness did not appear or otherwise respond to said subpoena." The order "attached" Walker, which resulted in an arrest warrant being issued against her; the order also dictated that "Walker may not be released on bond." A deputy sheriff subsequently appeared at Walker's residence to arrest her; Walker, however, was not home.

On July 13, 2012, Judge Batiste entered an order stating "[t]hat the Decree Ordering Attachment dated the 27th day of June 2012 is hereby recalled and held to be of no effect." Court costs were taxed to Walker.

#### B. Legal Conclusions

First, despite styling her order as a "Decree Ordering Instanter Attachment," Judge Batiste's order is, in fact, a citation for constructive contempt. This conclusion is

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<sup>7</sup>The "Plaintiff's Affidavit for Attachment" was not attached to the "Decree Ordering Instanter Attachment" and is not found in AlaCourt.

bolstered by both the evidence that an arrest warrant was issued and, also, by the provision in the order that prohibited bail; we note, however, that the order seemingly conflates the punishment of criminal contempt with the indefinite confinement of a civil contemnor. See T.L.D., 849 So. 2d at 205.

Second, to the extent that the "Decree Ordering Instanter Attachment" is, in fact, a writ of attachment, it was improper. As discussed above, § 12-21-182, Ala. Code 1975-- which governs attachment--speaks to subpoenaed witnesses; here, however, Walker was not notified of--let alone subpoenaed for--the June 27 trial setting. Although Judge Batiste entered an order purporting to "continue" Walker's subpoena, that orders had no effect. "Except in Jefferson County, witnesses, once subpoenaed, are 'bound to attend from session to session until the case is disposed of' and no new subpoena is required." William A. Schroeder & Jerome A. Hoffman, Schroeder & Hoffman on Alabama Evidence, § 1.9 (3d ed. 2012) (quoting § 12-21-184). See also § 12-21-184, Ala. Code 1975 ("[I]n the circuit court of counties having a population of 400,000 or more, according to the last or any subsequent federal census, the clerk of the said court must

subpoena witnesses to attend court at each regular setting of a case after said witnesses have once been ordered summoned by the party, unless otherwise directed by said party originally summoning them." ). Accordingly, Walker was not subpoenaed and, thus, does not fall within the purview of § 12-21-182, Ala. Code 1975.

Third, even if the subpoena requirements of § 12-21-184, Ala. Code 1975, are ripe for varying interpretations, we still conclude that § 12-21-182, Ala. Code 1975, does not support Judge Batiste's order, for two reasons. First, § 12-21-182, Ala. Code 1975, envisions due process as a part of the attachment process. See § 12-21-182 (b) and (c), Ala. Code 1975. No such process was provided here. Second, nothing in § 12-21-182, Ala. Code 1975, authorizes Judge Batiste to hold attached witnesses without bond for an indefinite period of time; Judge Batiste has not provided this Court with any authority that allows a judge to hold an attached witness for an indefinite period of time without bail in the absence of due process.

V. Kyle v. Kyle, (DR-09-1260)

A. Findings of Fact

On October 12, 2011, Judge Batiste entered a "Final

Judgment of Divorce" in the divorce case between Richard Ingram Kyle and Barbara Dill Kyle. In that order, Richard was "awarded all right, title, and interest of the real estate jointly owned ... in Birmingham, Alabama[.]" The order required Barbara "to catch-up the mortgage within 45 days from the date of th[e] order." On October 31, 2011, Richard, through counsel, filed an "Emergency Motion for Expedited Hearing," arguing that Barbara had "failed to make the monthly mortgage payments on the marital residence, and, in turn, the marital home [was to be] foreclose[d] on Friday, November 4, 2011." The following day, Richard filed an "Emergency Motion for Contempt" on the same basis. On November 1, 2011, at 4:36 pm, Judge Batiste issued an order setting the matter for a hearing on November 3, 2011, at 1:30 pm; that order also required that the parties "appear ... and show cause why the petition should not be granted and why they should not be adjudged in contempt of court."

It is undisputed that, although represented by counsel at the hearing, Barbara did not appear at the hearing; Barbara testified during the trial that, at the time of the hearing, she was on a preplanned months-long stay in California. What is unclear, however, is whether Barbara's counsel explained

during the hearing why Barbara was not present; although this Court received testimony during the trial that Barbara's attorney relayed to Judge Batiste the reason for Barbara's absence, the attorney who represented Barbara at the hearing is now deceased and the hearing was not transcribed.

Following the November 3 hearing, Judge Batiste entered a "Decree Ordering Attachment." According to the order, Barbara was served with the respective motions set for November 3, but failed to appear in court; accordingly, "Barbara [was] cited for civil contempt" and ordered incarcerated and held without bond. Additionally, Judge Batiste ordered that the Jefferson County Sheriff "to enter this Decree Ordering Attachment 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."

