

IN THE ALABAMA COURT OF THE JUDICIARY



IN THE MATTER OF:)
ARMSTEAD LESTER HAYES III)
Municipal Judge,)
Municipal Court,)
City of Montgomery, Alabama)

Court of the Judiciary
Case No. 49

COMPLAINT

1. The Judicial Inquiry Commission of the State of Alabama (hereinafter "the Commission") files this Complaint against Judge Armstead Lester Hayes III ("Judge Hayes"), Presiding Judge of the Municipal Court for the City of Montgomery, Alabama. The Commission alleges and charges as follows:

I. Introduction

2. This case is about Judge Hayes, the presiding judge of the Montgomery Municipal Court since 2002, overseeing and participating in a court system that routinely incarcerated traffic offenders and misdemeanants, many who were indigent, for significant lengths of time for failure and/or inability to pay court-ordered financial assessments¹ by converting overdue assessments into jail

¹The term "court-ordered financial assessment" includes fees, fines, restitution, court costs, attorney fees, and

time; failed to follow established constitutional, statutory, and procedural law in placing on probation, revoking probation, and/or incarcerating misdemeanor defendants and traffic offenders for failure and/or inability to pay; delegated judicial functions and authority to a non-judicial, private entity; treated offenders with disrespect and/or did not allow offenders a full and fair hearing; and perpetuated recordkeeping so deficient that it is often impossible to glean which judge on what basis incarcerated non-paying offenders on a given day. In so doing, Judge Hayes undermined the public's confidence in the integrity, independence, and impartiality of the judiciary, particularly by exercising a municipal judge's ultimate authority, i.e., incarceration, without adhering to the most basic of judicial duties and law.

3. It is the judge's responsibility to respect the constitutional rights of those who appear in his/her court in matters of adjudication of guilt, imposition of sentence, provision of probation, revocation of probation,

any other financial obligation imposed upon a criminal defendant by a court of law.

and incarceration for failure to pay by indigent defendants; to ensure the orders of the court are just that—orders of the judge; and to enforce applicable procedural rules and policies to guarantee the court's records are properly maintained. JIC Advisory Opinion 14-926.

II. The Facts

4. At all times relevant to this Complaint, Judge Hayes was the presiding judge of the Municipal Court for the City of Montgomery. As presiding judge, he has responsibility and authority for the oversight of the procedures of the Montgomery Municipal Court.² He was appointed a municipal judge in 2000 and appointed presiding judge in 2002.³ Judge Hayes was appointed municipal judge

²"A municipal judge is the chief judicial officer of the municipality and bears primary responsibility for the administration of the court." JIC Advisory Opinion 14-926. Judge Hayes considers that his duties as presiding judge include "mak[ing] sure that things run smoothly in the courtroom. To be involved in the implementation of any policies and procedures that pertain to the courtroom. Matters that pertain to judicial issues, I have a voice in that as well." (Judge Hayes Dep. 6:11-16, *Cleveland/Watts*, Apr. 29, 2014).

³Judge Hayes was admitted to the Alabama State Bar on April

(and later presiding judge) by the city council for terms of four years each. His present term as presiding judge ends in January, 2018. See generally Ala. Const., Art. VI, § 145; Ala. Code § 12-14-30.

5. A municipal court, including the court for the City of Montgomery, has original jurisdiction of all prosecutions for the breach of the ordinances of the municipality. *Ex parte Tulley*, No. 1140049, 2015 WL 5192182, at *11 (Ala. Sept. 4, 2015) (citing Ala. Const. 1901 Art. VI, § 145 and Ala. Code § 12-14-1(b)). This jurisdiction includes traffic offenses.

6. During all times applicable to this Complaint, the Montgomery Municipal Court collected disproportionately large revenues for the City. The following chart reflects the municipal court revenues for Montgomery, Birmingham, Mobile, and Huntsville (where those revenues were available), and each city's corresponding population.⁴ Based

24, 1986.

⁴ The information in this chart was obtained from the Municipal Court Annual Survey filed with the Administrative Office of Courts. The population figures were obtained from the Municipal Report Cards; the U.S. Census Bureau

on a comparison of revenues, it is clear that the Montgomery Municipal Court collected revenue significantly disproportionate to the population of the municipality and significantly disproportionate to revenues collected by other major Alabama municipal court systems.

	2010	2011	2012	2013	2014
Montgomery	\$12,792,926 201,568 pop.	\$10,259,912	\$11,698,070	\$11,581,934	\$9,073,956 200,481 pop.
Birmingham	\$4,158,198 242,820 pop.			\$3,830,872 212,038 pop.	\$3,187,431 212,237 pop.
Mobile	\$4,249,741 195,111 pop.	\$4,365,000 195,111 pop.			
Huntsville			\$2,782,607 200,000 pop.	\$3,205,243	\$3,770,439 186,254 pop.

A comparison of caseloads underscores this disparity. For example, in 2010, 267,933 cases were filed in the Birmingham Municipal Court, while only 109,073 were filed

from the Population Census of April 1, 2010; and the Population Estimates for April 1, 2010 (<http://www.census.gov/quickfacts/table/PST045215/0150000,00>).

The Montgomery revenue is the sum of the court costs, fines, and corrections fund reported on each year's Municipal Court Annual Survey. Bond forfeitures and "other" (typically district-attorney collections fees) are excluded from Montgomery's revenue, but are included in the other municipalities' revenues.

in Montgomery. Similarly, in 2014, 106,702 cases were filed in the Birmingham Court, while only 71,440 cases were filed in Montgomery.

7. The disparity in revenues the Montgomery Municipal Court collected compared to other municipalities could be due to the disproportionately large assessments per ticket the Montgomery court collected. The following chart illustrates the amount of revenue collected per ticket filed in the given year and per ticket disposed of per year (when such information was available).⁵

	2010	2011	2012	2013	2014
Montgomery	\$122.99/filed \$238.20/disp.	\$90.79/filed \$241.53/disp.	\$82.91/filed \$113.21/disp.	\$90.74/filed \$103.77/disp.	\$135.64/filed \$129.81/disp.
Birmingham	\$15.51/filed \$29.67/disp.				\$29.87/filed \$56.33/disp.
Mobile	\$54.38/filed \$56.42/disp.	\$60.63/filed \$63.65/disp.			
Huntsville⁶			\$53.60/filed \$61.81/disp.	\$94.17/filed \$365.35/disp. ⁷	\$74.33/filed \$61.79/disp.

⁵The information in this chart was obtained from the Municipal Court Annual Surveys filed with the Administrative Office of Courts. The amounts were calculated through dividing the total amount of revenues collected in the municipal court by the total number of cases filed/disposed each year.

⁶Huntsville in 2009: \$55.59/filed; \$60.76/disposed.

⁷The Commission cannot account for such an anomalous number.

8. This particular disparity could be attributed, at least partly, to Montgomery's practice of charging separate court costs in the amount of \$155 for every ticket adjudicated, even when multiple tickets arose from the same traffic stop.⁸ For example, an offender would be assessed court costs in the amount of \$465 for receiving, in one stop, tickets for failing to possess or display proof of liability insurance; driving with a suspended license (possibly suspended because the offender has outstanding court-ordered financial assessments on a prior ticket); and improper taillights.

9. At all times relevant to this Complaint, the City of Montgomery utilized the services of Judicial Correction Services, Inc. (hereinafter "JCS"), a privately held, self-

⁸See Ala. Code § 12-19-150(c) ("When multiple offenses arise from the same incident, docket fees and other court costs should generally be assessed on the basis of the most serious offense for which the defendant is convicted. A judge may, in his or her discretion, assess costs for each conviction.").

funded probation company.⁹ However, JCS collected less than a quarter of the Court's collections. The percentage of revenues JCS collected for the Montgomery Municipal Court per year¹⁰ is, as follows:

2010	2011	2012	2013	2014
18.5%	24%	23%	18%	9%

⁹JCS has ceased operations in Alabama after facing multiple lawsuits over alleged abusive and unconstitutional collection practices. See generally Sarah Stillman, *Get Out of Jail, Inc.*, The New Yorker (Jun. 23, 2014), <http://www.newyorker.com/magazine/2014/06/23/get-out-of-jail-inc> (in discussing the use of private probation companies, Presiding Judge of the Criminal Court of Jefferson County Tommy Nail used the term "Third World country", while Judge Stephen Wallace, another Jefferson County judge, stated: "We're no different than a payday or a title-loan company, if our central purpose is collections."); see also Kent Faulk, *Private Probation Company Once Called 'Judicially Sanctioned Extortion Racket' Leaving Alabama*, AL.COM (Oct. 19, 2015), http://www.al.com/news/birmingham/index.ssf/2015/10/judicial_correction_services_i.html; Lisa Seville and Hannah Rappleye, *Probation Firm Extorted Money From Poor in Alabama, Suit Charges*, U.S. NBC News (Mar. 13, 2015), <http://www.nbcnews.com/news/us-news/probation-firm-extorted-money-poor-alabama-suit-charges-n323036>.

¹⁰The information in this chart was obtained from the Municipal Court Annual Surveys the city of Montgomery filed with the Administrative Office of Courts and from JCS annual collection totals.

10. In exchange for providing debt-collecting services to the City free of charge, JCS was permitted to charge "probationers" a \$10 start-up fee and a \$40-per-month "supervisory" fee. The following chart illustrates the moneys remitted to the City versus the amount retained by JCS in "fees" for the years 2009 through early 2014:

	2009	2010	2011
Total JCS Remitted to City	\$1,209,308	\$2,368,324	\$2,482,037
Total JCS Retained	\$523,670	\$1,145,115	\$1,269,878
Ratio of Total JCS Retained	30.2%	33%	34%

	2012	2013	2014
Total JCS Remitted to City	\$2,684,218	\$2,114,499	\$781,530
Total JCS Retained	\$1,175,520	\$920,705	\$336,832
Ratio of Total JCS Retained	30.5%	30.3%	30.1%

11. At all times relevant to this Complaint, an offender's typical experience before Judge Hayes began when the offender appeared for an initial court appearance.¹¹ If

¹¹The Montgomery City Court did not assign a case to a particular judge to retain until it was final and all

the offender pled guilty, Judge Hayes would impose fines and costs. Below is a sampling of the authorized court-ordered financial assessments for common municipal offenses:

Municipal Offense	Fine & Court Costs Total	Delinquent	Delinquent w/ Alias Warrant
Failure to Possess/Display Proof of Vehicle Liability Insurance (1st Offense)	\$205	\$255	\$287
Failure to Possess/Display Proof of Vehicle Liability Insurance (2nd Offense)	\$305	\$455	\$487
Failure to Possess / Display Vehicle Registration	\$205	\$255	\$287
Operating Vehicle w/o Driver's License	\$230	\$255	\$287
Expired License or Expired Tag	\$175	\$195	\$227
Driving While Suspended, Revoked, or Canceled ¹²	MUST APPEAR IN COURT		

court-ordered financial assessments had been paid. Rather, the judge who presided over each particular docket ruled on the particular action before the judge that day, i.e., one judge may have adjudicated the charge, another judge may have revoked probation, etc.

¹²A court may revoke the driving's license of a non-indigent defendant who has been convicted of a traffic offense, ordered to pay a fine in installments, and fails to pay such a fine. Ala. R. Crim. P. 26.11(i)(3). The offender's license may remain revoked until he/she pays the entire fine. Driving while a driver's license is suspended, cancelled, or revoked constitutes a misdemeanor, and upon conviction, a fine of not less than \$100 and no more than

12. After Judge Hayes ordered the imposition of fines and costs, the following occurred if the offender stated he/she could not pay the total immediately: Judge Hayes either offered the possibility of a JCS "payment plan" or ordered a shorter court-supervised payment option.¹³ If the defendant expressed interest in JCS, Judge Hayes would ask the JCS representative if that particular offender was "eligible" for JCS "probation," i.e., whether that offender was likely to pay their court-ordered financial assessments and JCS fees. If JCS agreed to accept the offender, Judge Hayes would assign that offender to JCS, at which point a JCS "Probation Officer," not Judge Hayes, would determine the "probation" period, the frequency of reporting to make payments, and the monthly payment amount.¹⁴ Judge Hayes would then sign the "Order of Probation," memorializing those terms without first determining that the conditions requiring payment did not go beyond the "probationer's"

\$500, in addition to a sentence of up to 180 days, may be imposed. Ala. Code, 32-6-19(a)(1).

¹³Judge Hayes Dep. at 100:15-20.

¹⁴*Id.* at 107:11-15.

ability to pay. (Attachments A and B). See Ala. R. Crim. P. Rule 27.1 Committee Comments. Judge Hayes regularly ordered "probation" despite the absence of a suspended sentence of incarceration, as required by Ala. Code § 15-22-54.

13. If JCS refused to accept the offender, Judge Hayes would assign a date certain for the offender to pay the court-ordered financial assessments, typically 30, 60, or 90 days, with a compliance-review hearing set for the expiration of the time-to-pay period. If the offender missed that compliance review, Judge Hayes would issue an arrest warrant.

14. At all times relevant to this Complaint and pursuant to Judge Hayes's presiding-judge directive implemented in 2009, an offender appearing at the pay window who requested a payment plan and owed less than \$1,500 in court-ordered financial assessments could, without any judicial action, "be placed with JCS provided the individual is not already with JCS or is in good standing with JCS." (See Attachment C). In other words, Judge Hayes delegated to a clerk and/or to a JCS employee

the judicial determination of whether to place a defendant on "probation" with JCS and, if so, the term and conditions of probation—allowing an offender to be placed on probation outside of any proper legal process and without any of the judicial determinations constitutionally and procedurally required.

15. If JCS subsequently decided to terminate an offender's "probation" for failure to pay, it would generate a probation revocation petition and a "Violation of Probation" letter ("VOP letter"), both signed by a JCS employee. The VOP letter would inform the "probationer" that he/she had violated the terms and conditions of his/her "probation"; that **"a failure to appear in court on the above date will result in a warrant being issued for your arrest,"** (emphasis in original), and that **"the court date cannot and will not be reset or rescheduled"** (emphasis in original). (Attachments D and E). Thus, the JCS employees, without prior judicial oversight or approval, told "probationers" that they had violated their "probations" and, also without judicial oversight or approval, set court dates. In other words, JCS, with the

approval of Judge Hayes, unilaterally added and removed "probationers" from the court docket.

