



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 MOTION TO DISMISS AND BRIEF IN SUPPORT

COMES NOW the Judicial Inquiry Commission ("Commission") and responds to Judge Kelly's Motion to Dismiss and Brief in Support. The motion is without basis in law and fact and is due to be denied.

In her Motion to Dismiss and Brief in Support, Judge Kelly lists five categories of alleged procedural or pleading error that she argues warrant dismissal of the Commission's complaint: (1) the lack of a verified JIC complaint detailing every fact alleged in the COJ complaint both deprives the Commission and this Court of jurisdiction and violates Rule 6A, R. P. Jud. Inq. Comm'n; (2) Judge Kelly was not given "proper notice"; (3) the charges based on Judge Kelly's failure to abide by statutory time standards fail to state a claim upon which relief can be granted; (4) a showing of bad faith is required for a violation of any Canon of Judicial Ethics; and (5) Judge

Kelly lacked advance fair warning that her conduct could be violative of the Canons and sanctionable.

1. Under the Commission's procedural rules, a verified complaint is required to institute an investigation, not to aver every fact and charge ultimately included in a complaint filed in the Court of the Judiciary ("COJ").

Foremost, the filing of a complaint with the JIC invokes the JIC's jurisdiction. Steensland v Alabama Judicial Inquiry Com'n, 87 So. 3d 535, 541-42 (Ala. 2012). Likewise, this Court's jurisdiction is invoked upon the filing of a complaint by the Commission. Ala. Const. 1901, Amend. No. 581 § 6.18(a) [now § 157(a)].¹

Judge Kelly fundamentally misconstrues the requirements of Rule 6A, attempting to impose a requirement on the Commission that would severely hinder, if not outright extinguish, the Commission's ability to execute its constitutional mandate, i.e., conduct investigations and file complaints in this Court.

¹ A violation of a procedural rule does not void or bar the Commission's prosecution of a complaint in the COJ unless the charged judge makes a showing of prejudice (with the exception of the Rule 9 requirement that no investigation may be instituted nor subpoena issued except upon the affirmative vote of a majority of all members of the Commission taken at a duly called meeting of the Commission. Rule 9, R. P. Jud. Inq. Comm'n).

Rule 6A reads “[p]roceedings may be instituted by the commission only upon a verified complaint.” Rule 6A, R. P. Jud. Inq. Comm’n. (emphasis added). Judge Kelly repeatedly acknowledges in her Brief in Support that the Commission received a verified complaint against her alleging delay in holding hearings, delay in ruling, and failure to rule.²

The Commission’s investigation of pattern-and-practice of delay arose from its investigation of the verified complaint. On September 12, 2016, the Commission explicitly advised Judge Kelly that “the Commission is expanding its investigation to determine whether this is an isolated case or part of a pattern and practice of delays in hearings and rulings and of failure to rule.”³

The rationale for such expansion was based on questions the Commission must decide in any delay complaint: whether the delay is purely a matter of administrative concern or is it conduct that may be violative of ethical norms and, if the latter, whether the delay has reached the level of sanctionable conduct. In making these determinations, the

² See Judge Kelly’s Brief in Support, at 6, 16; Judge Kelly’s Exhibit B to her Brief in Support.

³ Judge Kelly’s Exhibit D to her Brief in Support.

Commission may look, for example, at whether the delay demonstrates an unwillingness or inability to rule; whether the delay continued after the parties made efforts to obtain a ruling, after administrative measures were suggested or taken, and/or after inquiries had been made; and whether the delay is attributable or indicative of the judge's incapacity, arbitrariness, unnecessary absences, or neglect of office or whether it is attributable to caseloads or other extraordinary measures.

Furthermore, in her July 18, 2016 response to the allegations made in the verified complaint, Judge Kelly herself injected whether the issue of delay was isolated to the one case or was in keeping with her Court's standard practice.⁴ At that point, the Commission was compelled to modify its investigation to include pattern and practice.

In asserting that there was an investigation without a verified complaint, Judge Kelly fails to delineate between a "complaint" and materials gathered during the investigation. The materials the Commission gathered were pursuant to and in furtherance of its previously-and-

⁴ See Judge Kelly's Exhibit C to her Brief in Support, at 3-4.

properly instituted investigation of the delay alleged in the complaint and Judge Kelly's response to that complaint. Those materials are not "complaints" subject to verification under Rule 6A.

