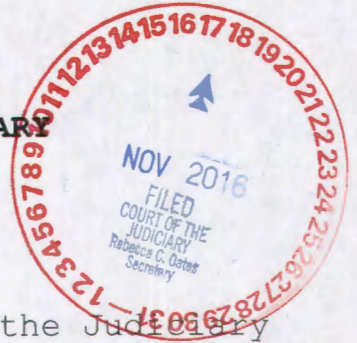


IN THE ALABAMA COURT OF THE JUDICIARY



IN THE MATTER OF:)
ARMSTEAD LESTER HAYES III)
Municipal Judge,)
Municipal Court,) Court of the Judiciary
City of Montgomery, Alabama) Case No. 49

AGREEMENT AND STIPULATION OF THE PARTIES

The Alabama Judicial Inquiry Commission ("the Commission") and Municipal Court Judge Armstead Lester Hayes III ("Judge Hayes") enter this Agreement and Stipulation of the Parties regarding the Complaint filed in this case in the Court of the Judiciary by the Commission alleging Judge Hayes's violations of the Alabama Canons of Judicial Ethics.

The Commission and Judge Hayes agree and stipulate:

1. The Commission can prove the following facts by clear and convincing evidence:

a. At all times relevant to this Complaint, Judge Hayes was a Municipal Court Judge of the City of Montgomery, Alabama.

b. From 2002 to the present, Judge Hayes has been the presiding judge of the Municipal Court of the City of Montgomery, Alabama.

c. The Municipal Court of the City of Montgomery has jurisdiction over cases involving criminal misdemeanor defendants and defendants with traffic tickets.

d. Many of these defendants are given fines and court costs in connection with their convictions or guilty pleas.

e. On multiple occasions, defendants in the Municipal Court have not paid their fines and costs in full, even though they were always initially given additional time to pay beyond the conviction date to do so, i.e., 30, 60, or 90 days.

f. On many occasions prior to 2014, Judge Hayes incarcerated traffic offenders for failure to pay fines and costs without first, in compliance with Rule 26.11, Ala. R. Crim. P.: (a) making sufficient inquiry into the offenders' financial, employment, and family standing to determine if the offenders had the ability to pay court-ordered financial assessments; (b) determining reason(s) for an offender's inability to pay or failure to pay; and/or (c) considering alternatives to incarceration other than initially providing additional time to pay, resulting in the incarceration of indigent defendants, in some cases for several months.

g. On numerous occasions, Judge Hayes failed to permit a traffic offender to fully explain the reason for either the offender's failure or inability to pay court-ordered financial assessments.

h. The Judges of the Municipal Court had before them, when a defendant was presented to them in the situations that are made the basis of the Complaint, the following information contained on a "warrant list" which listed the outstanding traffic tickets and misdemeanor cases with the case number and the nature of any outstanding warrants connected therewith, from which the following information could be gleaned: the general age of the tickets/cases; the number of tickets/cases; whether tickets/cases were given for the same offenses on multiple occasions; whether failure-to-appear warrants had been issued in connection with those tickets/cases; and the amount still due on the tickets/cases listed on the "warrant list" which would be a general indicator of prior efforts to pay.

i. When determining whether to convert fines and costs to jail time, Judge Hayes took into consideration the information on the warrant list, and he represents he took into consideration any information provided by the

defendant. However, there was generally neither a written order nor a general oral pronouncement in Court that sets out the basis for the Court's decision to convert fines and costs to jail time.

j. For that reason, the Court's records do not reflect the extent, if any, of the Court's inquiry into the reasons the individual did not pay nor the basis for the Court's decision regarding indigency; whether the individual had made a bona-fide effort to pay the fines and costs; and whether alternative punishments were adequate.

k. Judge Hayes ordered some defendants to a private entity called Judicial Correction Services, an entity which was commonly referred to as a private-probation company.

l. In connection with the charges at issue in this case, Judicial Correction Services acted as a service to monitor defendants solely in connection with the collection of outstanding fines and costs.

m. Judge Hayes did delegate to Judicial Correction Services the judicial functions of ordering monitored defendants to appear in court to show cause why they should not be removed from Judicial Correction Services's

oversight and/or issuing a summons to a "probation revocation" hearing.