16. A significant number of VOP letters would also contain notes offering to cancel a hearing if the probationer paid a portion of the money owed before the hearing date. The following is a typical example of such a note: "PLEASE NOTE THAT YOU MAY PAY \$400 BY FEBRUARY 11, 2011 TO CANCEL YOUR HEARING."

17. The probation revocation petition was intended to notify the Court of the status of an offender's "probation" and that JCS "verily believes that the Defendant has violated one or more of the written conditions of probation entered into between her and [the] Court." Above the "Municipal Court Judge" signature line, the petition decreed that "a Revocation Hearing be set before this Court" and that "a true copy of this Petition . . . be served upon the above named Defendant." However, this petition was typically neither seen nor signed by a judge until the day of, or in some cases several days after, the date of the hearing.

18. If the offender failed to appear at that hearing, which often happened due to lack of notice, Judge Hayes would issue an arrest warrant. When offenders were arrested on outstanding failure-to-appear warrants, i.e., failure to appear for initial adjudication, compliance-review hearing, or probation-revocation hearing, they would appear before Judge Hayes during the "jail docket." While in the holding cell awaiting their hearings, traffic offenders and misdemeanants were often asked by the public defender if they could pay their outstanding fines and costs that day with the question, "Pay or stay?" A public defender would often advise these offenders that they would be jailed if they were unable to pay off their balance that day.

19. During the hearing, the only written information Judge Hayes reviewed was typically the "warrant list." (Attachment F). This document listed the offender's adjudicated and/or unadjudicated tickets, the amount due on each ticket, and whether failure-to-appear warrants had been issued in connection with those tickets.

20. During the docket, Judge Hayes would typically ask each defendant, "Why haven't you paid?" Oftentimes, this

question and "do you have a job?" were Judge Hayes's only questions to the offender regarding his/her ability to pay. During this abbreviated hearing, which typically lasted only several minutes,¹⁵ an offender might have the opportunity to explain his/her financial, employment, and family situation if Judge Hayes asked the pertinent questions.¹⁶ However, on many occasions, Judge Hayes did not afford offenders the opportunity to explain why they had not paid their court-ordered financial assessments and, in fact, prevented offenders from speaking when they attempted to explain. On numerous occasions, Judge Hayes would ask if the offender had family present and, if so, whether they could pay.

21. Judge Hayes rarely, if ever, made the specific determinations, required by Ala. R. Crim. P. 26.11, regarding whether the offender had the ability to pay; whether nonpayment was due to willful failure to pay or due

¹⁵Judge Hayes Dep. at 85:23.

¹⁶*But see id.* at 39:19-22 ("I'd like to say I ask them [these questions] in most every case. Now, there may not be quite as pressing of a need in some cases as in others.")

to indigency; and whether the offender had made sufficient bona-fide efforts to pay. He also did not consider, in the event of a showing of sufficient efforts to pay, any alternative measure of punishment for the non-payment of fines, as required by Rule 26.11, other than on rare occasions extending the period to pay.¹⁷

22. After the abbreviated hearing, Judge Hayes would, on many occasions, revoke the offender's probation and/or "commute" the offender's fines and costs into jail time. According to Judge Hayes, commuting fines means "to take

¹⁷Alternative measures to incarceration for non-payment include reducing the fine to an amount the defendant is able to pay; continue or modify the schedule of payments; order the offender's employer to withhold wages; or release the defendant from obligation to pay. Ala. R. Crim. P. 26.11(h). Additional alternative measures are contempt of court; suspension of driver's license; and community service. See also Montgomery Municipal Ordinance No. 118-77, § 29; Code 1980, § 26-11(f), which provides:

A municipal judge shall have the authority to continue the case from time to time to permit the fine and costs to be paid, remit fines, costs and fees, impose intermittent sentences, establish work release programs, require attendance of educational, corrective or rehabilitative programs, suspend driving privileges for such times and under such conditions as provided by law . . .; provided, however, that the judge may enter an order authorizing the defendant to drive under the conditions set forth in the order.

finer and costs and to basically roll them into one to where a defendant is placed in jail to serve out his or her time at fifty dollars a day, with the option of paying the commuted amount to be released." (Judge Hayes Dep. at 9:21-10:3). Basically, every \$25 (later \$50¹⁸) the offender owed in fines and costs was converted into one day's incarceration. So an offender with \$2,500 in outstanding court-ordered financial assessments, indigent or otherwise, would be incarcerated for 100 (or 50) days. Sometimes, offenders were given the option of early release if they, or a friend or family member, paid a specified, significant portion of the amount owed, with the balance due shortly after release, i.e. 30, 60, or 90 days.

23. Judge Hayes did not afford many indigent offenders an opportunity to explain why he should find them indigent. Even when Judge Hayes allowed them to fully explain their indigency, he commuted them because he defined indigency as

¹⁸In his capacity as presiding judge, Judge Hayes issued an order that increased the amount that would be credited to fines and costs from the minimum of \$25 per day of incarceration to \$50 per day for defendants whose court-ordered financial assessments were commuted.

the total inability to pay, i.e., "no source of income" (Judge Hayes Dep. at 57:6-18) and "[t]otal inability to pay any amount." (*Id.* at 58:3-4). As a result, numerous indigent offenders were incarcerated for weeks or months at a time for their inability to pay their fines and costs.¹⁹

24. Strikingly, JCS "Report Cards" for the Montgomery Municipal Court, for 2010, 2011, 2012, and 2013, show an average of approximately .5% of the "probationers" assigned to JCS were indigent. (See, e.g., Attachment G). These four report cards contain the only mention of indigency in the thousands of records the Commission has reviewed from the Montgomery Municipal Court and related federal filings.

25. Court records do not refute the reasonable appearance that Judge Hayes on many occasions failed to make the specific determinations and findings, supported by the evidence, that are required by Rule 26.11, prior to

¹⁹When asked if there are circumstances where he would incarcerate an indigent defendant for non-payment of fines and costs, Judge Hayes responded, "I think it depends on the circumstances." (*Id.* at 43:7-16). "I understand the term [indigency] to mean a total inability to pay" (*id.* at 43:23-44:1); but "[t]here could be" circumstances where someone who has a total inability to pay could still have outstanding fines and costs commuted. (*Id.* at 44:3-9).

commuting fines and costs to jail time.²⁰ Municipal courts are not "courts of record," so the necessity of memorializing—in written, signed court orders—the judge's fundamental, evidentiary determinations like "willful nonpayment," "contumacious conduct," and "indigency" is that much more important. Otherwise, there is no record, from a hearing transcript or otherwise, of the municipal judge's compliance with the basic requirements of the law before jailing an offender for unpaid court-ordered financial assessments.

26. In fact, the recordkeeping in the Montgomery Municipal Court was so poor that the Commission often could not even determine through court records which judge took a specific action. Only a relatively small number of the thousands of pages of Municipal Court documents the Commission subpoenaed and reviewed contain the signature, printed name, or initials of Judge Hayes or any other Montgomery Municipal Court judge. Most troubling, the

²⁰Judge Hayes admitted his decision whether the person is indigent "may not be documented" (*id.* at 60:5-6), and that, if the court-ordered financial assessments are commuted, there are no explicit findings that the person was not indigent—"Nothing in writing." (*Id.* at 60:16).

documents the Court used to commit to a defendant to jail and identifying the period of incarceration—in addition to containing none of the factual determinations required by Rule 26.11—are not signed or initialed by any judge or do not contain the printed name of the committing judge.

27. In almost every case reviewed, defendants whose fines were “commuted” into jail time were incarcerated without written court orders. Instead, the court clerk generated a report (“jail transcript”) with a list of the amount of fines and costs per ticket or charge “commuted.” (Attachment H). Typically, these reports contained the clerk’s handwritten notations totaling the amount of fines and costs owed and the number of days “commuted” from that total. For example, a defendant with \$500 in unpaid fines and costs would be jailed via an unsigned report with the handwritten notation “\$500 or 20 days.” In some cases, the report contained a judge’s instruction to “release with 1/2” or “release with [X] paid, balance due in 60 days.” An

extensive court file of a traffic-violation repeat offender might not contain any indicia of a judge's name.²¹

28. In almost every case, the "commuting" judge cannot be positively identified. Instead, the identity of the judge (to the extent that identity can be ascertained at all) can only be determined by reference to a "court calendar" that identifies which judge was assigned to preside on a given date. (Attachment I). However, it was not unusual for judges to swap dockets, and, while the court calendars are "supposed" to reflect such substitutions, there is no degree of certainty that such substitutions are accurately reflected on the court calendars.

III. The Law

29. The United States Constitution is the supreme law of the land and applies, so far as pertinent, to municipal courts. In 1983, the United States Supreme Court made it clear that judges cannot send people to jail simply because they are too poor to pay their court fines: "We conclude

²¹As a result, this Complaint must often refer to "an unidentified Montgomery municipal judge" when relating the facts surrounding the jailing of indigent offenders.

that the trial court erred in automatically revoking probation because petitioner could not pay his fine, without determining that petitioner had not made sufficient bona-fide efforts to pay or that adequate alternative forms of punishment did not exist." *Bearden v. Georgia*, 461 U.S. 660, 662 (1983). In reaching that conclusion, the Court noted:

The rule of *Williams* [*v. Illinois*, 399 U.S. 235 (1970)] and *Tate* [*v. Short*, 401 U.S. 395 (1971)], then, is that the State cannot "impos[e] a fine as a sentence and then automatically conver[t] it into a jail term solely because the defendant is indigent and cannot forthwith pay the fine in full." *Tate, supra*, at 398, 91 S.Ct., at 671. In other words, if the State determines a fine or restitution to be the appropriate and adequate penalty for the crime, it may not thereafter imprison a person solely because he lacked the resources to pay it.

Bearden, 461 U.S. at 667-68. Due process applies to municipal traffic court. *Ward v. Vill. of Monroeville*, 409 U.S. 57, 58-62 (1972).

30. As a creature of the Alabama Constitution, municipal courts and the judges who preside in those courts are subject to the Constitution and laws of the State of Alabama. Ala. Const., Art. VI, § 145. The Alabama Rules of Criminal Procedure apply to municipal courts. Ala. R. Crim.

P. 1.1.

31. The requirements of *Bearden* are encapsulated in Ala. R. Crim. P. 26.11, as it provides that in no case shall an indigent defendant be incarcerated for inability to pay a fine or court costs. Rule 26.11(i)(2). The *Bearden* requirements are also included in Ala. R. Crim. P. 27.5(a), regarding initial appearance after arrest for revocation of probation: "In cases involving breaches of conditions of probation because of nonpayment of fines, costs, restitution, or other court-ordered assessments, the court, before the probationer is incarcerated, must inquire into the probationer's financial status and determine whether the probationer is indigent."

32. Rule 26.11, which also applies to revocation-of-probation proceedings, see *Taylor v. State*, 47 So. 3d 287 (Ala. Crim. App. 2009), outlines a judge's permitted actions when a defendant fails to pay a court-ordered financial assessment. As a threshold matter, if a defendant fails to pay a court-ordered financial assessment as directed, "the court may inquire and cause an investigation to be made into the defendant's financial, employment, and

family standing, and the reasons for nonpayment of the fine and/or restitution, including whether nonpayment of the fine and/or restitution was contumacious or due to indigency." Rule 26.11(g).

33. Before a fine can even be imposed, Rule 26.11(b) requires the judge to consider "the reasons a fine is appropriate, the financial resources and obligations of the defendant and the burden payment of a fine will impose, [and the] ability of the defendant to pay."

34. The municipal court judge is the chief judicial officer of the municipal court and, as such, bears primary responsibility for the administration of the court. Thomas Brad Bishop, *Municipal Courts Practice and Procedure in Alabama*, § 2.1 (4th ed. 2012). "Municipal court administration is ultimately the responsibility of the municipal judge." *Id.* at § 3.1.

35. Municipal courts are granted the power of probation by Ala. Code § 12-14-13. "Municipal courts may suspend execution of sentence and place a defendant on probation... not to exceed two years." § 12-14-13(a). Basic probation determinations must be made by the court, "The

court shall determine and may, at any time, modify the conditions of probation and may require the probationer to comply with the following ... condition[] ... (7) To pay the fine and costs imposed or such portions thereof as the judge may determine and in such installments as the judge may direct." § 12-14-13(d). Conditions of probation are not to be established by the probation officer. Ala. R. Crim. P. 27.1 Committee Comments. Conditions requiring payments of fines should not go beyond the probationer's ability to pay. *Id.* When revoking probation, the judge must "make a written statement or state for the record the evidence relied upon and the reasons for revoking probation." Rule 27.6(f).

36. In determining indigency or the ability to pay, the court shall recognize ability to pay as a variable depending on the nature, extent, and liquidity of the defendant's assets, and disposable net income of the defendant. See § 15-12-5. The court cannot consider the assets of relatives or friends. *Ex parte Sanders*, 612 So. 2d 1199 (Ala. 1993). As stated above, if the court

determines the defendant indigent, the judge cannot incarcerate that defendant for non-payment.

37. Before committing a non-indigent offender to jail for nonpayment of fines, a court must examine reasons for nonpayment and make specific determinations and findings that the defendant willfully refused to pay a fine that he/she has the ability to pay; that the defendant failed to make sufficient bona-fide efforts to pay; or, in the event of a showing of sufficient bona-fide efforts to pay, that alternate measures to punish and deter are inadequate. See *Taylor v. State*, 47 So. 3d at 290.

38. "[T]he trial judge 'may not delegate his discretion to another party.' *United States v. Brooks*, 125 F.3d 484, 502 (7th Cir. 1997) (quoting *Lemons v. Skidmore*, 985 F.2d 354, 358 (7th Cir. 1993))." *Lopez v. Thurmer*, 573 F.3d 484, 493 (7th Cir. 2009). See also *United States v. Dezern*, 242 F. App'x 622, 625 (11th Cir. 2007) ("the [Mandatory Victim Restitution Act] imposes an obligation on the district court to set a restitution schedule and to determine the schedule's duration-obligations that the court may not delegate to the probation office").

