MAY 2018

COURT OF THE JUDICIARY CASE NO. 50

IN THE MATTER OF:
ANITA KELLY
Circuit Judge, Fifteenth Judicial Circuit

FINAL JUDGMENT

The Judicial Inquiry Commission ("the Commission") filed a complaint in this Court against Judge Anita Kelly on August 16, 2017, charging Judge Kelly with violating the Alabama Canons of Judicial Ethics in her capacity as a circuit judge. Judge Kelly became a circuit judge in 2004 assigned to family court in the Fifteenth Judicial Circuit in Montgomery County, Alabama. She was reelected in 2010 and again in 2016.[1] As a family court judge, Judge Kelly presides over domestic and juvenile cases, including divorce, child custody, child support, protection from abuse, adoption, dependency, and termination of parental rights ("TPR").

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[1]In 2014, Judge Kelly was appointed Presiding Judge of the Montgomery County Family Court. In early 2016, she was removed from that position at the direction of Judge Eugene Reese, who was the Presiding Judge of the Montgomery Circuit Court.

The complaint, as amended February 7, 2018,[2] alleges that Judge Kelly has repeatedly violated the Alabama Canons of Judicial Ethics by a pattern and practice of unreasonable and unjustifiable delay in managing her docket in the Montgomery County Family Court. In support of the pattern-and-practice allegations, the complaint alleges that in family court cases filed or disposed of since at least 2012, Judge Kelly has

a. Failed to manage court business in a timely manner by

   1. Unreasonably delaying rulings on standard motions; issuing orders; setting timely hearings; resetting continued trial settings; and ratifying referee recommendations;

   2. Regularly continuing dockets; and

   3. Failing or refusing to meet statutory time requirements in numerous cases and to timely and consistently submit accurate Canon 3A(5) reports to the Administrative Office of Courts ("AOC").

b. Failed to manage court business in an efficient manner by

   1. Failing or refusing to establish an effective system of review of pending matters to expeditiously move cases through the court;

   2. Failing or refusing to allot sufficient time in her dockets to complete scheduled matters;

   3. Refusing or not having the ability to promptly conclude matters on her docket;

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[2]The Commission has filed two amended complaints. Unless otherwise indicated, all references to "the complaint" refer to the Second Amended Complaint, filed on February 7, 2018.

4. Failing or refusing to implement a wide range of recommendations for improvement from the National Council of Juvenile and Family Court Judges ("NCJFCJ"); and

5. Failing or refusing to timely and consistently submit accurate Canon 3A(5) reports to AOC.

The complaint alleges violations of the following Canons of Judicial Ethics: 1, 2, 2A, 2B, 3, 3A(1), 3A(5), 3B(1), and 3B(2).

The parties engaged in extensive discovery over several months, exchanging thousands of pages of documents and deposing numerous witnesses. This matter was tried before this Court for a week beginning May 7, 2018.[3]

The Commission's evidence at trial primarily focused on alleged delays by Judge Kelly in juvenile cases, particularly in TPR petitions. The Commission cited two relevant time standards: (1) the requirement that a hearing be completed on a TPR petition within 90 days of perfection of service of process[4] and (2) the requirement that a final order be issued

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[3]The matter was set for trial on two prior occasions. See Rule 8, R.P. of the Ala. Ct. of the Judiciary ("The Court shall fix a date for hearing upon the complaint as expeditiously as possible."). On both occasions, the matter was continued at the request of Judge Kelly.

[4]See § 12-15-320(a), Ala. Code 1975.

within 30 days of completion of the hearing.[5] The Commission introduced evidence that Judge Kelly did not meet time standards in more than 40% of the TPR cases assigned to her from January 1, 2012, to July 1, 2017. The Commission's evidence further indicated that the Alabama Department of Human Resources ("DHR") filed in the Alabama Court of Civil Appeals numerous petitions for a writ of mandamus to compel Judge Kelly to enter orders in cases involving TPR petitions and that more than half of the instances in which Judge Kelly violated the time standards in TPR cases occurred after August 13, 2014--the date that DHR filed its initial petition for a writ of mandamus regarding timeliness.