n. In connection with his use of Judicial Correction Services, Judge Hayes placed some municipal court defendants who appeared before him on what was nominally referred to in the court's order as "probation" even though they had not received a suspended sentence or any jail time, but had been given only fines and court costs. Under Alabama law as applied to municipal courts, only those individuals who have suspended sentences are subject to probation. However, Judge Hayes, when assigning people to Judicial Correction Services, used forms and orders provided by Judicial Correction Services which indicated that individuals were in fact on probation.

o. In converting fines and costs to jail time and incarcerating traffic and misdemeanor defendants, Judge Hayes and other judges of the Municipal Court failed to enter a signed order indicating the nature of the court's ruling, the number of days the individual was to spend in jail, and/or the amount owed, which was to be converted to days in jail. There was a practice in place for a clerk to enter the aforementioned information on what was referred

to as a "jail transcript," the document presented to the jail upon receiving an inmate from court. Even after the court converted to its current electronic system in 2012 and a system was implemented allowing for an electronic signature on the case action summary, the case action summary on numerous occasions failed to show the identity of the judge or an electronic signature on the order.

p. Judges Hayes's practice, and that of other judges on the Municipal Court generally, in cases involving the commuting (i.e., converting) of fines and costs to jail time was to give oral instructions to the clerks and in some instances written notations to the effect that individuals' fines and costs, or certain portions thereof, for certain cases were to be commuted (converted) to days in jail at a set rate per day. Neither Judge Hayes nor other judges created a written and signed instrument containing the formal indicia of a court order, although the clerks created a document known as the "jail transcript" which was forwarded to the jail.

q. The "jail transcript" had a blank for both the "mandatory time release date" (those days that were part of a sentence) and "commuted time release date" (which

indicated a period of incarceration that resulted from converting outstanding fines and costs to jail time). It also listed each open case and the disposition of that case, i.e., whether the court had given time to pay on a ticket, had commuted outstanding fines and costs to jail time, or had given "mandatory days," i.e., an actual jail sentence rather than, or in addition to, fines and costs.

r. In addition, the "jail transcripts" would occasionally indicate that a defendant could be released early with the payment of a specified portion (with the remainder due within a set period of time) or the full amount of the fine due. Often this instruction, if given, was given orally without a judicial signature, though the clerk would sometimes indicate the judge who had issued the ruling. There was, however, no consistent method for indicating which judge had given the oral order or written instruction upon which the "jail transcript" was based. The transcript was rarely signed by a judge.

2. Except as stipulated above, Judge Hayes denies the allegations in the Complaint.

3. Upon trial of this matter and for aggravating purposes, the Commission would offer testimony and evidence

as to the following, to which Judge Hayes does not stipulate:

a. Judge Hayes's incarcerating of offenders for nonpayment of fines and costs without inquiring into the reasons for nonpayment and regularly incarcerating indigents in clear violation of state law was an abuse of judicial authority.

b. Municipal courts are the very foundation of the enforcement of the criminal law; upon them rests the developments of respect for law on the part of our citizenry; more citizens are familiar with this State's court system through interaction with municipal courts than any of the other courts in this state, so a municipal court's responsibility to develop and engender respect for the law and for our judiciary on the part of our citizenry is enormous. Judge Hayes's violations of the Canons are the type of violations that undermine the public confidence in the integrity, impartiality, and independence of the judiciary—the cornerstones of a judge's ethical responsibility—which in turn undermine deference to the judgments and rulings of courts.

c. Judge Hayes's violations of the Canons span a minimum of five years in a court with an annual caseload of thousands of cases, i.e., those violations are more serious than an isolated instance or spontaneous instances.

d. Judge Hayes's violations of the Canons were prejudicial to the actual administration of justice, to the court system, to litigants, and to the public's perception of the fairness of the judicial system, i.e., those violations are more serious than violations prejudicial only to the appearance of propriety.

e. Judge Hayes's violations of the Canons have undermined the ability of the judicial system to reach the most just result in cases before him.

f. Judge Hayes's disregard for clearly stated law, including rules of court, by either failing to know, apply, and/or comply with the law demonstrates his disrespect for the law.