IV. Nature of the Charges

A. Judge Hayes's Wrongful Incarceration

39. Judge Hayes violated the Alabama Canons of Judicial Ethics²² and displayed a disregard for both state and federal law. By the manner in which he incarcerated traffic offenders and misdemeanants, including indigents, for failure to pay their court-ordered financial assessments, Judge Hayes failed to comply with the Constitution of the United States, the dictates of the United States Supreme Court, federal and state case law, the Alabama Constitution, Alabama statutes, and the Alabama Rules of Criminal Procedure.

40. Judge Hayes participated in and/or, as presiding judge, allowed to continue a municipal judicial system in which he and other municipal judges routinely jailed traffic offenders and misdemeanants, including indigent defendants, for their failure to pay court-ordered financial assessments:

²²"The Canons are not merely guidelines for proper judicial conduct. It is well-settled that the Canons of Judicial Ethics have the force and effect of law." *Matter of Sheffield*, 465 So. 2d 350, 355 (Ala. 1984).

(a) without conducting any meaningful inquiry into and/or without proper consideration for each offender's indigent status, the reasons for the offender's inability to pay, any bona-fide efforts by the offender to pay, and/or all alternatives to incarceration for failure to pay;

(b) without affording the offender an adequate opportunity to address his/her particular circumstances regarding his/her ability to pay, the reasons for any inability to pay, and any bona-fide efforts to pay;

(c) without making the specific determinations and findings, supported by the evidence that are required by Rule 26.11;

(d) while applying a fundamentally erroneous definition of indigency, i.e., "no source of income" and "[t]otal inability to pay any amount"; and/or

(e) while considering the assets of the offender's family and friends.

41. In addition, contrary to established law, Judge Hayes imposed "probation" (a) despite the absence of a suspended sentence, and (b) without making the requisite determination that the "probation" terms did not exceed the offender's ability to pay. Furthermore, contrary to established law, Judge Hayes revoked "probation" without (a) making a meaningful inquiry into the "probationer's" financial status; (b) affording the "probationer" an adequate opportunity to address his/her particular circumstances; (c) making the required Rule 26.11

determinations and findings, including indigency; (d) using the correct definition of indigency; and (e) making a written statement of the evidence relied upon and the reasons for revoking "probation."

B. Grossly Deficient Recordkeeping

42. Judge Hayes violated the Alabama Canons of Judicial Ethics and displayed a disregard for state law by participating in and/or, as presiding judge, allowing to continue a municipal judicial system in which basic judicial determinations were not documented. Comprehensive review of various offenders' Montgomery Municipal Court records often yielded no indication of which judge took specific judicial actions, if such actions actually occurred, be they compliance reviews, revocation of "probation," indigency and other Rule 26.11 determinations, warrant issuance, and even incarceration orders.²³ It is often impossible to determine, from the court records, which judge presided over a given docket on a given day.

²³The Commission's investigation into these allegations was stymied by the incomplete records maintained by the Montgomery Municipal Court.

As presiding judge, Judge Hayes was responsible for these deficiencies.

Delegation of Judicial Authority to JCS

43. Judge Hayes violated the Alabama Canons of Judicial Ethics and displayed a disregard for state law by participating in and/or, as presiding judge, allowing to continue a municipal judicial system that delegated critical judicial functions to JCS, as well as to court staff, without adequate oversight or any approval. In regard to offenders who owed less than \$1,500 and were sent directly by court staff to JCS in accordance with Presiding Judge Hayes's 2009 directive, all required judicial action was delegated to JCS and court employees. In regard to other "probation" cases—without any prior judicial oversight or approval, JCS employees were permitted to (a) refuse to accept offenders for their "probation" supervision; (b) set the terms and conditions of "probation"; and (c) issue "show cause orders" directing a defendant to appear in court and show cause why he/she had

failed to pay the fees required by JCS.²⁴ Judge Hayes, as presiding judge, not only permitted this system to operate, but actively participated in its abuses.²⁵

44. Judge Hayes allowed, even tacitly encouraged, the fiction of a "probation" system executed by JCS to increase the collection of court-ordered financial assessments. In that pursuit, he allowed JCS to cloak itself in the fiction that it was a "probation" company, giving it the appearance of having judicial authority and powers it did not possess under state law. JCS employees referred to themselves as "probation officers" in Judge Hayes's court, and Judge Hayes signed "Order[s] of Probation" forms generated and populated by JCS, held "probation revocation" hearings at the behest of JCS, and sanctioned the JCS practice of unilaterally setting, modifying, and cancelling hearings in

²⁴JCS did not merely file a petition for a show-cause order. JCS actually issued the order to show cause directly to the defendant directing the defendant to appear in court on a certain date and show cause.

²⁵For instance, on October 29, 2010 JCS mailed "probationer" Lorenzo Brown a Notice to Show Cause with a December 6, 2010 hearing date, but without a judge's signature. According to JCS records, Judge Hayes signed the Notice on the day of the hearing only after Mr. Brown failed to appear.

his court. JCS "probation officers" did not have the power of arrest, did not visit the "probationers," and even allowed persons other than the "probationers" to report as long as that person brought payments to JCS.²⁶ In the Montgomery Municipal Court under Judge Hayes, the non-judicial, debt-collector JCS purported to act with judicial authority when collecting court-ordered financial assessments owed to the City of Montgomery.

V. Bad Faith

45. "[A]bsent bad faith (i.e., absent proof of malice, ill will, or improper motive), a judge may not be disciplined under Canons 2A and 2B of the Alabama Canons of Judicial Ethics for erroneous legal rulings." *Matter of Sheffield*, 465 So. 2d 350, 358 (Ala. 1984). Furthermore, "[w]hen a judge or his staff persists in a pattern or practice of engaging in such conduct [as failure to follow

²⁶See Ala. Code § 12-14-13(e) ("The probation or other officer designated by the court ...shall keep informed concerning the conduct and conditions of each person on probation under his supervision by visiting the probationer ... The officer so designated shall have, in the execution of his duties, the power to arrest probationers.") See also, *infra* ¶ 138 (JCS allowed probationer's brother to "report" in probationer's place at least 41 times over the term of probation).

the law], that pattern and practice shows such a disregard for the law as to establish either the judge's bad faith or lack of competence in his or her knowledge of the law." JIC Advisory Opinion 14-926. In addition, bad faith may be "demonstrated by knowledge that the act was beyond [the judge's] lawful judicial power" or taken in "conscious disregard for the limits of [the judge's] authority." *Ark. Judicial Discipline & Disability Comm'n v. Simes*, 2011 Ark. 193, 381 S.W.3d 764, 770-71 (2011). "A specific intent to use the powers of the judicial office to accomplish a purpose which the judge knew or should have known was beyond the legitimate exercise of his authority may in and of itself constitute bad faith." *In re Thomas*, 873 S.W.2d 477, 490 (Tex. Rev. Trib. 1994).

46. Judge Hayes's pattern and practice of conduct and rulings in incarcerating those traffic offenders and misdemeanants who had not paid and/or were unable to pay court-ordered financial assessments were in violation of multiple, fundamental federal and state constitutional provisions, statutes, rules of procedure, and caselaw.

47. Judge Hayes did not merely commit isolated erroneous legal rulings. Though a well-experienced judge, his erroneous legal rulings were consistently repeated. He consistently ruled without first undergoing a full and fair hearing; he consistently made findings without sufficient evidentiary support; he consistently ruled without ensuring that important procedural requirements were in place to protect fundamental constitutional rights; and he consistently made legal rulings without first making specific determinations and findings. Judge Hayes is not guilty of mere legal error, as his conduct was contrary to clear and determined law about which there should be no confusion or question. Furthermore, under the circumstances presented, Judge Hayes's and the Court's failure to maintain essential records represents more than poor record keeping or administrative neglect; it is indicative of bad faith. That his practices and the municipal-court's practices over which he presides evidence bad faith is underscored by the fact that Judge Hayes did not begin to review the Court's official procedure and policy regarding incarceration for failure to pay until the federal

preliminary injunction and the distinct threat of additional federal action.²⁷

48. For these reasons, Judge Hayes's conduct implicates far more than mere mistakes of judgment honestly arrived at or the mere erroneous exercise of discretionary power. His abuse of authority and disregard for fundamental rights demonstrates bad faith under *Matter of Sheffield*, 465 So. 2d 350 (Ala. 1984), for purposes of the charged violations of Canon 2A and 2B.

VI. Federal Intervention

49. These ethical charges raise many of the same issues addressed in three federal court actions in Montgomery, Alabama: *Cleveland v. City of Montgomery et al.*, M.D. Ala., Civil Action No. 2:13-cv-732; *Watts v. City of Montgomery, et al.*, M.D. Ala., Civil Action No. 2:13-cv-733; and *Mitchell, et al. v. City of Montgomery, et al.*, M.D. Ala., 2:14-cv-186. All three actions have since settled.

50. Harriet Cleveland and Markis Watts originally filed lawsuits in Montgomery Circuit Court on August 28,

²⁷See Part VI., *infra*.

2013, which were transferred to federal court on October 4, 2013, and later consolidated. Ms. Cleveland and Mr. Watts were in custody in the Montgomery Municipal Jail when they filed their suits. Ms. Cleveland's complaint did not name Judge Hayes as a defendant, but Mr. Watts's complaint did name Judge Hayes.

51. Ms. Cleveland and Mr. Watts claimed that they were incarcerated for being too poor to pay parking and traffic tickets in violation of their rights to counsel, equal protection, and due process under the Sixth and Fourteenth Amendments of the United States Constitution; Article I, §§ 1, 6, and 22 of the Alabama Constitution; and the Alabama Rules of Criminal Procedure. *Cleveland*, Amended Complaint at ¶ 6; *Watts*, Amended Complaint at ¶ 5.

52. Sixteen plaintiffs filed the *Mitchell* case in federal court on March 18, 2014. On May 1, 2014, the *Mitchell* Court (District Judge Mark Fuller) entered a preliminary injunction, finding that "Plaintiffs are substantially likely to succeed on the merits." *Mitchell*, Preliminary Injunction Order at ¶ 7. The Court enjoined the City of Montgomery from collecting or attempting to collect

all outstanding fines, fees, costs, surcharges or the outstanding balance of any monies owed to the City or to JCS associated with traffic tickets by Plaintiffs until further order of the Court. *Id.* The Court also ordered the City of Montgomery to:

submit to the Court a comprehensive plan listing the current or proposed policies and procedures the City follows or intends to follow in making future determinations of an individual's ability to pay, the policies and procedures the City follows or intends to follow in making future determinations as to reasons for an individual's failure to pay, the policies and procedures the City follows or intends to follow in making future determinations of any alternative measures of punishment other than imprisonment for the non-payment of fines, and the policies and procedures the City follows or intends to follow in making future determinations of whether these alternative measures are adequate to meet the City's interests in punishing and deterring the non-payment of fines, which shall comply with all applicable federal and state laws and the Alabama Rules of Criminal Procedure.

*Id.*²⁸

53. Like the plaintiffs in *Cleveland* and *Watts*, the 16 *Mitchell* plaintiffs claimed that, although they were unable

²⁸Subsequently, the City filed a Motion for Relief from the Order on the ground that the Court had no authority to establish such relief because Municipal Court judges are independent judicial officers under state and federal law. *Mitchell* (Doc. 29). The case was settled as discussed herein before those issues were ruled upon.

to pay a debt owed from traffic tickets to the City of Montgomery due to indigency, they were sent to jail for non-payment without there being sufficient inquiry into their ability to pay. They alleged that it was

the policy and practice of the City of Montgomery to jail people when they cannot afford to pay debts owed to the City resulting from prior traffic tickets without conducting any inquiry into the person's ability to pay and without considering alternatives to imprisonment as required by federal and Alabama law.

Mitchell, Complaint at ¶ 1.

54. Counsel for the parties in *Cleveland* and *Watts* became involved in the *Mitchell* case for the limited purpose of expressing their views on the legal sufficiency of the current or proposed plan the City was required to submit to the Court. *Cleveland* (Doc. 35 or 36).

55. On October 31, 2014, the *Mitchell* Plaintiffs filed an unopposed motion to join the judges of the Montgomery Municipal Court in their official capacities as parties to this action because the parties and judges had entered into an *Agreement to Settle Injunctive and Declaratory Relief Claims*, which settled all matters relative to the declaratory and injunctive relief requested by Plaintiffs. *Mitchell* (Doc. 46).

56. On November 17, 2014, District Judge Myron Thompson granted the parties' *Joint Motion for Entry of Final Declaratory and Injunctive Relief* in all three cases. *Mitchell* (Doc. 47-2, granted Doc. 51)²⁹; *Cleveland/Watts* (Doc. 56, granted Doc. 59). That Settlement Agreement incorporated an eleven-page document, *Judicial Procedures of the Municipal Court of the City of Montgomery for Indigent Defendants and Nonpayment. Mitchell* (Doc. 47-2).³⁰

57. Several specific procedures in the Settlement Agreement to be followed by Montgomery Municipal Court judges indicate the breadth of the protections the parties agreed for the Municipal Court to implement:

1. No defendant will be incarcerated for inability to pay any court-ordered monies, including fines, court costs or restitution. (Rule 26.11, Ala. R. Crim. P.).

* * *

9. An indigent defendant will be given the option of either paying \$25.00 a month to pay off his

²⁹The consolidated cases were transferred to District Judge Thompson on August 20, 2014.

³⁰In reaching this settlement, the City and municipal judges denied any liability and did not waive any potential immunity. *Mitchell* (Doc. 47-2).

finer, court costs, fees, and restitution or doing community service.

* * *

11. The ability of a defendant to pay who is not deemed indigent but who expresses an inability to pay his fines, costs, fees and restitution in full will be based on that defendant's: (i) disposable income, as reflected in the Affidavit of Substantial Hardship (Form C-10A) and as further clarified by questions raised in the indigence hearing, (ii) the defendant's assets, and (iii) the defendant's earning potential.

