



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 JUDICIAL INQUIRY COMMISSION'S OBJECTION TO JUDGE ANITA
KELLY'S REQUEST FOR NOTICE AND PRODUCTION OF "OTHER ACTS"
EVIDENCE PURSUANT TO ALA. R. EVID. 404(b)

The Judicial Inquiry Commission ("Commission") hereby objects to Judge Anita Kelly's ("Judge Kelly") request for notice and production of all "other crimes, wrongs, or acts" evidence that the Commission may offer or otherwise seek to use in trial in this matter.

Ala. R. Evid. 404(b) states:

Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, provided that upon request by the accused, the prosecution in a **criminal case** shall provide reasonable notice in advance of trial, or during trial if the court excuses pretrial notice on good cause shown, of the general nature of any such evidence it intends to introduce at trial.

(emphasis added). Rule 404(b) plainly only requires pre-trial notice of "other acts" evidence in criminal

proceedings. There is no analogous requirement for civil actions.

The proceedings in the current matter are civil in nature. "Except where inappropriate, or otherwise provided for by these rules, the provisions of the Alabama Rules of Civil Procedure and the rules of evidence used in civil cases in Alabama shall govern proceedings before the court." Rules of Procedure of the Alabama Court of the Judiciary, Rule 10. The Commission has no duty under the Alabama Rules of Evidence or the rules of procedure in this Court to provide Judge Kelly notice and produce "other acts" evidence prior to trial.

Nevertheless, the Commission represents that it will not offer or seek to use at trial any specific case not identified in the Second Amended Complaint in its case-in-chief. The Commission reserves the right to offer or seek to use Rule 404(b) "other acts" evidence in rebuttal or impeachment should the need arise.

Respectfully submitted, this 12th day of March, 2018.



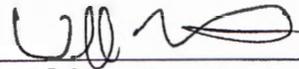
William A. Gunter V
Attorney for the Commission

CERTIFICATE OF SERVICE

I certify that, on this 12th day of March, 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:

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