g. Judge Hayes's failure to maintain and to encourage/require other judges to maintain adequate records as required by law seriously undermines the public's ability to have confidence in the outcomes of judicial

proceedings, particularly regarding matters of incarceration.

h. Judge Hayes exercised his judicial authority by incarcerating defendants in many cases for months without a written order properly executed by him.

i. Judge Hayes, in regularly delegating judicial authority to JCS, failed in his responsibility to maintain the confidence of both the judicial system and the public that judicial duties were being performed by a judge pursuant to the high standards of integrity and competence required of judges.

j. By virtue of the length of his service on the municipal bench, Judge Hayes should have been familiar with the high standards established for judicial behavior.

k. Judge Hayes failed to take any steps necessary to correct deficiencies until the federal injunction regarding pertinent allegations was entered.

4. Upon trial of this matter and for mitigating purposes, Judge Hayes would offer testimony and evidence as to the following, to which the Commission does not stipulate:

a. Judge Hayes represents that, prior to the filing of this complaint or the filing of any action against him in any personal capacity but after an injunction was issued against the City of Montgomery and without a court order compelling him to do so, Judge Hayes played a significant role in negotiations creating extensive judicial procedures and policies relative to the handling of cases involving fines and costs and ability to pay issues which were adopted by the Municipal Court of the city of Montgomery in 2014.

b. The Municipal Court of the City of Montgomery is operating pursuant to these procedures and has been since December 2014.

c. These Judicial Policies and Procedures have been provided to other courts as examples of best municipal court practices and other courts have used those procedures in revising their own procedures in connection with cases involving fines and costs.

d. The other judges of the Montgomery Municipal Court were free to exercise their own judicial discretion with respect to handling cases involving municipal court defendants' failure to pay fines and costs, use of Judicial

Correction Services, and all other judicial matters with the exception of any matter governed by a general standing order issued by Judge Hayes as presiding judge.

e. Judicial Correction Services was an organization that was used in various ways by courts throughout the state in over one hundred jurisdictions.

f. During Judge Hayes' tenure as presiding judge, the Municipal Court of the City of Montgomery terminated the use of services of Judicial Correction Services in the summer of 2014, after lawsuits were filed in 2013, and the Court has not used a private probation service since that time. The Municipal Court of the City of Montgomery was one of the first jurisdictions in the State of Alabama to terminate the use of Judicial Corrections Services, an action that has since been followed by all other municipalities in the state that were using Judicial Corrections services and that had also been sued or were under threat of litigation.

g. For those individuals whose fines and costs were commuted to jail time, Judge Hayes initiated a change in the amount of fines and costs that would be discharged per day in jail and doubled that amount from \$25.00 to \$50.00

per day thereby reducing the number of days an individual was subject to incarceration.

h. Converting fines and costs to jail time is permitted under Alabama Code Sec. 15-18-62 and Alabama Rule of Criminal Procedure 26.11 if the requirements of the statute and rule are followed.

i. Judge Hayes agrees to the appropriateness of the Court of the Judiciary entering a judgment finding that Judge Hayes violated Canons 2A and 2B based on the repeated nature of the conduct.

j. Judge Hayes recognizes the serious nature and profound consequences of the stipulated conduct and further assures the Court that he will do everything in his power to make sure that such conduct on his behalf will not reoccur.

5. Based on the foregoing, the Commission and Judge Hayes agree to the appropriateness of the Court of the Judiciary entering a judgment finding that Judge Hayes violated Canons 1, 2, 2A, 2B, 3, 3A(1), 3A(3), 3A(4), 3B(1), and 3B(2) as described in Charges 1 through 7 of the Complaint and jointly request the following resolution of this Complaint:

a. Judge Hayes take an unpaid suspension from his position as Municipal Judge for the City of Montgomery for 11 months to conclude on October 1, 2017, and to include (i) his voluntary leave without pay which, with city approval, began on November 3, 2016; (ii) his interim suspension, which he is electing to serve without pay, starting on November 17, 2016, the filing date of this Complaint, and terminating upon the Court's accepting this Agreement and imposing the sanction agreed upon; and (iii) the suspension following the Court's imposition of sanction, to terminate on October 1, 2017.

b. Judge Hayes be taxed with the costs of this prosecution allowed under Ala. R. Civ. P. 54 in the amount of \$4,312.82.

c. No additional sanction or penalty will be imposed.

d. Both parties agree not to make any public statements that are contrary to the terms of this Agreement.