* * *

13. The court record shall contain an explanation of any determination of non-indigence.

* * *

16. No person may be incarcerated for nonpayment in any case unless these procedures are followed.

* * *

20. No person unable to pay his or her fines in full will be charged an additional fee for being placed on a payment plan unless affirmatively authorized by law.

Mitchell (Doc. 47-2).

58. The Settlement Agreement also laid out specific procedures the Montgomery municipal judges are required to follow at various types of hearings. *Mitchell* (Doc. 47-2). These procedures include, but are not limited to: a

guidepost on when and how to conduct indigency determinations; what options, other than incarceration, the Court must offer defendants with an inability to immediately pay off fines; and a clear rule on when a defendant should be found indigent for purposes of paying fines, costs, fees, or restitutions. *Id.* The procedures provide guidance for the appropriateness of (a) incarceration for defendants who willfully fail to pay court-ordered financial assessments and/or fail to comply with community-service requirements; and (b) arrest of defendants who have failed to appear, as ordered by the Court. *Id.*

59. In *Cleveland*, Judge Thompson found it "uncontroverted" that the principles in *Bearden v. Georgia*, 461 U.S. 660 (1983), regarding incarceration for non-payment, and *Turner v. Rogers*, --- U.S. ---, 131 S. Ct. 2507 (2011), regarding notice,³¹ apply in municipal-court proceedings. *Cleveland* (Doc. 58). Judge Thompson further

³¹"*Turner* expanded on *Bearden* by defining an indigent person's due-process rights under the Fourteenth Amendment when facing civil contempt. *Turner*, --- U.S. at ---, 131 S. Ct. at 2512." *Cleveland* (Doc. 58 at pp. 14-15).

found that "[a]s such, judges in municipal courts, like judges in state courts, must follow *Bearden* and *Turner*, and the judges in the Montgomery Municipal Court are no exception." *Id.* at 11-12).

Judge Thompson further found:

[T]he proposed judicial procedures facially comply with the constitutional requirements outlined in *Bearden*. Under *Bearden*, a court may imprison a debtor only upon a finding of willful non-payment or when, despite the debtor making a bona-fide effort to pay, "alternative measures [of punishment] are not adequate to meet the State's interests in punishment and deterrence." 461 U.S. at 672. The judicial procedures agreed to by the parties here conform to that standard, allowing a debtor to be imprisoned only if (1) the municipal court determines that the debtor had the ability to pay and (2) the court makes an express finding that the non-payment was willful.

Cleveland, 2014 WL 6461900, at *4-5 (M.D. Ala. Nov. 17, 2014).

60. Judge Thompson also concluded that the proposed procedures facially comply with other constitutional requirements and Alabama law, specifically the 6th and 14th Amendments, Article I of the Alabama Constitution, and the Alabama Rules of Criminal Procedure:

[A] state court may not incarcerate an indigent defendant for the inability to pay a fine. To avoid this result, the state court may inquire

into the defendant's ability to pay, reduce the debt owed, modify the payment schedule, or release the defendant from the obligation altogether. The proposed judicial procedures (which require indigence/ability-to-pay hearings, guarantee of counsel, and exclusion of incarceration as a remedy for indigent defendants) facially conform to this rule.

Cleveland, 2014 WL 6461900, at *5-6 (internal citations omitted).

61. Final judgment was entered in the *Cleveland* and *Watts* consolidated cases on November 17, 2014. *Cleveland* (Doc. 59).³²

VII. Individual Offenders

62. While most cases of incarceration of traffic offenders and misdemeanants in Montgomery Municipal Court over a number of years follow the pattern and practice set out above, some cases exemplifying this pattern and practice are set out in more detail below. The following

³²Following settlement of the *Cleveland/Watts/Mitchell* cases, two cases with similar allegations were filed in federal court. The case of *McCullough, et al. v. City of Montgomery, et al.*, M.D. Ala., Case No. 2:15-cv-463, was filed on July 1, 2015. Judge Hayes was named as a defendant. The case of *Aldaress Carter v. City of Montgomery, et al.*, M.D. Ala., Case No. 2:15-cv-555, was filed on August 3, 2015, in which Judge Hayes has not been identified as a defendant to date. Both cases are pending.

individual defendants were incarcerated for various periods (a) without conducting any meaningful inquiry into and/or without proper consideration for each offender's indigent status, the reasons for their failure or inability to pay court-ordered financial assessments, any bona-fide efforts to pay, and/or all alternatives to incarceration; (b) without affording the offenders an adequate opportunity to address his/her circumstances; (c) without making Rule 26.11's required specific determinations and findings; (d) while applying an absolute definition of "indigency"; and/or (e) while considering the assets of friends or family. Many of the defendants were on "probation" with JCS pursuant to the Court's abdication of judicial authority.

A. Kenny Jones

63. Kenny Jones ("Mr. Jones") is a 32 year old resident of Montgomery, AL. At all times relevant to this Complaint, Mr. Jones was indigent as his sole source of income was a Social Security Income ("SSI") disability payment in the amount of \$606 a month.

64. In August, 2009, Kenny Jones was assigned to JCS

for 12 months' "probation" for \$526 owed for traffic tickets. Over the next 8 months, Mr. Jones paid JCS \$745. JCS determined, without judicial oversight or approval, the amount of each payment that would be credited towards Mr. Jones's outstanding balance versus the amount JCS retained JCS for "probation fees." In this case, JCS typically retained 30-40% of each payment, remitting the remainder to the Court.

65. On August 4, 2010, the Court approved the JCS-generated Order for Modification to extend Mr. Jones's "probation" by six months. At that time, Mr. Jones owed the Court only \$36, but owed \$225 to JCS. On the order, the signatory judge marked out the \$225 owed to JCS. However, according to a failure-to-report letter issued on August 5, 2010, JCS did not remove that \$225 in fees owed to JCS.

66. Shortly after the modification order, Mr. Jones could no longer make payments to JCS. As a result, on September 17, 2010, JCS generated a probation revocation petition for Mr. Jones's failure to pay the remaining \$36 owed the Court and \$114 owed to JCS. It was signed by a JCS "Probation Officer" on that date. The petition set a

"probation"-revocation hearing for November 4, 2010. Judge Hayes did not sign the order setting a hearing on this petition until the day of the hearing.

67. When JCS generated its revocation petition, it also generated a VOP letter as discussed *supra* at ¶ 15-17 ("VOP letter"), in which a JCS employee wrote, "This letter is to inform you that you have violated the terms and conditions of your probation. There has been a court date set for you on the 4 [sic] day of November, 2010" Thus, that JCS employee, without prior judicial oversight or approval, told Mr. Jones he had violated his "probation" and, also without judicial oversight or approval, set a court date. The VOP letter also noted that, "YOU MAY PAY \$150 BY OCTOBER 27, 2010 TO CANCEL YOUR HEARING AND CLOSE YOUR CASE." JCS, without prior judicial approval, offered to unilaterally cancel a hearing for a fee.

68. On February 9, 2011, Mr. Jones was arrested, and Judge Hayes converted his outstanding amount due to jail time, without conducting any meaningful inquiry into Mr. Jones's inability and/or failure to pay; without considering the proper factors under the correct meaning of

"indigency"; and without making any determination that Mr. Jones had the ability to pay and was willfully refusing to pay.

B. Willie Carnell Boldin

69. Willie Carnell Boldin was a 61 year old resident of Montgomery, AL and, at all time relevant to the Complaint, was indigent. On or about January 16, 2012, Judge Hayes committed Mr. Boldin to jail for a term of 115 days for his failure to pay court-ordered financial assessments on 12 offenses: 7 for driving with a suspended license, 4 for failure to possess or display proof of motor vehicle liability insurance, and 1 for having no driver's license, as further described below:

	Charge	Case #	Court Disposition of Case
1	Driving While Suspended	N3347617	1 day Time Served
2	Fail Possess/Display	N3347616	1 day cc Time Served
3	Driving While Suspended	N2198767	Commuted on \$646
4	Driving While Suspended	N2109393	Commuted on \$646
5	Fail Possess/Display	N2217031	Commuted on \$196
6	Driving While Suspended	N2217030	Commuted on \$487
7	Driving While Suspended	N2091285	Commuted on \$646
8	Fail Possess/Display	N2234572	Commuted on \$134

9	Driving While Suspended	N2234571	Commuted on \$246
10	Fail Possess/Display	N2197041	Commuted on \$246
11	Driving While Suspended	N2197040	Commuted on \$246
12	No Driver License	N2095245	Commuted on \$246
	TOTAL		\$3,739

It appears these 12 tickets were issued during 8 traffic stops.

70. Judge Hayes converted Mr. Boldin's outstanding amount due to jail time, without conducting any meaningful inquiry into his inability and/or failure to pay; without considering the proper factors under the correct meaning of "indigency"; and without making any determination that Mr. Boldin had the ability to pay and was willfully refusing to pay.

71. A handwritten entry on Mr. Boldin's "jail transcript" reflects that he would be released on payment of \$2,200 with the balance due 60 days from the date of his release. Both the "jail transcript" and the handwritten notation are unsigned and incapable of being attributable to any one individual or judge. Based on the subpoenaed

Montgomery Municipal Court documents the Commission reviewed, there is no signed order of sentence.³³

72. While incarcerated, Mr. Boldin, a painter by trade, was "allowed" to paint the interior of the jail to earn an extra \$25-per-day credit towards his fines and fees.³⁴ However, he was forced to hire an attorney in order to receive credit for his labor.³⁵

³³A "signed" order would include any order issued by a municipal judge that is either signed, initialed, or contains the judge's printed name. As far as the Commission can determine from its review of the subpoenaed court documents, there is no signed order regarding Mr. Boldin's incarceration. In fact, in the thousands of documents the Commission reviewed, there is seldom a signed order of incarcerating any defendant, either by commutation or revocation of probation.

³⁴Work for extra credit toward the balance owed was a common practice apparently condoned by the Court, but implemented by the jail personnel, e.g., the jail personnel chose those offenders who would be allowed the opportunity; the credit was determined by the jail, etc.

³⁵See *Defendant's Motion for Immediate Release From Confinement* filed by Attorney Winn Faulk on March 7, 2012 in *City of Montgomery v. Willie Boldin*, Case Numbers N2198767, N2109393, N2217031, N2217030, N2091285, N2234572, N2234571, N2197041, N2197040, N2095245 and Unknown Case No. re marijuana-charge reference in Jail Booking # 2012-0000384.

73. According to the Montgomery Municipal Jail inmate-release log kept by the Court's bailiff, Mr. Boldin was released sometime prior to May 10, 2012.

C. Harriet Delores Cleveland

74. Harriet Delores Cleveland is a fifty-two year old female resident of Montgomery, Alabama. At all times relevant to this complaint, she was indigent. Up to the time of her final arrest, she had been unable to find full-time employment after losing her daycare job in 2009, as a result of her arrest record for failure to report and to pay. She has held part-time jobs sporadically, but had so little income she was forced to file for bankruptcy in 2013.

75. Over a period of five years, Ms. Cleveland received numerous traffic tickets that she could not afford to pay. The early tickets were for failure to possess/display proof of vehicle-liability insurance. (Over a two-year span, police set up roadblocks in her neighborhood, and she was ticketed each time she could not provide proof of insurance.) Because she could not afford to pay those tickets, the City of Montgomery petitioned the

Department of Public Safety to suspend her license, which was granted. Nevertheless, she continued driving to work and her child's school, and she eventually received additional tickets for driving without a license.

76. On March 23 2010, Municipal Judge Karen Knight assigned Ms. Cleveland to JCS. For Ms. Cleveland to pay her \$3,633 in court-ordered financial assessments and the JCS-required \$10 set-up fee and \$40 monthly fee, a JCS employee set her payment amount at \$200 per month and scheduled her term of probation for 24 months, with minimal oversight by the Court.

77. In November 2011, Ms. Cleveland lost her unemployment benefits. As a result, on November 11, 2011, JCS set a "probation revocation" hearing so she could be removed from JCS supervision. To prevent revocation, Ms. Cleveland pawned the title to her vehicle and paid JCS \$200. Consequently, JCS canceled the revocation hearing and put Ms. Cleveland back on a regular payment schedule.

78. On or about January 19, 2012, a judge, who would be Judge Hayes according to a "Judge's Calendar" provided by the city, incarcerated Ms. Cleveland in the City Jail

for a term of 18 days after commuting her \$471 in a different set of unpaid fines and court costs, as further described in the following table:

	Charge	Case #	Court Disposition of Case
1	Harassment	2010CRA002763B	Commutated on \$471
2	No Insurance	N4221413	1 Day CC
3	Failure to Signal	N4221415	1 Day CC
4	Driving While Suspended	N4221414	1 Day CC

79. Prior to incarcerating Ms. Cleveland, the judge did not conduct a sufficient inquiry into her inability and/or failure to pay; did not consider the proper factors under the correct meaning of "indigency"; did not give her a meaningful opportunity to be heard; and did not make a determination that she had the ability to pay and was refusing to pay. Ms. Cleveland was released on February 6, 2012 after receiving credit for "jail work."

80. On February 17, 2012, 11 days after she was released from jail, Ms. Cleveland paid JCS \$2,000 she had received from her income tax refund. On March 29, 2012, JCS unilaterally extended Ms. Cleveland's probation by 19 days, which was 19 days more the statutorily allowed 24 months.

81. Despite Ms. Cleveland notifying JCS on May 8, 2012 that she was unemployed and her house was in foreclosure,

and despite the fact that she had been current on her payments just two months earlier, on June 20, 2012, a JCS "probation officer" issued a "Notice to Show Cause" to Ms. Cleveland compelling her appearance on July 12, 2012, in the Montgomery Municipal Court "to explain why you have failed to pay fine and costs as ordered by this court." The Notice also declared, "You have failed to report! In order to dismiss this court date, you must do the following: You must report for your next scheduled appointment. You must also pay \$1417 to rescind the scheduled hearing." JCS, without prior judicial approval, offered to unilaterally cancel a hearing for a fee.

82. The Notice to Show Cause contains no indication that it had prior judicial approval or authorization. In fact, the Notice was not signed by a judicial officer, Judge Hayes in this case, until the day of the hearing. This is just one of countless examples in the Montgomery Municipal Court of JCS issuing purported "court orders" with no judicial authority to do so. Ms. Cleveland failed to appear at show cause hearing and a warrant was issued for her arrest.