In addition to offering into evidence case files and statistics, the Commission called witnesses who testified regarding the negative effects that the delays in Judge Kelly's cases caused. One of those witnesses, a foster parent who had adopted a child through the fostering process, testified that the child was in foster care for more than

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[5]See § 12-15-320(a), Ala. Code 1975. See also Rule 25(D), Ala. R. Juv. P. Rule 25(D), which became effective September 18, 2006, originally imposed the 30-day time limit for issuing an order after completion of a TPR hearing. Act No. 2013-157, Ala. Acts 2013, incorporated the 30-day requirement into § 12-15-320.

1,900 days. The process required to terminate parental rights, in his opinion, was unnecessarily delayed and that delay caused lasting problems for the child that required ongoing psychiatric treatment.

The Commission also introduced evidence of alleged delays by Judge Kelly in juvenile-delinquency cases and domestic-relations cases. The Commission's evidence of those delays was primarily in the form of case files.

The Commission also introduced evidence indicating that Judge Kelly was on notice, from several sources, as to her delays--and the problems caused by them--in scheduling matters and entering rulings. Those sources included discussions with presiding judges of the Fifteenth Circuit, appellate court decisions,[6] time standards and best-practices

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[6]Five published decisions from August 2015 through September 2016 addressed delays in Judge Kelly's cases. In one of those decisions, the Court of Civil Appeals noted:

> "We note that the juvenile judge indicates in her answer that the failure to include in the judgments a provision awarding permanent legal custody of the children to DHR was not 'deliberate, purposeful, or planned.' However, we would be remiss if we did not also note that the juvenile judge has, in the past, engaged in a pattern and practice of failing to comply with statutory requirements only to take steps to comply after DHR has filed a petition for the writ of mandamus with this court. In no less than five cases in the last year, DHR has sought

she learned from national professional organizations, and reports Judge Kelly was required to file regarding the length of time she had certain cases under advisement.[7]

Finally, the Commission introduced evidence indicating that Judge Kelly on several occasions filed untimely or

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> this court's intervention to direct the juvenile judge to comply with the time requirements set out in Ala. Code 1975, § 12-15-320(a), and to either set a termination-of-parental-rights trial or to enter a termination-of-parental-rights judgment. ... All but one of those petitions had been mooted by the action of the juvenile judge upon her receipt of the petition; one petition was not mooted only because the juvenile judge thought that she required our permission or instruction to enter the requested termination-of-parental-rights judgment while the petition for the writ of mandamus was pending before this court. Deliberate or not, the juvenile judge's continued neglect of her duty to comply with the statutorily prescribed time requirements and to enter proper and compliant judgments unless and until threatened with the supervisory action of this court causes the members of this court great concern."

Ex parte Montgomery Cty. Dep't of Human Res., 215 So. 3d 582, 583-84 (Ala. Civ. App. 2016).

[7]Although Judge Kelly recognized problems in her handling of cases and applied for assistance from the National Council for Juvenile and Family Court Judges ("NCJFCJ"), based in Reno, Nevada, Judge Kelly's handling of cases did not improve, and she failed to adequately implement the best practices recommended by the NCJFCJ. Evidence also indicated that, despite requests from Presiding Judge Eugene Reese, Judge Kelly delayed sharing the NCJFCJ report with other judges in the Fifteenth Circuit.

inaccurate reports required every six months under Canon 3A(5) of the Canons of Judicial Ethics ("six-month reports").[8]

In her defense, Judge Kelly introduced evidence indicating the following:

- that she was a hard worker, rarely took a day off, and worked many weekend days;
- that she genuinely cared about her cases and took an active interest in the children and families in the cases before her; and
- that on two occasions former employees returned for short-term "volunteer" work and on at least one occasion Judge Kelly paid one of them out of her own pocket, thus indicating the level of leadership of others in commitment to the individuals impacted by her court.