2. Judge Kelly had sufficient notice of every aspect of the investigation supporting the Commission's complaint.

Judge Kelly bifurcates her notice argument, claiming the Commission both: (a) failed to provide any notice, or sufficient notice, of the aspects of third-party submissions of evidence that the Commission deemed worthy of some investigation, as allegedly required by Rules 6C and 6D; and (b) failed to provide any notice that matters underpinning large portions of the formal charges were even under investigation.⁵

Judge Kelly misperceives the notice to which she is entitled at the investigatory phase. This Court recently addressed this very issue in COJ Case No. 46, In the Matter of Roy S. Moore. In its Final Judgment, this Court agreed with the Commission's position that:

The requirements of due process . . . 'are not necessarily the same as those in a criminal matter.' . . . This is because the purpose of disciplinary proceeding is 'to protect the public interest'—not to

⁵ Judge Kelly's Brief in Support, at 15.

punish the judge In fact, 'the majority view holds that virtually no notice is required by the due process clause in investigatory proceedings.'

COJ Case No. 46, Final Judgment at 44. This Court further agreed with the Commission's assertion that, even with insufficient notice—which the Commission did not concede—the charged judge must show prejudice, as required by Rule 19, to prevail. Id.

In affirming this Court's ruling on appeal, the Alabama Supreme Court relied in part on the following:

When governmental agencies adjudicate or make binding determinations which directly affect the legal rights of individuals, it is imperative that those agencies use the procedures which have traditionally been associated with the judicial process. On the other hand, when governmental action does not partake of an adjudication, as for example, when a general fact-finding investigation is being conducted, it is not necessary that the full panoply of judicial procedures be used.

Moore v. Alabama Judicial Inquiry Comm'n, No. 1160002, 2017 WL 1403696, at *16 (Ala. Apr. 19, 2017) (quoting Hannah v. Larche, 363 U.S. 420, 442 (1960)). That Court also declared the charged judge must establish prejudice. See also Charles Gardner Geyh, James J. Alfini, Steven Lubet, & Jeffery M. Shaman, Judicial Conduct and Ethics, § 12.10 (5th Ed. 2013) ("When considering questions of notice during the investigative stage, courts seldom hold

disciplinary bodies to strict compliance with the procedural guidelines provided for their operation" and "the majority view holds that virtually no notice is required by the due process clause in investigatory proceedings.")

Even if Judge Kelly was entitled to adjudicatory-style notice during the investigative phase, which she was not, Judge Kelly received such notice.

1. May 9, 2016: letter from the Commission to Judge Kelly notifying her that it had opened an investigation into the allegations contained in the initial verified complaint.⁶
2. September 12, 2016: letter from the Commission to Judge Kelly notifying her that the investigation was continuing into the allegations in the verified complaint and that the investigation had expanded into pattern and practice of delays in hearings and rulings and of failure to rule.⁷
3. December 5, 2016: letter from the Commission to Judge Kelly notifying her the investigation was continuing into the allegations in the verified complaint and into pattern and practice of delays in hearings and rulings and of failure to rule.⁸
4. January 9, 2017: Email from the Commission's Executive Director to Judge Kelly's counsel

⁶ Judge Kelly's Exhibit B to her Brief in Support.

⁷ Judge Kelly's Exhibit D to her Brief in Support.

⁸ Judge Kelly's Exhibit E to her Brief in Support.

reiterating that Judge Kelly had previously received notice of delay issues in her court as early as November 25, 2015 with the issuance of a Court of Civil Appeals opinion listing six instances of delay or failure to rule in Judge Kelly's court.⁹

5. January 25, 2017: An 8-page memo from the Commission to Judge Kelly responding, in detail, to Judge Kelly's request for a clarification of the status of the investigation, the matters under investigation, and the matters to be addressed at her scheduled appearance before the Commission.¹⁰

Furthermore, during the pendency of its 15-month investigation, the Commission, pursuant to Rules 6C and 6D, produced to Judge Kelly more than 13,000 pages of documents. A cursory review of the documents would have revealed the breadth of the Commission's investigation into Judge Kelly's pattern-and-practice of delay. The list below is not exhaustive and merely serves to illustrate the repeated notice Judge Kelly received concerning the scope of the investigation.