83. Also on July 12, 2012, JCS generated a "Violation Report" addressed to Judge Karen Knight in the Montgomery Municipal Court. The report detailed the number of missed appointments and the amount Ms. Cleveland had paid JCS to that point. Of the \$3,633 in fines and \$1,080 in "probation fees" Ms. Cleveland owed, she had paid \$3,176. JCS recommended removal from "probation" because "DEF LOST HER HOUSE AND HAS NO INCOME." This document would have been in her file prior to the issuance of the failure-to-appear warrant and the commuting of her remaining fines.

84. On August 20 2013, Ms. Cleveland was again arrested for failure to appear at hearings related to her court-ordered financial assessments. She was taken into custody at her home in front of her 18-month-old grandson. An unidentified Montgomery municipal judge commuted her outstanding fines to 31 days incarceration for her failure to make payments on old traffic tickets in the amount of \$1,554.

85. Prior to sentencing Ms. Cleveland to incarceration, the judge made no determination that Ms. Cleveland had the ability to pay and was refusing to pay.

Ms. Cleveland attempted to explain that she recently found a job that would help her begin paying the tickets, but she could not pay that day. However, after a JCS employee said she was not qualified for a payment plan, the judge commuted her fines and incarcerated her. The decision to either allow her further time to pay what she owed the city (and JCS), or to jail her, was ultimately made by a JCS employee.

86. Ms. Cleveland was released only after she filed an appeal in state court that was removed to federal court, staying her incarceration, as discussed *supra*.

D. Marquita Shaaron Johnson

87. Marquita Shaaron Johnson (hereinafter "Ms. Johnson") is a thirty-two year old woman and a mother of four children: an 12 year-old girl, a 6 year-old girl, a 5 year-old girl, and a 2 year-old boy. One of her children has a speech impediment and another has been diagnosed with ADHD. At all times relevant to this Complaint, she was indigent.

88. Ms. Johnson is one of the named plaintiffs in *McCullough, et al. v. City of Montgomery, et al.*, M.D.

Ala., Case No. 2:15-cv-463.

89. On or about April 24, 2012, Ms. Johnson was arrested in connection with her failure to pay traffic tickets. She had been on "probation" with JCS since May 24, 2011,³⁶ with a requirement to make monthly payments to JCS totaling \$564. Ms. Johnson made payments, but her "probation" was revoked for failure to keep up with her monthly payments and weekly appointments. During the term of her "probation", Ms. Johnson lost her job, rendering her unable to pay JCS. When she did manage to make a payment, typically only half of the money she paid went towards paying down her fines, while JCS retained the rest.

89. During the jail docket held on April 25, 2012, Judge Hayes did not make any inquiry into Ms. Johnson's ability to pay, whether her non-payment was willful or contumacious, or into any alternatives to imprisonment.

90. After a brief and wholly insufficient inquiry into her circumstances, Judge Hayes commuted Ms. Johnson's \$12,410.00 in fines and costs to incarceration for a period

³⁶ On that same day, Ms. Johnson paid off two 2007 tickets totaling \$916 with a credit card. She was placed on JCS "probation" for 32 other tickets totaling \$10,936.

of 496 days, as seen in the table below:

	Charge	Case #	Court Disposition of Case
1	Driving W/ Revoked	N4190950	1 Day
2	No Proof of Insurance	N4190949	1 Day CC
3	Speeding	M6436073	Commuted on \$100.00
4	No Proof of Insurance	M6444338	Commuted on \$260.00
5	No Proof of Insurance	M9658861	Commuted on \$260.00
6	Running Stop Sign	M9658860	Commuted on \$230.00
7	No Child Restraint	M9679112	Commuted on \$250.00
8	Driving W/ Suspended	M9679111	Commuted on \$710.00
9	Driving W/ Suspended	M9652706	Commuted on 710.00
10	Running Stop Sign	M9652707	Commuted on 230.00
11	Running Red Light	M8804223	Commuted on 230.00
12	No Proof of Insurance	M9668823	Commuted on 260.00
13	Driving W/ Suspended	M9668824	Commuted on 710.00
14	Driving W/ Suspended	N3242060	Commuted on 710.00
15	Speeding	N3227499	Commuted on 230.00
16	Driving W/ Suspended	N3227500	Commuted on 710.00
17	Speeding	N3348371	Commuted on 230.00
18	No Proof of Insurance	N33448372	Commuted on 260.00
19	Speeding	V2334204	Commuted on 230.00
20	Driving W/ Suspended	V2334205	Commuted on 710.00
21	Driving W/ Suspended	N3578274	Commuted on 710.00
22	Speeding	N3578273	Commuted on 230.00
23	Driving W/ Suspended	N3728911	Commuted on 710.00
24	Speeding	N3728910	Commuted on 230.00
25	Expired Tag	N3748516	Commuted on 203.00
26	Driving W/ Suspended	N3748517	Commuted on 333.00
27	Expired Tag	V3253975	Commuted on 203.00
28	Driving W/ Suspended	V3253976	Commuted on 683.00
29	No Child Restraint	V3253978	Commuted on 223.00
30	No Child Restraint	V3253979	Commuted on 223.00
31	No Child Restraint	V3253980	Commuted on 223.00
32	No Child Restraint	V3253981	Commuted on 223.00
33	No Child Restraint	V3253982	Commuted on 223.00
34	No Child Restraint	V3253983	Commuted on 223.00
35	Improper Turn	N4193116	Commuted on 203.00
36	Driving W/ revoked	N4193117	Commuted on 304.00
37	No Proof of Insurance	N4193118	Commuted on 233.00

	TOTAL		\$12,410.00
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91. A handwritten but unsigned entry on the "jail transcript" stated:

\$12,410.00 or 496 days

92. During Ms. Johnson's confinement for failure to pay her court-ordered financial assessments, several of her family members appeared in front of Judge Hendley and asked for Ms. Johnson's release. A notation added later on the same jail transcript, presumably after the family's appearance, read:

Defendant can be released
with \$5000.00 per
Judge Hendley 2 of 2
[unidentified initials] 2012-3361

93. Ms. Johnson remained in the Montgomery Municipal Jail for approximately nine months. She was released from jail on or about January 28, 2013.

94. While incarcerated, Ms. Johnson was informed of alternative ways to perform jail labor to "work off" her debt. Ms. Johnson performed the following "jobs" to "work off" debt: washed police cars; worked in jail laundry; cooked in the kitchen; swept the jail; washed lockers; and cleaned courtrooms. Because phone calls to her family were

so expensive, she would sometimes ask for a phone call rather than the \$25 "credit". Ms. Johnson's work was not recorded daily by the jailer, which extended her time in jail.

95. Prior to her jailing, Ms. Johnson had a car and home. After her release she was homeless and unable to find a job.³⁷ During Ms. Johnson's confinement, one of her daughters was molested and another physically abused.

96. Prior to commuting Ms. Johnson fines to jail-time, Judge Hayes did not conduct a meaningful inquiry into Ms. Johnson's inability and/or failure to pay; did not consider the proper factors under the correct meaning of "indigency"; and did not make the determination that Ms. Johnson had the ability to pay and was willfully refusing to pay.

E. Justin Lorenzo Jones

97. Justin Lorenzo Jones, 46 years old, was indigent at all times relevant to this complaint.

98. On or about November 15, 2012, Mr. Jones appeared before Judge Hayes after being arrested for warrants

³⁷ As of early 2016.

relating to outstanding court-ordered financial assessments. The charges and their disposition are detailed below.

	Charge	Case #	Court Disposition of Case Fine and Costs
1	Driving W/ Revoked	2004TRT021658	1 Day
2	Driving W/ Revoked	2010TRT093637	1 Day
3	No Proof of Insurance	2004TRT021659	1 Day
4	No Proof of Insurance	2010TRT093636	1 Day
5	No D/L in Possession	2010TRT086393	1 Day CC
6	No Proof of Insurance	2010TRT093638	1 Day CC
7	No Proof of Insurance	2010TRT092612	1 Day CC
8	No Proof of Insurance	2003TRT007899	Commutated on \$201.00

99. Judge Hayes commuted Mr. Jones's court-ordered financial assessments to incarceration without conducting a meaningful inquiry into Mr. Jones's inability and/or failure to pay; without considering the proper factors under the correct meaning of "indigency"; and without making any determination that Mr. Jones had the ability to pay and was willfully refusing to pay.

100. Mr. Jones was sentenced to four days' incarceration on four tickets, three concurrent days for three other tickets, and commuted to four additional days incarceration from the \$201 traffic ticket. He was released six days later, with two days' credit for time served.

F. Angela McCullough³⁸

101. Angela McCullough is a 41 year-old indigent woman and a resident of Montgomery, Alabama. She is the mother of four children: an 8 year old son, a 13 year-old girl, a 24 year old son, and a 26 year-old disabled, schizophrenic son. At all times pertinent to this complaint, except for the time she was incarcerated, Ms. McCullough was the sole provider and caretaker for these four children.

102. Ms. McCullough is the lead plaintiff in the case of *McCullough, et al. v. City of Montgomery, et al.*, M.D. Ala., Case No. 2:15-cv-463, which was filed in federal court on July 1, 2015.

103. On or about November 27, 2009, Plaintiff McCullough was arrested for failure to pay traffic tickets after she had been on "probation" under the supervision of JCS. Her "probation" was revoked for failure to make her JCS payments and probation fees on tickets owed to the City of Montgomery.

³⁸ Many of these allegations concerning Ms. McCullough are taken from the complaint in *McCullough, et al. v. City of Montgomery, et al.*, M.D. Ala., Case No. 2:15-cv-463-WKW-WC, Doc. 1 and Doc. 32, filed July 1, 2015, ¶¶ 46-52.

104. Shortly thereafter, Ms. McCullough appeared in front of Judge Hayes, who asked her why she had not paid her fines. She informed Judge Hayes that she was working, but with bills, school, and her children (including a disabled son), she was unable to pay at that time. No indigency hearing was held nor failure-to-pay determination made, and Judge Hayes commuted her fines to 152 days incarceration. Ms. McCullough performed jail labor for "credit", including working in the laundry during her incarceration. She was released after 66 days imprisonment on or about February 2, 2010, after her family members used portions of their tax refunds to pay around \$2,200 of her remaining debt.

105. On or about July 3, 2013, Ms. McCullough was again arrested for failure to pay outstanding traffic tickets. Shortly after leaving class at Faulkner University, she was pulled over at dusk for driving without headlights. After approximately two hours of the police officer "running her name", she was arrested for 14 outstanding tickets. She appeared in Montgomery Municipal Court the next day and

ordered jailed by Judge Hayes for 83 days³⁹ for unpaid tickets, fines, and related costs as seen below.

	Charge	Case #	Disposition of Case Fine and Costs
1	Driving W/Suspended	2011TRT007985	1 day
2	Driving W/Suspended	2013TRT0424422	1 day
3	No Insurance	2011TRT056458	1 day
4	No Child Restraint	2011TRT007987	1 day
5	No Insurance	2011TRT007986	1 day cc
6	Improper Tail Lights	2013TRT042420	1 day cc
7	No Insurance	2013TRT04241	1 day cc
5	False Statement	2004CRA000391A	Commuted on \$407.00
6	Driving While Suspended	2006TRT012376	Commuted on \$619.00
7	Driving While Suspended	2006TRT012375	Commuted on \$169.00
8	No Driver License	2001TRT029275	Commuted on \$222.00
9	No Insurance	2008TRT064789	Commuted on \$169.00
10	Driving While Suspended	2010TRT023050	Commuted on \$295.00
11	No Child Restraint	2010TRT023051	Commuted on \$170.00
12	No Driver License	2008TRT064788	Commuted on \$219.00
13	No Driver License	2001TRT009552	Commuted on \$214.00
14	Improper Lights	2002TRT036427	Commuted on \$66.00
	TOTAL		\$5760.00 ⁴⁰

106. An Order of Release from Jail dated July 22, 2013, shows that Ms. McCulloch was released on that date with the comment: "Defendant served 4 days mandatory; Defendant

³⁹ Judge Hayes initially threatened her with 100 days in jail if she could not pay her balance, but was changed to 83 days after the hearing by a court employee using more accurate math.

⁴⁰ The Transcript Report for July 2, 2015, shows that while Ms. McCulloch owed a total of \$5760.00, she was ordered incarcerated for 83 days for fines and costs of \$4,186.00. The "Commuted" amounts total \$2550.00.

given credit for 17 days; balance of \$1350.00 paid in full." That \$1,350 was money she intended to use on her education.

107. While in jail, Ms. McCullough performed manual labor to help work off her unpaid tickets. On one occasion, she was made to keep "suicide watch" over a female inmate known to have Hepatitis C. Ms. McCullough was sent to the "drunk tank" where the female with Hepatitis C had slit her wrist with what appeared to be a crack pipe. Ms. McCullough was on "suicide watch" for about two hours, during which time the inmate slit her other wrist. Ms. McCullough was then made to clean up the blood after the guards threw Clorox or bleach on the floor. She was also made to clean feces in cells during her incarceration.

108. Ms. McCullough lost her job at Home Inn & Suites because of her illegal and unconstitutional incarceration. Her mentally disabled son was very agitated during her incarceration because he could not speak to or see her as he regularly did.

109. At the time of her arrest, Ms. McCullough was a student at Faulkner University with a 3.87 GPA. Ms.

McCullough lost her financial aid and was forced to quit college. She had one and one-half semesters remaining to complete a college degree in management and human resources; she has been unable to afford further college. Because she was afraid to drive, she walked a little over a mile to and from work.

110. Judge Hayes commuted Ms. McCullough's court-ordered financial assessments to incarceration without conducting a meaningful inquiry into Ms. McCullough's inability and/or failure to pay; without considering the proper factors under the correct meaning of "indigency"; and without making any determination that Ms. McCullough had the ability to pay and was willfully refusing to pay.