The following day, November 4, Barbara's attorney entered a "Motion to Reconsider Motion for a New Trial and Motion to Reconsider Incarceration." In that motion, counsel asserted that Barbara "was in California for health reasons," and that Barbara "could not return in time for the hearing" because "the hearing was set so quickly." Specifically, the motion

pointed out that "the transmittal concerning the hearing was sent to [c]ounsel[] November 1, 2011, at 4:36:36 pm" for a hearing set on November 3, at 1:30 pm. Additionally, the motion contended that, contrary to Judge Batiste's order, Barbara was not served with the motions. The motion also asserted that the order was "not within the legal limits of civil contempt," and that Judge Batiste was "without jurisdiction to enter a misdemeanor warrant into the National Crime Information Computer." Judge Batiste denied the motion on November 7, 2011.

Barbara, through counsel, filed notice of appeal on November 9, 2011. On appeal, the Alabama Court of Civil Appeals held that "[c]oncerning the contempt order of November [3], 2011, ... the trial court lacked subject-matter jurisdiction to hear the matter." Kyle v. Kyle [Ms. No. 2110185, May 17, 2013] \_\_\_ So. 3d \_\_\_, \_\_\_ (Ala. Civ. App. 2013). According to the Court of Civil Appeals, because Richard's "emergency motion initiated a new cause of action for contempt of court, it should have been assigned an '.01' suffix by the trial court clerk and the husband should have paid the filing fee." The husband, however, did not do this and "[b]ecause no filing fee was paid, the trial court lacked

subject-matter jurisdiction to consider the emergency motion." Id. Judge Batiste's "attachment" order remained in effect until vacated by the Court of Civil Appeals in May 2013.

#### B. Legal Conclusions

Although the order entered against Barbara was styled as an "attachment order," it is, by its language, a contempt order; more specifically, it is an order holding Barbara in constructive contempt for her failure to appear at the November 3 hearing.

First, as the Court of Civil Appeals noted in Kyle, "[i]t is well settled that the filing of any contempt motion relating to the failure to abide by the terms of a final divorce judgement requires the initiation of an independent proceeding." Kyle, \_\_\_ So. 3d \_\_\_. See also Kaufman v. Kaufman, 934 So. 2d 1073, 1082 (Ala. Civ. App. 2005). Here, however, there was no independent proceeding initiated; accordingly, Judge Batiste held Barbara in contempt for 18 months based on a matter over which she had no jurisdiction.

Second, irrespective of jurisdiction, Judge Batiste failed to comply with Rule 70A, Ala. R. Civ. P., before holding Barbara in contempt. The two emergency motions--one for an expedited hearing and one for contempt--were premised

on the allegation that Barbara had failed to meet her requirements under various court orders to make payments on the "marital residence." The contempt order issued by Judge Batiste, however, was not based on Barbara's failure to make payments, but instead, was based on Barbara's failure to appear at the hearing on the motions; although there was a motion for contempt filed, that motion did not speak to a contempt proceeding regarding nonappearance. Accordingly, prior to the entry of the contempt order, there was no written contempt petition filed, no contempt petition was served on Barbara, and there was no hearing on the contempt charge at which Barbara was given the opportunity to be heard on the charge related to her nonappearance.

### **Sanctions**

On the basis of the evidence presented, not all of which is set out herein, this Court unanimously finds that the JIC proved by clear and convincing evidence--in each of the five cases, and with respect to the pattern and practice charges--that Judge Batiste is guilty of violating:

- Canon 1, by failing to observe high standards of conduct so that the integrity and independence of the judiciary may be preserved;

- Canon 2A., by failing to respect and comply with the law and conducting herself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary;
- Canon 2B., by failing to avoid conduct prejudicial to the administration of justice which brings the judicial office into disrepute;
- Canon 3A.(1), by failing to be faithful to the law and maintain professional competence in it; and
- Canon 3A.(4), by failing to accord every person who is legally interested in a proceeding ... full right to be heard according to law.

The Court finds that Judge Batiste's conduct has demonstrated a cavalier disregard for the due-process rights of litigants and witnesses as guaranteed by both the United States and Alabama constitutions. Due process is one of our most basic rights and we find that the violations of these rights, as demonstrated by the evidence presented in this case, are serious.

In light of these findings, this Court hereby orders that Judge Batiste shall be suspended for a period of 90 days without pay. This suspension shall begin on the date of the

final order. Additionally, the Court hereby orders Judge Batiste to attend the General Jurisdiction course at the National Judicial College in Reno, Nevada, in September 2013, or any other similar formal judicial training or educational opportunity as agreed to between Judge Batiste and the presiding circuit judge of Jefferson County. In the event that Judge Batiste has previously attended the General Jurisdiction course, Judge Batiste is hereby ordered to undertake such other training or educational course as may be agreed to between Judge Batiste and the presiding circuit judge of Jefferson County. This training may either be in a formal and structured training program--such as a continuing legal Education ("CLE") program or a judicial-college type program--or in the form of a mentoring program.