1. Bates Nos. 9797-9880, 10808-10809 (produced July 5, 2017) is the Davis Day Treatment Center Program's grant application to the Alabama Department of Youth Services and the monthly attendance totals of the Davis Treatment Center Program from August 2010 through March 2017.

⁹ Judge Kelly's Exhibit F to her Brief in Support.

¹⁰ Judge Kelly's Exhibit H to her Brief in Support.

2. Bates Nos. 10391-10574 (produced July 5, 2017) are case files of various juvenile delinquency cases assigned to Judge Kelly.
3. Bates Nos. 10659-10807, 10935-11036 (produced July 5, 2017) are case files and/or case action summaries related to various petitions to modify custody, visitation, and child support, filed under both DR and CS designators, assigned to Judge Kelly.
4. Bates Nos. 9670-9690 (produced May 22, 2017) are SJIS printouts of all divorce cases, contested and uncontested, assigned to Montgomery County Family Court judges from January 1, 2017 through May 1, 2017.
5. Bates Nos. 9203-9659 (produced May 22, 2017) are monthly SJIS Time Standard Reports related to cases assigned to Judge Kelly, or disposed of by Judge Kelly, from January 1, 2013 through May 1, 2017. These reports reflect all types of cases Judge Kelly was assigned: juvenile delinquency, juvenile dependency, domestic relations (including divorce), and child support.

In addition, during her May 18, 2017 appearance before the Commission, Judge Kelly was specifically asked about several areas of her court docket that she now claims to have had no notice of prior to the Commission's filing of the complaint:

- Uncontested divorce dockets:¹¹

JIC: What about uncontested divorces? Have you - have you noticed an uptick or a higher-than-normal request for orders in that venue? In that context?

¹¹ See Complaint Sec. III.A; Charges 3-5.

[Judge Kelly]: I can't - I don't know the answer to that.

JIC: What do you have to do as a judge to grant a final decree of divorce in an uncontested divorce proceeding?¹²

- Delinquency Dockets:¹³

JIC: [B]efore [the Reno Group] came for their first site visit or even their second or third, did you cancel delinquency dockets and put dependency dockets in their place in preparation for the Reno group's arrival?¹⁴

- Davis Treatment Center Program:¹⁵

JIC: And very briefly, could you describe what happened with - in 2015 with the Davis grant?

. . .
Could you just briefly kind of tell us what happened with that? With losing the grant for four months?¹⁶

In conclusion, Judge Kelly clearly had notice above-
and-beyond that required by law. Even assuming arguendo she did not receive adequate notice on some aspects of the allegations contained in the complaint—which the Commission

¹² Judge Kelly's May 18, 2017 Testimony, 113: 19 - 115:7, to be attached as an exhibit following this Court's instructions at the October 19, 2017 hearing.

¹³ See Complaint Sec. II.B; Charges 4, 5.

¹⁴ Judge Kelly's testimony, 81:9 - 15.

¹⁵ See Complaint Sec. V; Charge 6.

¹⁶ Judge Kelly's testimony, 117: 17 - 118:2.

does not concede—Judge Kelly has failed to make a threshold showing of actual prejudice.

3. Judge Kelly's repeated violations of statutory time standards are violations of the Canons and sanctionable.

In paragraph 13 of her Motion to Dismiss, and section C of the Brief in Support, Judge Kelly generally claims that the alleged violations based on her failure to comply with statutory time standards fail to state a claim because (a) the relevant time standards (termination of parental rights ("TPR") and protection-from-abuse ("PFA") statutes) are directory, not mandatory; and (b) the relevant time-standard statutes violate the separation of powers.

A. Whether the time-standard provisions at issue are mandatory or directory is a distinction without effect in the context of judicial discipline.

The Commission's complaint alleges Judge Kelly repeatedly failed to comply with the following statutes and rules¹⁷:

Ala. Code § 12-15-315(a): Within 12 months of the date a child is removed from the home and placed in out-of-home care, and not less frequently than every 12 months thereafter during the continuation of the child in out-

¹⁷ In her brief, Judge Kelly mentions that Ala. Code § 12-15-312(a)(2) and (3) are relevant to the complaint, but these code sections are neither cited in the complaint nor does the Commission allege them to have been violated. Brief in Support, at 29.

of-home care, the juvenile court shall hold a permanency hearing.

Ala. Code § 12-15-320(a): Termination of parental rights cases shall be given priority over other cases. The trial on the petition for termination of parental rights shall be completed within 90 days after service of process has been perfected. The trial court judge shall enter a final order within 30 days of the completion of the trial.