G. Aldaress Carter

111. Aldaress Carter ("Mr. Carter") is a 28 year old resident of Montgomery, Alabama. At all times relevant to the Complaint, he was indigent. On June 7, 2011, Mr. Carter was placed on JCS "probation" to repay \$1,101 of court-ordered financial assessments relating to 6 traffic tickets arising from three separate traffic stops. JCS set Mr.

Carter's payment amount at \$140/month for a period of 24 months.

112. Over the next 18 months, Mr. Carter made \$823 in payments to JCS. \$363 of those payments, or 44% of the total paid, was retained by JCS. Only \$460 went towards Mr. Carter's \$1,101 in fines. The Montgomery Municipal Court exercised no oversight over this aspect of the JCS operations. Due to representations made by a JCS employee, Mr. Carter believed he had satisfied his obligations and had been released from JCS.

113. JCS, however, set a "probation revocation" hearing in the Montgomery Municipal court, without the court's prior knowledge or approval, for January 30, 2013. Mr. Carter received no notice of this hearing. Judge Hayes signed the order for the hearing the same day the hearing was held. After Mr. Carter failed to appear, Judge Hayes issued a warrant for Mr. Carter's arrest.

114. On January 25, 2014, Mr. Carter was arrested on outstanding warrants for unpaid tickets. After spending the weekend in the Montgomery jail, Mr. Carter was brought before a judge he identifies as Judge Hayes. Mr. Carter

told the judge that his girlfriend had the money to pay on his tickets. The judge asked Mr. Carter's girlfriend, "Do you have \$180?" She replied, "No, I only have \$120." The judge immediately ordered the fines commuted to jail time and told Mr. Carter that the correctional officers would inform him how much time he would have to serve. The warrant list contained an unsigned notation that defendant's fines were commuted to 36 days incarceration.

115. While Mr. Carter insists Judge Hayes ordered his incarceration, a typed notation on the unsigned "jail transcript", the paperwork relied upon to incarcerate him, indicated he could be "released with 1/2 per Judge Hendley." Mr. Carter was released the next day after his mother borrowed \$452 to pay her son's outstanding fines and costs and he received \$50/day credit for his four days incarceration.

116. There is no indication that the unidentified Montgomery municipal judge that commuted Mr. Carter's fines made a meaningful inquiry into Mr. Jones's inability and/or failure to pay; considered the proper factors under the correct meaning of "indigency"; or made any determination

that Mr. Jones had the ability to pay and was willfully refusing to pay.

H. Tequila Ballard

117. Tequila Ballard ("Ms. Ballard") is a 35 year old indigent mother of four dependent children and a resident of Montgomery, Alabama. At all times relevant to the Complaint, she was indigent. Ms. Ballard depended on food stamps to feed her family. On February 4, 2013, Ms. Ballard was placed on JCS to repay \$4,026 of court-ordered financial assessments relating to a number of 2008 traffic tickets. At a time when she worked at a fast food restaurant for less than \$8.50/hour, JCS set Ms. Ballard's payment amount at \$215/month for a period of 24 months.

118. Despite her indigency and the difficulty of providing for her family with a small income, Ms. Ballard made an effort to pay her fines. Two or three times a month she paid JCS what she could spare, often only \$10 or \$20. Typically, JCS retained 33-50% of Ms. Ballard's payments, remitting the remainder towards Ms. Ballard's fines, as can be seen in the following chart:

Date	Fee Type	Amount
9/16/2013	Fine	25.00
9/16/2013	Probation Fee	25.00
8/19/2013	Fine	10.00
8/19/2013	Probation Fee	10.00
7/26/2013	Fine	10.00
7/26/2013	Probation Fee	10.00
7/8/2013	Fine	10.00
7/8/2013	Probation Fee	10.00
7/1/2013	Fine	5.00
7/1/2013	Probation Fee	5.00
6/25/2013	Fine	10.00
6/25/2013	Probation Fee	10.00
6/12/2013	Fine	10.00
6/12/2013	Probation Fee	5.00

5/29/2013	Fine	5.00
5/29/2013	Probation Fee	5.00
5/6/2013	Fine	10.00
5/6/2013	Probation Fee	10.00
4/18/2013	Fine	12.00
4/18/2013	Probation Fee	8.00
4/5/2013	Fine	10.00
4/5/2013	Probation Fee	10.00
4/1/2013	Fine	10.00
4/1/2013	Probation Fee	10.00
3/25/2013	Fine	10.00
3/25/2013	Probation Fee	4.00
3/19/2013	Fine	10.00
3/19/2013	Probation Fee	10.00
3/11/2013	Fine	20.00
3/11/2013	Probation Fee	10.00

119. Despite her best efforts and having just made a payment three weeks earlier, JCS, on October 8, 2013, sent Ms. Ballard a Violation of Probation letter, informing her she had "violated the terms and conditions of [her] probation" and that a "court date had been set for [her] on the 7 (sic) day of November, 2013" in the Montgomery Municipal Court. JCS noted "DEF[endant] CAN PAY \$250 TO HAVE HEARING CANCELLED." Advising Ms. Ballard that she violated her probation, that a court hearing had been set, and that paying a sum-certain would cancel the hearing were all done outside of the court's supervision. Neither Judge Hayes nor any other Montgomery municipal judge was aware of

these communications or the JCS-set court date until the actual date of the hearing.

120. On March 22, 2014, Ms. Ballard was arrested for failing to appear at the November 2013 hearing. On March 24, 2014, after telling the court she was unable to pay her full balance that day, an unidentified Montgomery municipal judge commuted her fines into 99 days incarceration, despite her history of payments to JCS. She was told she would be released if she made a \$4,700 payment, with the balance due 90 days after release.

121. There is no indication that the unidentified Montgomery municipal judge that commuted Ms. Ballard's fines made a meaningful inquiry into her inability and/or failure to pay; considered the proper factors under the correct meaning of "indigency"; and made any determination that Ms. Ballard had the ability to pay and was willfully refusing to pay.

122. After several lawyers intervened in her case, Ms. Ballard was released on May 7, 2014, with a \$50/month payment plan. Ms. Ballard took part in a lawsuit against Judge Hayes that settled in December 2012.

I. Thomas Ellis

123. Thomas Ellis ("Mr. Ellis") is a 55 year old indigent resident of Montgomery, Alabama. At all times relevant to the Complaint, Mr. Ellis' sole source of income was SSI disability payments he received after suffering a debilitating stroke in which his speech and movement were severely impaired.

124. On July 12, 2010, Mr. Ellis was placed on JCS to repay \$1,404 of court-ordered financial assessments. JCS set Mr. Ellis' payment amount at \$140/month for a period of 24 months. After Mr. Ellis fell behind on his payments, JCS generated and sent Mr. Ellis, via regular mail and without the court's knowledge, a summons for an October 20, 2010 show cause hearing. However, JCS improperly addressed the summons and it was returned by the Post Office for "insufficient address." Mr. Ellis was never notified of the hearing.

125. JCS was aware at the October 20, 2010 hearing that Mr. Ellis was not given any notice. Judge Hayes knew or should known, through review of the records or questioning the JCS representative present at all such hearings, that

Mr. Ellis was not given notice. After Mr. Ellis failed to appear, Judge Hayes signed a warrant for his arrest.

126. Mr. Ellis was arrested on that warrant on January 7, 2011. Judge Hayes commuted Mr. Ellis' outstanding fines and costs to days, resulting in 40 days incarceration. He was released on February 17, 2011.

127. Mr. Ellis was again arrested on April 5, 2012 for unpaid traffic tickets. His fines were commuted to 28 days incarceration by an unidentified Montgomery municipal judge. The unsigned "jail transcript" noted Mr. Ellis could be released upon payment of \$719.

128. Mr. Ellis was again arrested on April 17, 2014 for unpaid traffic tickets. His \$2,801 in fines was commuted to 56 days in jail. An unsigned entry on the "jail transcript" noted that Mr. Ellis could be released if he paid half of the outstanding fines, with the balance due 90 days from release. After several attorneys intervened, on May 7, 2014 Mr. Ellis was released after serving 19 days in jail.

129. Prior to commuting Mr. Ellis' fines to jail, there is no indication that Judge Hayes and the other unidentified Montgomery municipal judges that commuted Mr.

Ellis's fines made a meaningful inquiry into Mr. Ellis's inability and/or failure to pay; considered the proper factors under the correct meaning of "indigency"; and made any determination that Mr. Ellis had the ability to pay and was willfully refusing to pay.

J. Willie Williams

130. Willie Williams ("Mr. Williams") is a 55 year old indigent resident of Montgomery, Alabama. On August 24, 2009, Mr. Williams was placed on JCS to repay \$263 of court-ordered financial assessments for a ticket. JCS set Mr. Williams' payment amount at \$140/month for a period of 12 months. At that rate, Mr. Williams could have paid off the court-ordered financial assessment in approximately 3 months. However, over the next five months, Mr. Williams paid \$246 to JCS. Only \$146 of those payments went towards his court fines and costs, and JCS retained \$100.

131. On May 20, 2010, JCS generated a "Petition for Revocation of Probation" that set a court date for July 2, 2010. Judge Hayes did not sign the petition until the day of the hearing. After Mr. Williams failed to appear, Judge Hayes issued a warrant for his arrest.

132. Mr. Williams was arrested on November 9, 2012. City records show he owed \$214 on a \$263 ticket, even after paying JCS \$246. The records are unclear why Mr. Williams still owed so much on a ticket he had nearly paid off before his arrest. An unidentified Montgomery municipal judge commuted the \$214 in outstanding fines and costs to 4 days incarceration, and Mr. Williams was released on November 13, 2012.

133. There is no indication that the unidentified Montgomery municipal judge that commuted Mr. Williams's fines made a meaningful inquiry into Mr. Williams's inability and/or failure to pay; considered the proper factors under the correct meaning of "indigency"; and made any determination that Mr. Williams had the ability to pay and was willfully refusing to pay.

134. Mr. Williams was again arrested on March 31, 2014 for unpaid traffic tickets. An unidentified Montgomery municipal judge commuted Mr. Williams's \$1,914 in outstanding court-ordered financial assessments into 38 days incarceration. There is no indication that the unidentified Montgomery municipal judge that commuted Mr.

Williams's fines made a meaningful inquiry into Mr. Williams's inability and/or failure to pay; considered the proper factors under the correct meaning of "indigency"; and made any determination that Mr. Williams had the ability to pay and was willfully refusing to pay.

135. Mr. Williams was released on April 11, 2014 after receiving credit for time served, jail work, and making a \$341 payment.

K. Lorenzo Brown

136. Lorenzo Brown ("Mr. Brown") is a 60 year old indigent resident of Montgomery, Alabama. At all times relevant to the Complaint, Mr. Brown's sole source of income was SSI disability.

137. On May 26, 2009, Mr. Brown was placed on JCS to repay \$3,106 in court-ordered financial assessments. JCS set Mr. Brown's payment amount at \$180/month for a period of 24 months. Mr. Brown paid what he could afford over the next 13 months, which amounted to \$825 total. Of that \$825, JCS retained \$370, remitting only \$455 towards Mr. Brown's fines and costs. During his time with JCS, Mr. Brown moved to Huntsville, Alabama, but was told by a JCS

employee that he must continue to report to the Montgomery location because he had a week's notice before each appointment to find a ride.

138. Over the course of Mr. Brown's JCS "probation", his brother reported in his place at least 41 times. JCS records indicate this was an acceptable arrangement as long as payments were made. There is no indication that Mr. Brown was being supervised during the approximately year-long period that his brother reported in his place.

139. Despite Mr. Brown's brother regularly reporting on his behalf and making small payments, JCS determined that Mr. Brown was "too far behind on his fees" and extra-judicially set a show cause hearing for December 6, 2010. The JCS-generated "Notice to Show Cause" instructed Mr. Brown to appear and warned him a warrant would be issued for his arrest should he fail to appear. It was signed by a JCS "Probation Officer."

140. A note at the bottom of the "Notice to Show Cause" advised Mr. Brown that "in order to dismiss this court date, you must do the following: REPORT WITH YOUR TOTAL AMOUNT OF \$1,455.00 NO LATER THAN NOVEMBER 26, 2010." JCS

had been delegated the authority to set and cancel hearings if a "probationer" paid a significant portion of their outstanding fines, costs, and JCS fees. Judge Hayes signed this order on December 6, 2010, the day of the hearing. Mr. Brown failed to appear, and Judge Hayes issued a warrant for his arrest.

L. Hassam Caldwell

141. Hassam Caldwell ("Mr. Caldwell") is a 21 year old resident of Montgomery, Alabama. At the times relevant to the Complaint, Mr. Caldwell was indigent. On April 17, 2013, Mr. Caldwell was placed on JCS to repay \$175 in court-ordered financial assessments, via an unsigned "Order of Probation."

142. Over the next 3 months, Mr. Caldwell paid JCS \$145. Only \$100 was remitted to his fine, while JCS retained the remainder. After one month of missed payments, JCS revoked Mr. Caldwell's probation. On July 23, 2013, a JCS employee generated a "Petition for Revocation of Probation" that set a court date of August 27, 2013. Judge Hayes did not sign this "Order" until August 28, 2013. A

warrant was issued for his failure to appear at the hearing.

143. Mr. Caldwell was arrested on the failure to appear warrant on December 28, 2013. He was released the same day after paying \$132 he owed on the \$175 ticket towards which he had already paid \$145.

L. Rayshone Williams

144. Rayshone Williams ("Mr. Williams") is a 32 year old father of four. Mr. Williams has been diagnosed with schizophrenia and bipolar disorder. At all times relevant to the Complaint, Mr. Williams' sole source of income was SSI disability.

145. On July 20, 2009, Mr. Williams was placed on JCS "probation" to repay \$431 in court-ordered financial assessments. Mr. Williams paid JCS \$150. Only \$100 was remitted towards his fine, while JCS retained the remainder. Less than 3 weeks after Mr. Williams informed a JCS employee that he would pay his balance after receiving his tax refunds, a JCS employee generated a "Petition for Revocation of Probation" that set a court date of June 3, 2010. Judge Hayes did not sign this "Order" until the day

of the hearing. A warrant was issued for Mr. Williams' failure to appear at the hearing.