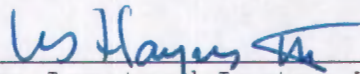
6. For purposes of this Agreement, Judge Hayes waives his right under Rule 5, Ala. R. P. Ct. of Jud., to file an answer or other responsive pleading to the Complaint herein within thirty (30) days of its service upon him; waives his

right under Rule 8, Ala. R. P. Ct. of Jud., to thirty (30) days' notice of the date and time for a hearing of the Complaint in this case and consents to a more expeditious setting of the hearing for purposes of approval of this Settlement Agreement only; and waives his right of appeal under Article VI, §157 of the Alabama Constitution, to the Alabama Supreme Court from any adjudicative order entered on the Complaint and any sanction based thereon imposed by the Court of the Judiciary consistent with this Agreement and Stipulation.

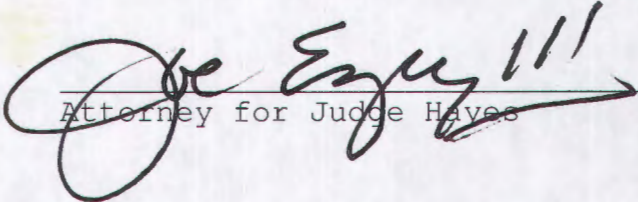
7. If this Agreement is not accepted, Judge Hayes does not agree to any of the waivers set forth in paragraph 6, including the setting of a trial date with 30 days' notice from the date of the decision on this agreement.

Done this the 17th day of November, 2016.

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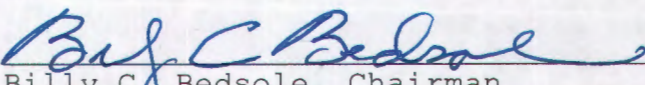


Judge Armstead Lester Hayes III

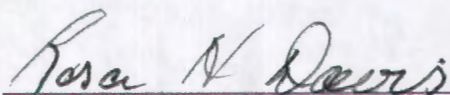


Attorney for Judge Hayes

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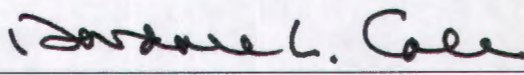


Billy C. Bedsole, Chairman

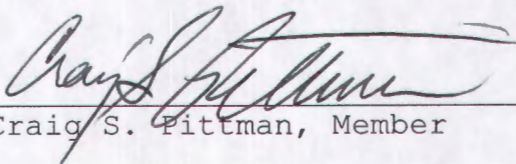


Rosa H. Davis
Attorney for the Commission

David Scott, First Vice-Chairman



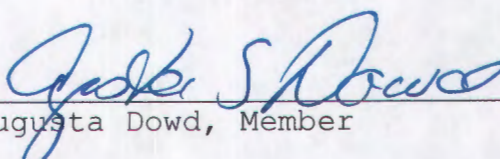
Randall Cole, Second Vice-Chairman



Craig S. Pittman, Member

Dr. David R. Thrasher, Member

Ralph D. Malone, Member



Augusta Dowd, Member

Done this the 17 day of November, 2016.

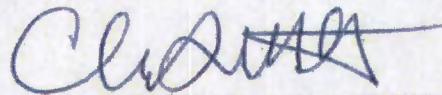
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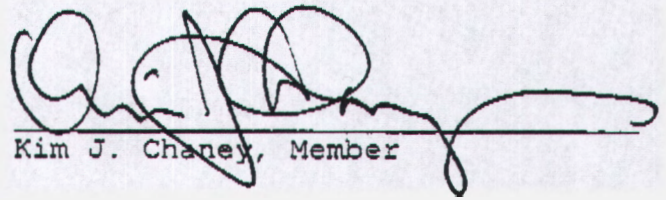
Augusta Dowd, Member

Kim J. Chaney, Member

David A. Kimberley

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Bill Gunter, Staff Attorney



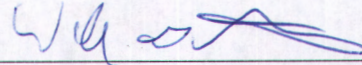
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