Further, there was no evidence introduced that Judge Kelly was ever involved in any sort of graft, corruption, scandal,

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[8]Canon 3A(5) of the Canons of Judicial Ethics states:

"A judge should dispose promptly of the business of the court, being ever mindful of matters taken under submission. On the first day of January and the first day of July of each year, each judge shall file a report which shall show the cases and/or matters which have been under submission or advisement for a period of six months or longer .... Where a matter or case has been under submission or advisement for six months or longer, the report shall give the date that the matter or case was taken under submission or advisement and the reasons for the failure of the judge to decide such matters or cases."

or wrongful conduct other than the alleged pattern and practice of delays. There is no evidence indicating that she intentionally did anything to harm anyone, most importantly the children impacted by her court.

Judge Kelly introduced evidence regarding the juvenile clerk's office of Montgomery County. That evidence indicated that the clerk's office primarily handled the scheduling of juvenile matters for all three juvenile court judges in Montgomery County: Judge Kelly, Judge Calvin Williams, and Judge Robert Bailey. Judge Kelly offered statistics of case assignments for those three judges from 2012 to August 2017. Those statistics indicated that Judge Kelly was assigned at least 1,200 more matters than Judge Williams and at least 500 more matters than Judge Bailey. Judge Kelly also introduced evidence indicating that the juvenile clerk's office was without meaningful supervision for an extended period, and she argued that it contributed to the delay in her cases.

In rebuttal, the Commission offered statistics from the Administrative Office of Courts indicating that the weighted caseload of each of the three family court judges--Judge Kelly, Judge Williams, and Judge Bailey--was relatively equal. Thus, despite the apparent disparity in the number of

new matters that were assigned to Judge Kelly, those additional matters should not have caused the extensive delays in her docket.[9] This Court finds highly persuasive this evidence, as well as evidence indicating (1) that neither Judge Williams nor Judge Bailey has ever had a case under submission or advisement long enough to include it on a six-month report and (2) both Judge Williams and Judge Bailey took responsible steps to ensure their dockets were current despite the challenges facing them and the juvenile clerk's office.

Based on the evidence presented at trial, this Court unanimously finds that the Commission proved by clear and convincing evidence that Judge Kelly is guilty of each of the following charges:

CHARGE 1 -- DELAY IN ISSUING TPR ORDERS

> Judge Kelly engaged in a pattern and practice of failing or refusing to timely enter orders within 30 days of completing trials on petitions for termination of parental rights, in violation of § 12-15-320(b), Ala. Code 1975, and Rule 25(D), Ala. R. Juv. P.

CHARGE 2 -- DELAY IN COMPLETING TPR TRIALS

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[9]Judge Kelly, in her defense, also offered weighted-caseload analysis from AOC to argue that the Montgomery Circuit was shorthanded, both as to the number of judges and number of employees in the circuit clerk's office.

Judge Kelly engaged in a pattern and practice of failing or refusing to complete the trials on petitions for termination of rights within 90 days of perfecting service, in violation of § 12-15-320(a), Ala. Code 1975.

CHARGE 3 -- FAILURE TO MANAGE DOCKETS

Judge Kelly engaged in a pattern and practice of failing or refusing to manage court dockets to decide pending matters in a timely manner--failing or refusing to allocate sufficient time on her dockets to hear pending matters in one setting, regularly continuing dockets, unreasonable delays in setting timely hearings, unreasonable delays in resetting continued trial settings--preventing the timely resolution of disputes that profoundly affected the lives of those, in particular children, whose interests were before her court.