Ala. Code § 30-5-6(a): The court shall hold a hearing after the filing of a petition under this chapter upon the request of the defendant or within 10 days of the perfection of service.

Ala. Code § 30-5-6(b): The court shall grant or deny a petition for a temporary ex parte protection order filed under this chapter within three business days of the filing of the petition.

Judge Kelly claims these statutes are directory, not mandatory, so Judge Kelly's failure to comply cannot be the basis to support an alleged violation of the Canons.¹⁸

Whether these statutes and rules are mandatory or directory is irrelevant in the instant matter because even if these time standards are merely directory, "labeling a provision directory in nature does not relieve public officials from following the statutory direction in the provision." Howard v. Cullman Cty., 198 So. 3d 478, 484 (Ala. 2015). "[I]n considering a provision to be directory

¹⁸ Judge Kelly's Brief in Support, at 30.

it is not meant that a duty does not rest upon the officer to act within the time, a duty which he may be compelled to perform, but simply that his power to act does not expire with the time." Id. at 485 (quoting Birmingham Building & Loan Ass'n v. State, 120 Ala. 403, 25 So. 52 (1899)).

The time standards at issue in TPR cases (Charges 1 & 2) and PFA petitions (Charge 5), if nothing else, articulate the importance both the Legislature and the Alabama Supreme Court¹⁹ have placed on the speedy resolution of these types of cases. The purpose behind such time standards is clear: the "prompt disposition" of juvenile and PFA matters, which are particularly time-sensitive and essential to the protection of public welfare in general and in particular the special needs of juveniles. These provisions can then be properly viewed as guidelines for a judge to follow in these most-important types of cases.²⁰

Material to the TPR time standards, in 1997, the United States Congress passed the Adoption and Safe Families Act

¹⁹ The Alabama Supreme Court set its own standard for TPR cases with Rule 25(D), Ala. R. Juv. P., which states, "In termination-of-parental-rights cases, the juvenile court shall make its finding by written order within 30 days of completion of the trial."

²⁰ See generally, Complaint Sec. II. A.

("ASFA").²¹ The ASFA, among other endeavors, set minimum benchmarks for states to follow to shorten the time children remain in state custody before finding their permanent placement. The ASFA brought TPR's to the forefront as a core strategy in permanency planning for children in foster care.²² In fact, the provisions in the Act related to TPR were designed to be the cornerstone of a system to speed up the adoptions of abused and neglected children through the adoption of nation-wide best practices.²³

Alabama substantially adopted the ASFA provisions in the Alabama Juvenile Justice Act of 2008. Ala. Code Title 12, Chapter 15. The primary purpose of the Act "is to facilitate the care, protection, and discipline of children who come under the jurisdiction of the juvenile court." Ala. Code § 12-15-101(a).

²¹ 42 U.S.C.A. §§ 670-679c (1997).

²² Madelyn Freundlich, Expediting Termination of Parental Rights: Solving A Problem or Sowing the Seeds of A New Predicament?, 28 Cap. U. L. Rev. 97, 99 (1999).

²³ Id., citing Barbara Vobejda, House Approves Bill to Speed Adoption of Abused Children, Wash. Post, May 1, 1997, at A1; see also David Hess, House: Speed up Child Adoption, Philadelphia Inquirer, May 1, 1997, at A1.

The Alabama Legislature enacted the above time standards for a purpose: to impress upon the courts the importance of promptly disposing of these uniquely time-sensitive cases. The Commission is not alleging Judge Kelly should be sanctioned outside of the judicial-discipline arena for her failure to adhere to these statutory time standards.²⁴ Rather, her repeated failure to abide by the time standards did violate the relevant statutes and rules, and such violations fall directly under the purview of the Canons. See e.g., Canon 2A ("A judge should respect and comply with the law.")

