

IN THE ALABAMA COURT OF THE JUDICIARY

IN THE MATTER OF: )  
ANITA KELLY, ) Court of the  
Circuit Judge, ) Judiciary  
15th Judicial Circuit ) Case No. 50  
)

**THE COMMISSION'S RESPONSE TO JUDGE KELLY'S**

**SECOND MOTION FOR CONTINUANCE**

COMES NOW the Judicial Inquiry Commission ("Commission"), and respectfully moves the Court to DENY Judge Anita Kelly's ("Judge Kelly") Second Motion for Continuance.

1. On October 25, 2017, this Court initially set the trial for January 8, 2018. Hours before a December 14, 2017 pre-trial conference, Judge Kelly filed a motion to continue, generally asserting that this matter had been on an "exceptionally fast track" and that she and her counsel did not have sufficient time to complete discovery and prepare for trial. See Judge Anita Kelly's Motion for Continuance, Dec. 14, 2017. This Court, over the Commission's objection, granted Judge Kelly's motion and reset the trial to its current setting of March 19, 2018.

2. The parties attended another pre-trial conference on January 25, 2018. Judge Kelly did not raise the possibility of a second continuance.

3. In her Second Motion for Continuance, Judge Kelly again notes the "exceptionally fast track" of this matter since the August 16, 2017 filing of the Original Complaint. She gives an overview of the status of discovery and a lengthy recitation of the contents of the First and Second Amended Complaints, particularly in relation to the number of cases referenced.

4. Only very recently, i.e., on February 17 and 18, 2018, did Judge Kelly notice several rescheduled depositions, set for February 22 and 28, 2018.<sup>1</sup> These depositions were originally set for dates in early to mid-December 2017.

5. The Commission's First and Second Amended Complaints have added only approximately 64 new cases to the breadth of cases contained in the Original Complaint filed six months ago, not the 267 "new" cases as alleged in

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<sup>1</sup> Not February 21, 2018, as asserted in Judge Kelly's Second Motion to Continue.

Judge Kelly's Second Motion for Continuance. Judge Kelly appears to be counting every case referenced in the Canon 3A(5) six-month reports as a "new case," but to call these cases "new" is inaccurate.

6. The First Amended Complaint added only 42 new cases to the Original Complaint. The other "new" cases are contained in the Canon 3A(5) six-month report chart and were either already referenced in the Complaint, or were cases that Judge Kelly herself identified on her previously-filed reports.

7. Similarly, the Second Amended Complaint added only 22 new cases to the First Amended Complaint. The bulk of additional allegations and evidence are in the Canon 3A(5) six-month report section. See 2nd Amended Complaint, Sec. V.E. Like the First Amended Complaint, the cases referenced in this section are either referenced earlier in the complaint, or were cases from Judge Kelly's own six-month reports.

8. Judge Kelly did not request digital access to Alacourt until December 4, 2017, nearly four months after the filing of the Original Complaint. Judge Kelly's delay in starting her review of the cases contained in not just

the First and Second Amended Complaints, but the Original Complaint, is her fault alone.<sup>2</sup>

9. Dilatory actions are disfavored, and any action that would interfere with the prompt disposition of these proceedings shall be discouraged. Rule 7, Rules of Procedure of the Court of the Judiciary. When the trial commences on March 19, 2018, more than seven months will have elapsed since the filing of the Original Complaint.

10. Judge Kelly has not had merely seven months to familiarize herself with the evidence supporting the Commission's complaint, as amended. In particular as it relates to TPR's, Judge Kelly had the incentive to review those cases for delay when she received Court of Civil Appeals' opinions on July 6, 2015 and September 2, 2016. See 2nd Amended Complaint, paras. 33-34. Judge Kelly again received notice of delays in her TPR docket with her December 5, 2016 receipt of the November 30, 2016 DHR memo containing references to a wide array of her cases. See Ex.

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<sup>2</sup> Judge Kelly's pattern and practice of delay extend beyond her docket. See, e.g., 2nd Amended Complaint, Sec. V.D. "The Judicial Inquiry Commission's Investigation."

E to Judge Kelly's Brief in Support of Motion to Dismiss, Oct. 11, 2017. In addition, Judge Kelly received the majority of the case files in the relevant TPR's prior to the filing of the Original Complaint in August 2017.

11. As this Court has noted during pre-trial conferences, this matter needs resolution. By the currently-set trial date, Judge Kelly will have been suspended with pay for seven months. All the while, the Montgomery County Family Court is burdened with timely handling her caseload and those cases that would have been assigned to her but for her interim suspension. The administration of justice must be weighed in considering Judge Kelly's motion for continuance.

WHEREFORE, PREMISES CONSIDERED, the Commission respectfully requests that the Court DENY Judge Kelly's Second Motion for Continuance.

Respectfully submitted, this 21st day of February, 2018.



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William A. Gunter V  
Attorney for the Commission

CERTIFICATE OF SERVICE

I certify that, on this 21st day of February, 2018, a copy of the foregoing has been filed electronically with the Court of the Judiciary and a copy of the same has been served on attorneys for Respondent, through electronic mail with a hard copy sent via regular U.S. mail to:

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