CHARGE 4 -- DELAY IN DIVORCE JUDGMENTS AND MODIFICATIONS

Judge Kelly engaged in a pattern and practice of unreasonable and unjustifiable delay or failure to rule on completed applications for uncontested-divorce complaints and requests for modification of divorce decrees, many of which included agreed-upon proposed orders, thereby preventing the timely resolution of disputes that profoundly affected the lives of those, in particular children, whose interests were before her court.

CHARGE 5 -- COMPREHENSIVE DELAY

Judge Kelly failed to take care of the business of the court in a timely, prompt, and efficient manner.

CHARGE 6 -- UNTIMELY AND INACCURATE CANON 3A(5) REPORTS

Judge Kelly engaged in a pattern and practice of failing or refusing to submit accurate and timely Canon 3A(5) six-month reports.

Based on the evidence presented, not all of which is set out herein, this Court finds that the Commission's proof of charges 1-6 did not establish by clear and convincing evidence that Judge Kelly violated Canons 1, 2, or 2A. Based on that same evidence, however, this Court unanimously finds that the Commission proved by clear and convincing evidence that as to charges 1, 2, 3, and 5, Judge Kelly is guilty of violating:

- Canon 2B, by failing to avoid conduct prejudicial to the administration of justice which brings the judicial office into disrepute;

- Canon 3, by not performing her duties diligently;

- Canon 3A(1), by failing to be faithful to the law and maintain professional competence in it;

- Canon 3A(5), by failing to dispose promptly of the business of the court, being ever mindful of matters taken under submission;

- Canon 3B(1), by failing to diligently discharge her 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), by failing to require her staff and court officials subject to her direction and control to observe the standards of fidelity and diligence that apply to her.

As to charges 4 and 6, this Court unanimously finds that the Commission proved by clear and convincing evidence that Judge

Kelly is guilty of violating Canons 2B, 3, 3A(5), 3B(1), and 3B(2).

Our finding that Judge Kelly is guilty of charges 1-6 as to the specific canons above is based on the Commission's proof by clear and convincing evidence of a pattern and practice as to the conduct forming the basis of those charges. In relying on the time standards and reporting requirements cited in this order and in the Commission's complaint, this Court is not holding that those time standards and reporting requirements are strict-liability provisions. We likewise are not holding that isolated failures to comply with those time standards and reporting requirements are per se violations of the Canons of Judicial Ethics. Finally, we were not asked to evaluate any substantive ruling by Judge Kelly in the cases before us, nor is it within our authority to do so.

In deciding the appropriate sanctions for Judge Kelly, this Court notes the credible opinion testimony from various witnesses that Judge Kelly takes her job seriously and that she wants the best outcome for all interested parties in the cases that come before her. This Court emphasizes, however, that well intentioned or not, Judge Kelly has demonstrated sustained inefficiency in managing--and an overall inability

in administering--her busy and complex docket. Unfortunately, the victims of that inefficiency are some of the most vulnerable of any under the power of the court system.

This Court is aware of the extended shortages in staffing and budgeting that all courts in the State of Alabama have faced since at least 2003. But the evidence in this case indicates that, in the same or similar circumstances with a similar weighted caseload as Judge Kelly, the other two family court judges--who each had less circuit judge experience than Judge Kelly--managed their dockets in a much more efficient manner than did Judge Kelly.

This Court is troubled by Judge Kelly's failure to accept responsibility and her attempt to blame others--including specifically the juvenile clerk's office--for the many delays that resulted in this matter being filed.[10] As a duly elected circuit judge, Judge Kelly has the authority and the responsibility to direct those who are involved in the administration of justice in the cases assigned to her--including clerks, attorneys, and other stakeholders--to take

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[10]This Court notes further that Judge Kelly did not dispute the evidence indicating that she, not employees of the clerk's office, was responsible for managing her domestic-relations docket and scheduling domestic-relations matters.

such steps as are necessary to comply with the law.[11] Judge Kelly, like every judge, has the inherent powers of the court, including the ability to cite for contempt, to insure the proper operation of her court. Ultimately, Judge Kelly is responsible for the management of her docket and must work not only to identify but to implement successful solutions to the problems affecting the just and efficient administration of her docket. Unfortunately, the evidence at trial indicates that to the extent Judge Kelly attempted to change her conduct to address problems of delays in her docket, she was unsuccessful.