In fact, Judge Kelly has repeatedly admitted she considered herself beholden to the time standards set out in Ala. Code § 12-15-320(a). See Judge Kelly's Testimony 112:4-8 ("And it has never been my intent to ignore the [TPR] rules, in any way, because I want to comply with the rules because my thought is that, as a judge, I'm an example."); Order, In the Matter of J.B., JU-2010-650.05 (Mar. 13, 2017) ("The Order in this [TPR] matter was signed

²⁴ See Ex parte Hood, 404 So. 2d, 717, 718 (Ala. 1981) (the court noted a key difference between a mandatory and directory statute is the presence of a sanction for noncompliance in the mandatory statute).

and submitted for normal processing within the 30 day statutory period."); Supplemental Response, In the Matter of J.B., Alabama Court of Civil Appeals Case No. 2164000, JU-2010-650.05 (Mar. 16, 2017) (original order terminating parental rights signed "within the 30 day statutory period"); Answer of Respondent, Honorable Anita L. Kelly, to Montgomery County DHR's Petition for Writ of Mandamus, Alabama Court of Civil Appeals Case No. 2130923 (Aug. 28, 2014) ("On its face, it appears that this Court missed the 30 day deadline for releasing its [final TPR] order following the October, 2013 hearing."); Answer of Respondent, Honorable Anita L. Kelly, to Montgomery County DHR's Petition for Writ of Mandamus, Alabama Court of Civil Appeals Case No. 2131002 (Sep. 24, 2014) ("It was not the intent of this Court to deliberately disregard the 30 day requirement [to issue a final TPR order].")

Judge Moore of the Alabama Court of Civil Appeals also reminded Judge Kelly of her violations of Ala. Code § 12-15-320(a) in her concurring opinion in Montgomery Cty. Dep't of Human Res. v. T.S., 218 So. 3d 1252 (Ala. Civ. App. 2016), "The juvenile court laid great blame on DHR for mishandling this case, but the juvenile court also should

consider its own culpability in unlawfully prolonging this matter to the detriment of the child." Id. at 1270 (emphasis added).

Judge Kelly's systemic failure to adhere to the statutory deadlines imposed by the Alabama Legislature may not give rise to sanction from the statutes themselves, but they are violative of the Canons and subject her to judicial discipline.

B. The time standards provisions at issue do not unconstitutionally violate the separation of powers.

As noted supra, the pertinent statutes are expressions of public policy addressing public interests, the time-sensitive critical needs of juveniles, and adopting best practices. By leaving to the judiciary whether to sanction violations of this established public policy, the Legislature respected the separation of powers.

The Commission, as part of the constitutionally-authorized judicial-disciplinary system, seeks sanctions against Judge Kelly for violating the Canons as they relate to the legislation— a fine point, but important in this context.

Judge Kelly cites to cases that invalidated time-standard statutes as violations of separation of powers.

However, those cases invalidated only mandatory statutes. In fact, several cases cited by Judge Kelly acknowledged that directory statutes do not violate the separation of powers. E.g., Briggs v. Brown, 400 P.3d 29, 61 (Cal. 2017) (after finding California statutes providing time standards for habeas proceedings in capital cases were directory and not unconstitutional, the court noted "Our conclusion that the time limits in [the statutes at issue] are merely directive does not empty them of meaning. Legislated time limits can establish as a matter of policy that the proceedings they govern should be given as early a hearing and decision as orderly procedure will permit."); State ex rel. Watson v. Merialdo, 268 P.2d 922, 924 (Ark. 1954) (the court acknowledged it previously declined to invalidate directory time standard statutes); Waite v. Burgess, 245 P.2d 994 (Nev. 1952) (statute is directory only, and not unconstitutional, insofar as it relates to judicial functions).

It is noteworthy that this is the first time Judge Kelly has asserted the unconstitutionality of the statutes despite the numerous times litigants have requested she comply with them. Moreover, as early as August 13, 2014,

when the Alabama Department of Human Resources ("DHR") filed a petition for writ of mandamus in the Court of Civil Appeals (No. 2130923) seeking an order directing Judge Kelly to enter an order nearly 10 months after a TPR trial was completed, Judge Kelly has had multiple opportunities to raise the constitutionality of Ala. Code § 12-15-320(a).²⁵ Judge Kelly addressed petitions for writ of mandamus on at least six later occasions relating to her failure to comply with § 12-15-320(a).²⁶ Not once did she request the Court to declare that statute unconstitutional. Similarly, Judge Kelly could have invalidated Ala. Code § 12-15-315(a) in June 2014 when, in In the Matters of M., C., D., & G.D., & D.L.N., JU-2013-30, JU-2013-31, JU-2013-32, JU-2013-33, and JU-2013-524, DHR filed a motion for a permanency hearing order more than two months after the conclusion of the permanency hearing.²⁷ Instead, in all instances in her pattern and practice of constant reminders of her failure to comply with time-standard provisions,

²⁵ See generally, Complaint para. 28.