Further, the Court will issue a public reprimand; the public reprimand will be issued to a newspaper of general circulation in Jefferson County, Alabama. The language of the public reprimand is attached hereto and incorporated herein by reference. Additionally, Judge Batiste is taxed with all costs associated with the case, including costs of publication of the public reprimand.

Finally, we conclude that the sanctions imposed against

Judge Batiste are warranted with respect to each instance of conduct, as well as the collective instances of conduct.

## **PUBLIC REPRIMAND**

Dorothea Batiste, a judge in the Birmingham Division of the Jefferson Circuit Court, is hereby publicly reprimanded by the Alabama Court of the Judiciary.

The Alabama Court of the Judiciary is a nine-member, constitutionally created judicial body that is convened to hear complaints filed by the Alabama Judicial Inquiry Commission pertaining to alleged violations of the Alabama Canons of Judicial Ethics. In July 2013, the Alabama Court of the Judiciary conducted a trial to address a complaint filed by the Alabama Judicial Inquiry Commission against Judge Batiste.

Based on the evidence presented at Judge Batiste's trial, the Alabama Court of the Judiciary found that Judge Batiste violated the Alabama Canons of Judicial Ethics by repeatedly failing to properly exercise her contempt powers. Specifically, Judge Batiste entered a number of unlawful orders for the arrest and detention of witnesses and litigants in a series of domestic relation cases in Jefferson County. As a result of the unlawful orders, witnesses and litigants were either jailed--or put in fear of immediate arrest and incarceration--for an indeterminate amount of time and without

notice or a hearing. In some cases, even when witnesses and litigants engaged the assistance of legal counsel, Judge Batiste failed to address the due-process concerns presented to her.

Judge Batiste's orders failed to comply with the Alabama Rules of Civil Procedure and failed to comport with the most basic tenets of both federal and Alabama law. Her conduct demonstrated a lack of a basic understanding of the law and constitutional principles; further, her actions also demonstrated a cavalier disregard for the due-process rights of witnesses and litigants as guaranteed by both the United States and Alabama constitutions.

Judge Batiste's conduct constituted serious breaches of the Alabama Canons of Judicial Ethics. The Alabama Canons of Judicial Ethics are not merely aspirational, but instead, are binding requirements to ensure public confidence in the integrity of our judicial system. Judge Batiste, contrary to the canons, failed to be faithful to the law, failed to avoid conduct prejudicial to the administration of justice that brings the judicial office into disrepute, and failed to provide every person who is legally interested in a proceeding a full right to be heard according to the law.

As a result of the findings of the Alabama Court of the

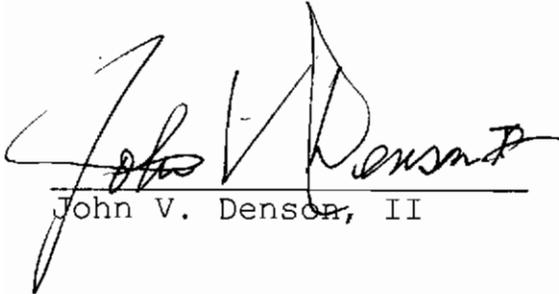
Judiciary, Judge Batiste shall be suspended for a period of 90 days without pay; Judge Batiste is also ordered to undertake professional development to ensure the protection of the due-process rights of witnesses and litigants appearing before her.

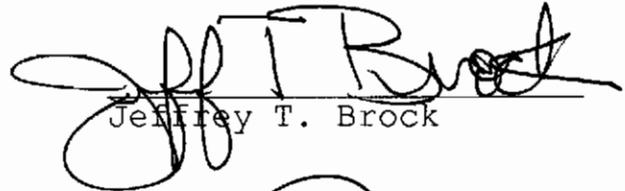
Done this 6<sup>th</sup> day of August, 2013.

  
J. Michael Joiner  
Chief Judge

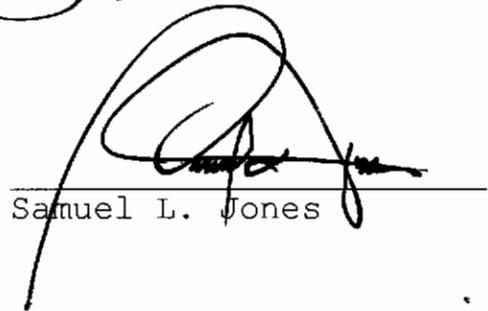
  
Laura Petro

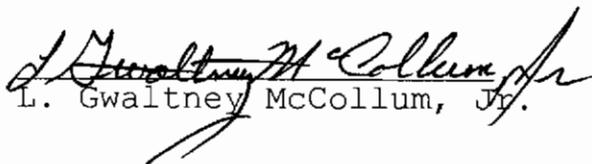
  
James Woodroof

  
John V. Denson, II

  
Jeffrey T. Brock

  
William D. Melton

  
Samuel L. Jones

  
L. Gwaltney McCollum, Jr.

  
Sandra R. Killion