146. Mr. Williams was arrested on that warrant on December 4, 2012. His outstanding fines, which included fines owed on the tickets JCS "supervised", were commuted to 23 days incarceration by an unidentified Montgomery municipal judge. He was released two weeks later after earning credit for "jail work."

147. Mr. Williams was again arrested for outstanding traffic fines on March 8, 2014. His fines were again commuted to incarceration by an unidentified Montgomery municipal judge.

148. Prior to commuting Mr. Williams' fines to jail, there is no indication that the unidentified Montgomery municipal judges made meaningful inquiries into Mr. Williams's inability and/or failure to pay; considered the proper factors under the correct meaning of "indigency"; and made any determinations that Mr. Williams had the ability to pay and was willfully refusing to pay.

VIII. THE CHARGES

CHARGE 1

By incarcerating indigent traffic offenders for failure to pay fines and costs on numerous occasions 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, Judge Hayes violated the following Canons:

Canon 1

A judge should uphold the integrity and independence of the judiciary.

A judge should participate in establishing, maintaining, and enforcing, and should himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved.

Canon 2

A judge should avoid impropriety and the appearance of impropriety in all his activities.

Canon 2A

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.

Canon 2B

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

Canon 3

A judge should perform the duties of his office impartially and diligently.

Canon 3A(1)

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

Canon 3A(4)

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 2

By participating in or allowing a system in which basic judicial functions were delegated to agents or employees of JCS, a private, non-judicial company, permitting those persons to:

- a) determine with only minimal judicial participation terms of "probation", including the length of

probation, the monthly payment amount, and the regularity of appointments "probationers" were required to attend;

b) modify the regularity of appointments "probationers" were required to attend;

c) determine the amount of each payment credited to court-ordered assessments versus credited to JCS fees when "probationers" did not pay a monthly payment in full;

d) autonomously determine whether traffic offenders were eligible for "probation";

e) notify offenders they had violated their "probation" when no such legal determination had been made in a way that was misleading and falsely suggestive of judicial authority;

f) issue "notices to show cause" directing a defendant to appear in court and show cause why the defendant had failed to pay the fees required by JCS and/or issue summons to "probation revocation" hearings over the JCS employee's signature;

- g) represent those "notices to show cause" and/or summonses as having judicial power and requiring the individual to appear in court when the notices/summonses were neither seen, signed, nor authorized by a judge; and
- h) set, modified, and/or cancelled "probation revocation" and "show cause" hearings independent of the judicial system and often without court supervision,

Judge Hayes violated the following Canons:

Canon 1

A judge should uphold the integrity and independence of the judiciary.

A judge should participate in establishing, maintaining, and enforcing, and should himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved.

Canon 2

A judge should avoid impropriety and the appearance of impropriety in all his activities.

Canon 2A

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.

Canon 2B

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

Canon 3

A judge should perform the duties of his office impartially and diligently.

Canon 3A(1)

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

CHARGE 3

On numerous occasions, by failing to permit the defendant to fully explain the reason for either the defendant's failure or inability to pay court-ordered financial assessments, Judge Hayes violated the following provisions:

Canon 2B

A judge should at all times maintain the decorum and temperance befitting his office and should avoid conduct prejudicial to the administration of justice which brings the judicial office into disrepute.

Canon 3A(3)

A judge should be patient, dignified, and courteous to litigants.

Canon 3A(4)

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

By failing to affix his signature or initials or otherwise indicate in the Court records that he was responsible for taking specific official actions and/or entering specific orders in the Montgomery Municipal Court, Judge Hayes has violated the following provisions:

Canon 3B(1)

A judge should diligently discharge his administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court officials.

CHARGE 5

As presiding Judge of the Montgomery Municipal Court, by participating in and or allowing a practice in which certain specific official actions and/or the entry of specific orders were not identified by the name and/or signature or initials of the specific judge taking the action or issuing the order except on the occasions when said actions were captured by the case action summary and

electronic judicial signatures captured therein, Judge Hayes has violated the following provisions:

Canon 3B(1)

A judge should diligently discharge his administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court officials.

Canon 3B(2)

A judge should require his staff and court officials subject to his direction and control to observe the standards of fidelity and diligence that apply to him.

CHARGE 6

As presiding judge of the Montgomery Municipal Court, by participating in and allowing a practice in which defendants were incarcerated without signed court orders, other than the occasions when case action summaries were signed electronically by the judges, Judge Hayes has violated the following provisions:

Canon 1

A judge should uphold the integrity and independence of the judiciary.

A judge should participate in establishing, maintaining, and enforcing, and should himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved.

Canon 2

A judge should avoid impropriety and the appearance of impropriety in all his activities.

Canon 2A

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.

Canon 2B

A judge should at all times maintain the decorum and temperance befitting his office and should avoid conduct prejudicial to the administration of justice which brings the judicial office into disrepute.

Canon 3A(1)

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

CHARGE 7

As presiding judge of the Montgomery Municipal Court, by participating in and allowing recordkeeping in which what, if any, ability-to-pay determinations and/or determinations that individuals had failed to make bona-fide efforts to pay, were difficult or impossible to glean from the record, Judge Hayes violated the following Canons:

Canon 3B(1)

A judge should diligently discharge his administrative responsibilities, maintain professional competence in

judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court officials.

Canon 3B(2)

A judge should require his staff and court officials subject to his direction and control to observe the standards of fidelity and diligence that apply to him.

DOCUMENTS ATTACHED

Attached to this Complaint and incorporated as a part hereof are true and correct copies of the following documents:

- A. "Order of Probation," dated July 22, 2009
- B. JCS "General Conditions of Probation," dated July 30, 2009
- C. Montgomery Municipal Court General Order 2013-0001, dated February 7, 2013
- D. "Petition for Revocation of Probation and Statement of Delinquency Charges," dated July 23, 2013
- E. JCS "Violation of Probation" Letter, dated January 13, 2011
- F. Montgomery Municipal Court "Warrant List," dated July 2, 2013
- G. JCS "Montgomery Municipal Court Report Card From 1/1/2011 Through 12/31/2011"
- H. Montgomery Municipal Court "Jail Transcript," dated April 25, 2012

I. Montgomery Municipal Court "Judges Calendar" for
the month of February 2013

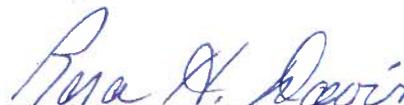
Done this 17th day of November, 2016.

BY ORDER OF THE COMMISSION

THE JUDICIAL INQUIRY COMMISSION



Billy C. Bedsole., Chairman



Rosa H. Davis
Attorney for the Commission



William A. Gunter V
Attorney for the Commission

28

IN THE MUNICIPAL COURT OF MONTGOMERY, AL

CITY OF MONTGOMERY, AL

VS Brown, Lorenzo

DEFENDANT

EXHIBIT
A

ORDER OF PROBATION

NOW ON THIS DAY, by virtue of the authority vested in me as a Municipal Court Judge pursuant to Section 12-14-13, Code of Alabama, 1975, as supplemented and amended, I hereby order the:

(X) Imposition of sentence (X) Payment of Fine/Restitution (X) Payment of Court Costs
and that the Defendant be placed on probation for 12 months or until 22 day of July 2009
upon the following conditions.

- (1) You will make a full and truthful report to your Probation Officer as instructed.
- (2) You will pay Judicial Correction Services, Inc. \$40.00 for each month on probation, unless all conditions are satisfied within 7 days of this order. You will pay a one-time \$10.00 file set up charge.
- (3) You will not change your residence or employment without first notifying your Probation Officer.
- (4) You will avoid injurious or vicious habits and not violate any law(s) during said term of probation.
- (5) You will not use illegal intoxicants or alcohol; nor will you visit places where intoxicants, drugs, or other dangerous substances are sold, dispensed or used. () Applicable if checked.
- (6) You will work diligently at a lawful occupation, unless a full time student.
- (7) You will promptly and truthfully answer all inquiries directed to you by the Court Referral Officer, Court Clerk, or Probation Officer and comply with all instruction he/she may give you.
- (8) You will pay Fines & Costs totaling 475 at the rate of 140 per month.

Case No.	Offense	Fine	Costs	Total	Jail Time (days)
<u>0811015166</u>	<u>Expired Tag</u>			<u>50</u>	
<u>0811015167</u>	<u>DWR</u>			<u>225</u>	
<u>0811015168</u>	<u>NPI</u>			<u>200</u>	

(9) You will make reparation or restitution for damage or loss caused by this offense to the victim in the following sum:

Victim _____ Sum \$ _____

(10) You will complete Jail Time as ordered and noted above. Jail time is hereby ordered:
() To Serve () Suspended upon successful completion of probation.

(11) You will complete the following education course(s) and/or programs:
() Court Referral Program () Domestic Violence Awareness () Obtain GED
() Other: _____

(12) () Return to court on: _____ to show completion of: () Driving School () CRO Program
() Other _____

(13) Other _____

The Court may at any time modify any conditions of your probation, change or extend probation, discharge defendant or revoke probation. You are subject to arrest for violation of any condition imposed by this order, and your probation may be revoked accordingly.

Signed this the 22 day of July 2009

MONTGOMERY, ALABAMA MUNICIPAL COURT

I have counsel or have waived my right to counsel for all proceedings to this date and have received a copy of this ORDER.

Signed Lorenzo Brown Date 7-22-09 Probation Officer Freeman
JCS (334) 262-0558

Comments: _____ First Appointment 7/30/09 @ 4:30

For JCS use only: Consecutive Case Data Entry

EXHIBIT

B

JUDICIAL CORRECTION SERVICES, INC. GENERAL CONDITIONS OF PROBATION

Case Number(s): 08TRT075766, 08TRT075767, 08TRT075768

I, **LORENZO BROWN**, having been granted the privilege of serving all or part of my sentence on probation, do hereby agree to the following conditions:

- I understand that I owe a monthly probation fee of \$40.00.
- I understand that I owe a total fine and court costs of \$475.00 plus a \$10.00 start-up fee.
- I understand that I owe a minimum monthly payment of \$140.00.
- I understand that there are NO excuses for missing my scheduled appointment.
- I understand that I will not violate the criminal laws of any governmental unit.
- I understand that I will not use illegal drugs or alcohol, nor will I visit places where intoxicants, drugs, or other dangerous substances are sold, dispensed, or used.
- I understand that I will work faithfully at a lawful occupation insofar as may be possible.
- I understand that I will not change my place of residency known to the Probation Officer, or leave the state for any period of time without prior permission of the Probation Officer.
- I understand that I will make a full and truthful report to my Probation Officer. I will answer all inquiries directed to me by the court or my Probation Officer and comply with all instructions they may give to me.
- I understand that I will submit to drug and alcohol testing as directed by the Probation Officer.

My current address is: [REDACTED]
 City, State & Zip: [REDACTED]
 Home Phone: [REDACTED]

Cell Phone: _____

*I, **LORENZO BROWN**, fully understand and do hereby voluntarily agree to the above conditions of probation. I have not been threatened or coerced into signing this document. I am not under the influence of any alcohol or drugs at the present time. I also state the above address and phone number that I have given are truthful and understand that failing to supply an accurate address will violate my probation. I understand that if I fail to meet my monthly obligation as I have agreed to above, I may have to meet with my probation officer more than once per month. I further understand that if I fail to abide by these conditions of probation that I may be returned before the court for a hearing or a warrant may be issued for my arrest.*

Lorenzo Brown
 LORENZO BROWN

7-30-09
 Date

Mylesha Tolbert
 Probation Officer

IN THE MUNICIPAL COURT FOR THE CITY OF
MONTGOMERY, ALABAMA

IN RE: EXTENSION/JCS PLACEMENT

)
)
) GENERAL ORDER NO. 2013-0001
)
)

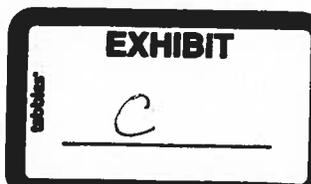
Pursuant to my directive implemented in June 2009 to reduce arrests at the Municipal Court and reduce the jail population by allowing qualified individuals to receive extensions or to be placed with Judicial Correction Service (hereinafter referred to as "JCS"), it is hereby ORDERED that the following measures shall remain in effect:

1. If the amount owed by an individual is less than two hundred fifty dollars and 00/100 (\$250.00), one thirty (30) day extension may be given provided approval is received by a Court Operations Supervisor.
2. If an individual owes an amount less than one thousand five hundred dollars and 00/100 (\$1,500.00) and requests a payment plan, said individual may be placed with JCS provided the individual is not already with JCS or is in good standing with JCS. If the amount owed is greater than one thousand five hundred dollars and 00/100 (\$1,500.00) and the individual requests a payment plan, a court date shall be scheduled before a Municipal Court Judge who shall consider said individual for placement with JCS.

DONE and ORDERED this the 7th day of February, 2013.



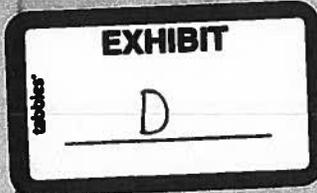
LES HAYES, III
Presiding Judge
Montgomery Municipal Court



Municipal Court of Montgomery, AL

Municipal Court of Montgomery, AL

vs.
HASSAM UMAR CALDWELL



Case #
2013TRT016885

Petition for Revocation of Probation and Statement of Delinquency Charges

TO: Milton J. Westry, Sr., Judge of the Municipal Court of Montgomery, AL, comes now _____, in his/her capacity as City Prosecutor and will respectfully show unto the Court as follows:

- I. On or about the 17th day of April, 2013 the above named defendant was placed on probation by this Honorable Court, pursuant to 15-22-24, Code of Alabama, 1975, as supplemented and amended, for a period of 24 months for the offense of **Speeding**
- II. That in conjunction with the grant of probation to the defendant by this Honorable Court, a written statement of the conditions of said probation was signed and executed by the Defendant and the Defendant was specifically instructed regarding the special provisions of said probation by **Judge Milton J. Westry, Sr.**
- III. That subsequent to the time that Defendant was placed on probation by this Honorable Court, she has failed to:

Report to the probation agent as directed:

4/24/2013, 5/17/2013, 5/20/2013, 6/11/2013, 6/13/2013, 6/24/2013, 6/27/2013, 7/8/2013, 7/11/2013, 7/22/2013

Make payments of fines, costs, restitution and other court ordered monies:

Due \$70.00

Pay a monthly probation fee of \$40 to the probation agent while on supervised probation: Due \$80.00

Total Due \$150.00

Based on the investigation of the undersigned and the information received therefrom, your Petitioner verily believes that the Defendant has violated one or more of the written conditions of probation entered into between her and this Court and that this Court should hold a hearing, after proper notice to Defendant to determine whether or not the Defendant's probation should be revoked.