²⁶ See, Complaint paras. 29, 32, 33, 34, 37, 40.

²⁷ See, Complaint para. 65(c).

Judge Kelly herself could have but declined to invalidate the statutes for violating the separation of powers.

4. *Sheffield* does not require the Commission to allege bad faith in the complaint.

Judge Kelly argues that a showing of bad faith is required to charge a violation of the Canons generally, and Canons 1, 2, 2A, 2B, 3, 3A(1), 3A(5), 3B(1), and 3B(2) specifically.²⁸ Judge Kelly claims all of her actions and inactions charged in the complaint were discretionary, and that discretionary acts are not sanctionable under the Canons absent a showing of bad faith under In re Sheffield, 465 So. 2d 350, 357-358 (Ala. 1984).

Judge Kelly is attempting to broaden the holding in Sheffield far beyond what the Alabama Supreme Court intended. The Court clearly stated,

[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.

Id. at 358.

A showing of bad faith is required only for charges that allege (a) violations of 2A or 2B, and (b) are based

²⁸ Judge Kelly's Motion to Dismiss, paras. 3-11; Brief in Support, Sec. D.

on erroneous legal rulings. Thus, there is not any requirement of bad faith for those provisions of the complaint charging violations of Canons 1, 2, 3, 3A(1), 3A(5), 3B(1), and 3B(2).²⁹ Further, none of the six charges allege any erroneous legal ruling. Rather, the complaint is limited to the lack of timeliness and efficiency of Judge Kelly's disposition of her court's business. The substance of her rulings is not at issue, merely when and if those rulings occurred.

5. The Canons and semi-annual reports gave Judge Kelly advance fair warning that her conduct could be sanctionable.

Judge Kelly generally claims that absent "specific time standards that define 'delay,' 'excessive delay,' or a 'pattern and practice,'" Judge Kelly could not have known that her conduct could subject her to discipline; and, therefore, any charge of "unreasonable delay" is arbitrary and capricious.³⁰

Canon 3A(5) could not be clearer on its face:

²⁹ See Complaint, Charges 1 - 6, all of which are based on Canons in addition to Canons 2A and 2B.

³⁰ Judge Kelly's Motion to Dismiss, para. 14; Brief in Support, at 36-39.

A judge should dispose promptly of the business of the court, being ever mindful of matters taken under submission.

Canon 3A(5)'s accompanying commentary further clarifies a judge's duty to avoid delay:

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.

These Canons, as evident from the previous discussion, must be applied in the context of statutory law, procedural rule, and caselaw providing guidelines for and definition of unreasonable and unjustifiable delay. See e.g., In the Matter of Pettway, COJ Case No. 44, in which this Court sanctioned a judge for conduct similar to conduct charged in the instant complaint: failure to effectively manage dockets resulting in unnecessary and harmful delays.

Since July 2, 1979, judges in this state have been required to submit a "Semiannual Report" to the Alabama Administrative Office of Courts ("AOC") every six months, as required by Canon 3A(5). This Canon provides that on January 1st and July 1st of each year, each judge must file a report with AOC that shows the cases and/or matters under

submission or advisement for a period of six months or longer, and the reasons for the failure of the judge to decide such matters and/or cases. This requirement is to advance the efficiency of the courts and prompt disposition of matters under submission.

Since at least 2008, Judge Kelly has submitted semiannual reports, albeit often inaccurate, to AOC that contained multiple cases in need of adjudication.³¹ These reports should have reminded Judge Kelly that the prompt disposition of the court's business is a fundamental responsibility of any judge and they should have provided her a clear sense of the meaning of delay. For Judge Kelly to now claim that she had no "fair warning" that a pattern and practice of delay could be sanctionable is unconvincing, particularly given her flagrant and continued delays, even after admonition by the Alabama appellate courts and the Commission's notice of investigation into pattern and practice.

WHEREFORE, PREMISES CONSIDERED, the Commission requests that Judge Kelly's Motion to Dismiss be denied.

³¹ See Complaint, Sec. VI. E.

Respectfully submitted this 18th day of October, 2017.



William A. Gunter V

Attorney for the Commission

CERTIFICATE OF SERVICE

I certify that, on this 18th day of October, 2017, 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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