This Court is mindful that in 2016 the voters of Montgomery County reelected Judge Kelly even though most of the events underlying the complaint in this case happened in the years immediately preceding that reelection. The sanctions imposed on Judge Kelly attempt to honor the will of the people as expressed at the ballot box while also

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[11]The Commentary to Canon 3A(5) states:

> "Prompt disposition of the court's business requires a judge to devote adequate time to [her] duties, to be punctual in attending court and expeditious in determining matters under submission, and to insist that court officials, litigants, and their lawyers cooperate with [her] to that end."

establishing safeguards to ensure that the rights of litigants--most importantly dependent children--are protected. The fact that Judge Kelly is not being removed from the bench is the result of the extensive evidence of Judge Kelly's good character and the lack of evidence of scandal or corruption on her part. This Court, under the circumstances of this case, finds Judge Kelly is warranted additional opportunity to attempt to efficiently do the job she was reelected to do. We emphasize, however, that regardless of whether Judge Kelly's inefficiency and inability in managing her docket has been unintentional, it must be remedied.

To that end, this Court unanimously orders the following:

1. Judge Kelly is suspended without pay for a period of 180 days. Because Judge Kelly has been disqualified from serving, with pay, since August 16, 2017, the date the complaint was filed with this Court, she is to be reinstated to service on Monday, May 14, 2018. She shall serve without pay for 180 days from that date. On the 181st day following her reinstatement to service, she will be restored to full pay provided she, by the 151st day following her reinstatement to service, has certified to the Administrative Office of Courts that she is complying with this Court's order in good faith and intends to continue to do so.

2. The time without pay in paragraph 1 shall be reduced to 90 days if Judge Kelly certifies[12] to this Court and

[12]If Judge Kelly makes such a certification, it shall not affect her right to appeal this decision.

to the director of AOC within 30 days of this order her agreement to comply in good faith with the following conditions:[13]

a. By the fifth day of each month until the end of her current term, Judge Kelly is to provide to the Presiding Judge of the Montgomery Circuit Court and to the Commission a report identifying, with appropriate redactions, the following matters assigned to her as of the last date of the preceding calendar month:

   1) Each TPR petition for which service has been perfected but a final hearing has not been completed within 90 days of perfection of service;

   2) Each TPR petition for which a hearing has been completed but a final order has not been entered within 30 days of the completion of that hearing.

b. For each item listed in the report provided in 2.a., Judge Kelly is to give the relevant dates of service or the completion of the hearing and the reasons for her failure to either complete the final hearing within 90 days of perfection of

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[13]In determining the number of days to suspend Judge Kelly, this Court decided to give Judge Kelly the option to reduce that suspension to 90 days with the understanding that this Court's constitutional authority to suspend a judge without pay includes the authority to impose the conditions imposed in 2.a.-e. This Court has offered Judge Kelly this option in an attempt to provide Judge Kelly affirmative measures to address the problems that have resulted in this disciplinary matter.

If this Court's understanding of its authority to impose those conditions prescribed in 2.a.-e. is determined to be erroneous, this Court unanimously finds that the 180-day suspension without pay in paragraph 1 is the appropriate sanction in this case.

service or to enter an order within 30 days of completion of the hearing.

c. For the next 12 months following the date of this order, Judge Kelly is to meet in good faith at least monthly for at least one hour with a mentor judge or judges selected by the Presiding Circuit Judge of the Montgomery Circuit with the approval of Judge Kelly. Among other things, Judge Kelly should seek accountability in complying with this Court's judgment and sanctions.

d. Judge Kelly is to work in good faith with the other judges of the Montgomery Circuit Court on an ongoing basis to implement and adhere to the "best practices" as recommended by the NCJFCJ.

e. If Judge Kelly timely makes the certification in paragraph 2, she will be restored to full pay on the 91st day following her reinstatement to service provided she, by the 61st day following her reinstatement to service, has certified to the Administrative Office of Courts that she is complying with this Court's order in good faith and intends to continue to do so.