WHEREFORE, your Petitioner respectfully requests that the probation of the Defendant be revoked and that this Honorable Court issue a warrant for the arrest of said Defendant, if necessary, and that said Defendant be brought before this Honorable Court for a hearing to determine whether or not the Defendant's probation should be revoked and the Defendant be required to serve the full sentence heretofore imposed.

City Prosecutor

Probation Agent - 7/23/2013

ORDER

It appears to the Court that a Petition for Revocation of Probation and Statement of Delinquency Charges having been filed in the Municipal Court of Montgomery, AL, a copy of which is attached hereto and incorporated herein by reference, and the Court having reviewed said Petition, is of the opinion that a hearing should be held to determine whether or not the Defendant-Probationer is in violation of the terms of her probation as charged in said Petition.

NOW, THEREFORE IT IS ORDERED, ADJUDGED AND DECREED that a Revocation Hearing be set before this Court to determine if the Defendant-Probationer has violated the terms of her probation and as a result should, therefore, have the period of her probationary sentence revoked and the original sentence of the Court imposed.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that a true copy of this Petition, together with the conditions of probation and all other relevant documents in the case be served upon the above named Defendant. Consider this order suspending time on this case until a resolution is decided.

**Defendant Failed to Appear;
Issue a Warrant of Arrest**

Municipal Court Judge
8-28-13

Court Date: 8/27/2013

Court Clerk / Magistrate

Date



January 13, 2011

ANGELA MCCULLOUGH
[REDACTED]

ANGELA MCCULLOUGH:

This letter is to inform you that you have violated the terms and conditions of your probation. There has been a court date set for you on the 23 day of February, 2011 in the Municipal Court of Montgomery, AL at 1:00PM .

Note that a failure to appear in court on the above date will result in a warrant being issued for your arrest.

Enclosed is a copy of a petition letter to be signed by the judge. If there are any questions or problems call 334-262-0558 , **but keep in mind that the court date can not and will not be reset or rescheduled.** Thank you!

PLEASE NOTE THAT YOU MAY PAY \$400 BY FEBRUARY 11, 2011 TO CANCEL YOUR HEARING.

Sincerely,

Sara Martin

Probation Officer
Judicial Correction Services
650 S McDonough Street
Suite B
Montgomery, AL 36104

Defendant's Name: **MCCULLOUGH, ANGELA**
 Social Security Number:
 DOB: Sex: M Race: B

MONTGOMERY MUNICIPAL COURT
J. Shubler Magistrate/Clerk
 7/2/13 Date Served

SECTION A

Alias Warrants - COURT OFFENSES ONLY (Defendant **MUST** Post Bail of Any Form)

Case Number	UTTC Number	Charge Description	Bond Amount
1 2011TRT007985	V3476907	DRIVING WHILE SUSPENDED	1 day / \$500.00
2 2013TRT042422	V6400444	DWS 1 day	
3			
4			
5			
6			
7			
8			
9			
10			



SECTION B

Alias Warrants - NON-COURT OFFENSES (Defendant **MAY** Post Bail of Any Form or **Simply Pay the Fine & Cost** Shown)

Case Number	UTTC Number	Charge Description	Bond Amount	Fine & Cost
1 2011TRT058458	N4205426	NO INSURANCE	1 day / \$500.00	\$633.00
2 2011TRT007987	V3476909	NO CHILD RESTRAINT	1 day / \$500.00	\$308.00
3 2011TRT007988	V3476908	NO INSURANCE	1 day / \$500.00	\$633.00
4 2013TRT042420	V6400442	Unproper No Tail Light	1 day / \$500.00	
5 2013TRT042421	V6400443	No Proof of Insurance	1 day / \$500.00	
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				

SECTION C

Capias Warrants - **MANDATORY FINE (\$500 Cash Bail Only - Or Defendant MUST Pay Out All Fines And Court Costs)**

Case Number	UTTC Number	Charge Description	Cash Bond Amt	Fine & Cost
1 2004CRA000391A		FALSE STATEMENT	407 \$500.00	\$824.00
2 2006TRT012376	M8807049	DRIVING WHILE SUSPENDED	619 \$500.00	\$916.00
3 2006TRT012375	M8807048	DRIVING WHILE SUSPENDED	169 \$500.00	\$625.00
4 2001TRT029275	M3408024	NO DRIVER LICENSE	222 \$500.00	\$688.00
5 2008TRT084789	N2099249	NO INSURANCE	\$500.00	1169 \$500.00
6 2010TRT023050	N3586539	DRIVING WHILE SUSPENDED	295 \$500.00	\$400.00
7 2010TRT023051	N3586540	NO CHILD RESTRAINT	170 \$500.00	\$302.00
8 2008TRT084788	N2099248	NO DRIVER LICENSE	219 \$500.00	\$381.00
9 2001TRT009552	M2360102	NO DRIVER LICENSE	\$500.00	214 \$344.00
10 2002TRT038427	M3454330	IMPROPER LIGHTS	166 \$500.00	\$167.00
11				
12				
13				
14				
15				

JUL 2013
 COMMUTE
 TO DAYS

TO THE WARDEN OF THE MONTGOMERY CITY SUMMARY - DEFENDANT MAY BE RELEASE AS FOLLOWS:

DEFENDANT **MUST** POST BOND OF ANY TYPE IN THE AMOUNT OF \$500.00

-AND/OR-

DEFENDANT **MAY** PAY FINES AND COSTS OF \$1,574.00 OR **MAY** POST BOND OF ANY TYPE IN THE AMOUNT OF \$1,500.00

-AND/OR-

DEFENDANT **MUST** PAY FINES AND COSTS OF \$4,186.00 OR **MUST** POST CASH BOND IN THE AMOUNT OF \$5,000.00

(TOTAL PAYABLE): \$5,760.00

83 Days

✓ MANDATORY TIME RELEASE
 COMMUTED TIME RELEASE DATE:

1-22-2012
2-8-2012

THIS REPORT CREATED:
 1/19/2012 3:32 AM ✓

REVISION #:

TRANSCRIPT PREPARED BY: jail

MONTGOMERY MUNICIPAL COURT STATE OF ALABAMA

BOOKING DATE & TIME: 01/18/2012

BOOKING #: 2012-0000431

NAME: CLEVELAND, HARRIETT, DELORES,

RACE: Black SEX: Female DOB: [REDACTED]

SSN: [REDACTED]

ADDRESS: [REDACTED]

	CHARGE DESCRIPTION	CASE #	COURT DISPOSITION OF CASE
	CRIMINAL TRESPASS 3	2012M00249	5 DAYS (JA)
	COMM HARASSMENT	2010CRA002763B	COMMUTED ON \$471.00
	NO INSURANCE	N4221413	1 DAY - CC
	FAILURE TO SIGNAL	N4221415	1 DAY - CC
	DRIVING WHILE SUSPENDED	N4221414	1 DAY - CC
6			
7			5 Mandatory Days
8			and \$471.00 or 10 days
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			

EXHIBIT
 G

February 2013

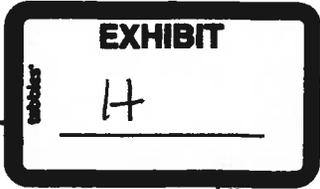
February 2013

Mo	Tu	We	Th	Fr	Sa	Su
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

March 2013

Mo	Tu	We	Th	Fr	Sa	Su
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

MONDAY		TUESDAY		WEDNESDAY		THURSDAY		FRIDAY	
Jan 28		29	30	31				Feb 1	
8:00am Judge Westry / Ed - Pros / Will/Ben - PD		8:00am Judge James / Buster - Pros / Branch - PD 1:00pm Judge Westry / Ed - Pros / Branch - PD	8:00am Judge Hayes / Buster - Pros / Will/Ben - PD 1:00pm Judge Hendley / Ed - Pros / Will/Ben - PD	8:00am Judge Hayes / Buster - Pros / Branch - PD 10:00am Environmental Docket 1:00pm Judge Hayes / Ed - Pros / Branch - PD	8:00am Judge Westry / Ed - Pros / Will/Ben - PD 1:00pm Judge Westry / Buster - Pros / Will/Ben - PD	8:00am Judge Hendley / Ed - Pros / Will/Ben - PD 10:00am Environmental Docket 1:00pm Judge Hayes / Buster - Pros / Will/Ben - PD	8:00am Judge Westry / Ed - Pros / Branch - PD 2:00pm Judge Westry - Walk-In Docket	8:00am Judge Hayes / Buster - Pros / Will/Ben - PD 10:00am Red Light Camera Hearings 2:00pm Judge Westry - Walk-In Docket	8:00am Judge Westry / Ed - Pros / Branch - PD 2:00pm Judge Westry - Walk-In Docket
4	5	6	7	8	9	10	11	12	13
8:00am Judge Westry / Ed - Pros / Will/Ben - PD	8:00am Judge James / Buster - Pros / Branch - PD 1:00pm Judge Westry / Ed - Pros / Branch - PD	8:00am Judge Hayes / Buster - Pros / Will/Ben - PD 1:00pm Judge Hendley / Ed - Pros / Will/Ben - PD	8:00am Judge Hayes / Buster - Pros / Will/Ben - PD 1:00pm Judge Westry / Buster - Pros / Branch - PD	8:00am Judge Hayes / Buster - Pros / Branch - PD 10:00am Environmental Docket 1:00pm Judge Hayes / Buster - Pros / Will/Ben - PD	8:00am Judge Westry / Ed - Pros / Will/Ben - PD 1:00pm Judge Westry / Buster - Pros / Will/Ben - PD	8:00am Judge Hendley / Ed - Pros / Will/Ben - PD 10:00am Environmental Docket 1:00pm Judge Hayes / Buster - Pros / Will/Ben - PD	8:00am Judge Westry / Ed - Pros / Branch - PD 2:00pm Judge Westry - Walk-In Docket	8:00am Judge Hayes / Buster - Pros / Will/Ben - PD 10:00am Red Light Camera Hearings 2:00pm Judge Westry - Walk-In Docket	8:00am Judge Westry / Ed - Pros / Branch - PD 2:00pm Judge Westry - Walk-In Docket
18	19	20	21	22	23	24	25	26	27
8:00am HOLIDAY - Washington/Jefferson Birthdays	8:00am Judge James / Buster - Pros / Branch - PD 1:00pm Judge James / Ed - Pros / Branch - PD	8:00am Judge Westry / Buster - Pros / Will/Ben - PD 1:00pm Judge Hayes / Ed - Pros / Will/Ben - PD	8:00am Judge Westry / Buster - Pros / Will/Ben - PD 1:00pm Judge Hayes / Ed - Pros / Will/Ben - PD	8:00am Judge Westry / Buster - Pros / Will/Ben - PD 1:00pm Judge Hayes / Ed - Pros / Will/Ben - PD	8:00am Judge Westry / Buster - Pros / Will/Ben - PD 1:00pm Judge Westry / Buster - Pros / Will/Ben - PD	8:00am Judge Hendley / Ed - Pros / Will/Ben - PD 10:00am Environmental Docket 1:00pm Judge Hayes / Buster - Pros / Will/Ben - PD	8:00am Judge Hayes / Buster - Pros / Will/Ben - PD 2:00pm Judge Westry - Walk-In Docket	8:00am Judge Hayes / Buster - Pros / Will/Ben - PD 2:00pm Judge Westry - Walk-In Docket	8:00am Judge Hayes / Buster - Pros / Will/Ben - PD 2:00pm Judge Westry - Walk-In Docket
25	26	27	28	29	30	31	Mar 1		
8:00am Judge Hayes / Buster - Pros / Branch - PD	8:00am Judge Westry / Ed - Pros / Will/Ben - PD 1:00pm Judge Westry / Buster - Pros / Will/Ben - PD	8:00am Judge Hayes / Ed - Pros / Branch - PD 1:00pm Judge Westry / Buster - Pros / Branch - PD	8:00am Judge Hayes / Ed - Pros / Branch - PD 1:00pm Judge Westry / Buster - Pros / Branch - PD	8:00am Judge Hayes / Ed - Pros / Will/Ben - PD 10:00am Environmental Docket 1:00pm Judge Hayes / Buster - Pros / Will/Ben - PD	8:00am Judge Hayes / Ed - Pros / Will/Ben - PD 1:00pm Judge Westry / Buster - Pros / Will/Ben - PD	8:00am Judge Hayes / Ed - Pros / Will/Ben - PD 1:00pm Judge Westry / Buster - Pros / Will/Ben - PD	8:00am Judge Hayes / Buster - Pros / Will/Ben - PD 2:00pm Judge Westry - Walk-In Docket	8:00am Judge Hayes / Buster - Pros / Will/Ben - PD 2:00pm Judge Westry - Walk-In Docket	8:00am Judge Westry / Ed - Pros / Will/Ben - PD 2:00pm Judge Westry - Walk-In Docket



**MONTGOMERY MUNICIPAL COURT
REPORT CARD
FROM 1/1/2011 THROUGH 12/31/2011**

Start active	2780
New Cases Added	7271
End Active	2782
Total Cases Supervised since beginning of court	10286
Top 3 charges	No Insurance Suspended License Speeding
Fines & Court Costs collected (this period)	\$2,537,907.74
Fees Waived (this period)	1877
Successful Term current time frame	4015
Ending VOP Count	1060
Ending warrant count	3243
Total number of warrants outstanding	2101
Defendants terminated Unsuccessful	3
Defendants revoked	29
Indigent Defendants	25
Defendants in Hold Status (ending)	1719
Total Defendant Contacts logged	78315

EXHIBIT
 I