3. This Court will issue a public reprimand of Judge Kelly in a newspaper of general circulation in Montgomery County, Alabama. The language of the public reprimand is attached hereto and incorporated herein by reference.

4. Judge Kelly is taxed with the costs of publication of the public reprimand. All other costs are taxed as paid.

Finally, this Court admonishes Judge Kelly to scrupulously avoid future failures to comply with this judgment and the Canons of Judicial Ethics.

DONE this 11th day of May, 2018.

J. MICHAEL JOINER
CHIEF JUDGE

LAURA PETRO

STEVEN E. HADDOCK

ROBERT L. MINOR

S. DAGNAL ROWE, SR.

W.N. WATSON

L. GWALTNEY MCCOLLUM, JR.

LUCINDA S. CANNON

WALTER BODY

PUBLIC REPRIMAND

Anita Kelly, a family court judge in the Montgomery Circuit Court, is hereby publicly reprimanded by the Alabama Court of the Judiciary.

The Alabama Court of the Judiciary is a nine-member, constitutionally created judicial body that is convened to hear complaints filed by the Alabama Judicial Inquiry Commission pertaining to alleged violations of the Alabama Canons of Judicial Ethics. In May 2018, the Alabama Court of the Judiciary conducted a trial to address a complaint filed by the Alabama Judicial Inquiry Commission against Judge Kelly.

Based on the evidence presented at Judge Kelly's trial, the Alabama Court of the Judiciary found Judge Kelly guilty of violating the Alabama Canons of Judicial Ethics by engaging in a pattern and practice of failing or refusing to timely enter orders on petitions for termination of parental rights, in violation of § 12-15-320(b), Ala. Code 1975, and Rule 25(D), Ala. R. Juv. P.; by engaging in a pattern and practice of failing or refusing to timely complete trials on petitions for termination of rights, in violation of § 12-15-320(a), Ala. Code 1975; by engaging in a pattern and practice of

failing or refusing to manage court dockets to decide pending matters in a timely manner, thereby preventing the timely resolution of disputes that profoundly affected the lives of those, in particular children, whose interests were before her court; by engaging in a pattern and practice of unreasonably and unjustifiably delaying or failing to rule on completed applications for uncontested-divorce complaints and requests for modification of divorce decrees, many of which included agreed-upon proposed orders, thereby preventing the timely resolution of disputes that profoundly affected the lives of those, in particular children, whose interests were before her court; by failing to take care of the business of the court in a timely, prompt, and efficient manner; and by engaging in a pattern and practice of failing or refusing to submit accurate and timely reports required under Canon 3A(5) of the Alabama Canons of Judicial Ethics.

Judge Kelly's conduct constituted serious breaches of the Alabama Canons of Judicial Ethics. Judge Kelly, contrary to the canons, failed to avoid conduct prejudicial to the administration of justice which brings the judicial office into disrepute; failed to perform her duties diligently; failed to be faithful to the law and maintain professional

competence in it; failed to dispose promptly of the business of the court, being ever mindful of matters taken under submission; failed to diligently discharge her administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court officials; and failed to require her staff and court officials subject to her direction and control to observe the standards of fidelity and diligence that apply to her.

As a result of the findings of the Alabama Court of the Judiciary, Judge Kelly shall be suspended for a period of 180 days without pay. That suspension shall be reduced to 90 days, however, provided Judge Kelly certifies that she will voluntarily engage in additional reporting and mentoring requirements as specified in the May 11, 2018, final judgment of the Court of the Judiciary.