IN THE ALABAMA COURT OF THE JUDICIARY

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

**RESPONSES AND OBJECTIONS TO RESPONDENT'S FIRST REQUEST FOR PRODUCTION**

COMES NOW the Judicial Inquiry Commission of Alabama ("the Commission"), by and through counsel, and serves its responses and objections to Respondent's First Request for Production, filed pursuant to Rule 34, Ala. R. Civ. P., and Rule 10 of the Rules of Procedure of the Court of the Judiciary.

Pursuant to Rule 6, Ala. R. P. Jud. Inq. Comm'n, the Commission has timely produced to Respondent copies of all transcripts, documents, and/or recordings the Commission has obtained during the course of its investigation. From the date of the first investigation letter, May 9, 2016, Respondent has received all materials collected by the Commission every 42 days, which as of the date of the filing of the complaint consisted of more than 13,366 pages of documents.

REQUEST FOR PRODUCTION NO. 1:

*A copy of all recordings, statements, transcripts of testimony, or other documents generated or received from any witnesses or other persons with whom JIC has had contact regarding the above-styled case.*[1]

RESPONSE:

The Commission objects to this request as it is duplicative and calls for recordings, statements, transcripts of testimony, and/or other documents already produced to Respondent. The Commission objects to the extent this request calls for the production of documents subject to the attorney-client privilege, the attorney work-product doctrine, and/or otherwise not discoverable under Rule 26, Ala. R. Civ. P. The Commission objects to this request to the extent it calls for recordings, statements, transcripts of testimony, and/or other documents within the control of third parties and/or not currently in the Commission's possession, custody, or control. The Commission objects to this request as overly

[1] "Regarding the above-styled case" includes but is not limited to the investigation leading up to and resulting in the complaint filed in the Court of the Judiciary in this matter.

broad, unduly burdensome, vague, and not reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections, the following constitutes the full and complete list of all witnesses who, whether pursuant to a subpoena or on a voluntary basis, have testified before the Commission regarding the above-styled case:

1. Sharon Ficquette
2. Angela Starr
3. Beverly Wise
4. Bruce Howell (no subpoena & testimony transcript not requested by Commission)
5. Judge Anita Kelly

The Commission previously produced the testimony transcripts for Sharon Ficquette on January 25, 2017; and Angela Starr, Beverly Wise, and Judge Anita Kelly on July 5, 2017. The Commission has not requested, and has never been in possession of, the testimony transcript of Bruce Howell. Testimony transcripts are available from the following sources: Stacey Johnson of Dunn King & Associates

for Sharon Ficquette, and Jordan Groves of Eagle Court Reporting for the remaining witnesses.

Subject to and without waiving the foregoing objections, the Commission will produce all documents responsive to this request it has received since the last production.

REQUEST FOR PRODUCTION NO. 2:

*A copy of any and all subpoenas issued to any person or entity in regard to the above-styled case, and a copy of any notes, writings, statements, other forms of recording, and other documents generated in response to the issued subpoena, whether said notes, writings, statements, other forms of recordings, or documents were generated by the witness, JIC staff or JIC attorneys, or others.*

RESPONSE:

The Commission objects to this request as overly broad, unduly burdensome, vague, and not reasonably calculated to lead to the discovery of admissible evidence. The Commission objects to the extent this request calls for the production of documents subject to the attorney-client privilege, the attorney work-product doctrine, and/or otherwise not discoverable under Rule 26, Ala. R. Civ. P. The Commission objects to this request as it is duplicative and calls for statements, other forms of recording, and/or

other documents already produced to Respondent. The Commission objects to this request to the extent it calls for notes, writings, statements, other forms of recording, and/or other documents within the control of third parties and/or not currently in the Commission's possession, custody, or control.

Subject to and without waiving the foregoing objections, the Commission notes that, pursuant to Rule 7C, Ala. R. P. Jud. Inq. Comm'n, the Commission previously served[2] on Respondent a true and correct copy of every subpoena and subpoena duces tecum issued in the above-styled case, to wit:

1. Tiffany McCord
2. Rebecca Oates
3. Tara Seay-Hunter
4. Marilyn Floyd
5. Tracy Collins
6. Elka Graham
7. Cornelius Warren
8. Angie Burkhalter
9. Oslynn Brown
10. Deputy Sheriff Derrick Cunningham
11. Veronica Ferguson

[2] Service of the subpoena on Respondent was perfected by placing a true and correct copy of the same in first class, certified U.S. Mail, postage prepaid, addressed to the subject judge or her attorney of record in the above-styled case. Rule 7D, Ala. R. P. Jud. Inq. Comm'n.

12. Sandra Jackson
13. Angela Starr
14. Beverly Wise
15. Diane Rolling
16. Teresa H. Allen
17. Sharon Ficquette

REQUEST FOR PRODUCTION NO. 3:

*A list of all persons interviewed via telephone or in person regarding the above-styled case, and the subject or topic(s) covered in the interview with said persons, to include any note(s), summary(ies), written impressions, or statement(s) taken from all such persons.*

RESPONSE:

The Commission objects to this request as overly broad, unduly burdensome, vague, and not reasonably calculated to lead to the discovery of admissible evidence. The Commission objects to this request as it calls for the production of documents subject to the attorney-client privilege, the attorney work-product doctrine, and/or otherwise not discoverable under Rule 26 of the Alabama Rules of Civil Procedure. The Commission objects to this request to the extent it calls for note(s), summary(ies), written impressions, and/or statement(s) within the control of third parties and/or not currently in the Commission's possession, custody, or control.

Subject to and without waiving the foregoing objections, the Commission responds that it is not in possession, custody, or control of a document responsive to Respondent's specific request of "*[a] list of all persons interviewed via telephone or in person regarding the above-styled case.*"

REQUEST FOR PRODUCTION NO. 4:

*All exculpatory evidence in JIC's possession regarding the above-styled case.*

RESPONSE:

The Commission objects to this request as overly broad, unduly burdensome, vague, and not reasonably calculated to lead to the discovery of admissible evidence. The Commission objects to the extent this request calls for the production of documents subject to the attorney-client privilege, the attorney work-product doctrine, and/or otherwise not discoverable under Rule 26, Ala. R. Civ. P. The Commission objects to this request as duplicative as all non-privileged documentary evidence has previously been produced to Respondent. The Commission objects to this request as the Commission is under no duty to specifically identify and produce exculpatory evidence.

Subject to and without waiving the foregoing objections, and insofar as "exculpatory evidence" is construed as meaning any documentary evidence that exonerates or tends to exonerate Respondent of the ethical violations charged in the Complaint, the Commission reiterates that any non-privileged documents in the Commission's possession, whether exculpatory or inculpatory, relevant or irrelevant, have previously been produced to Respondent pursuant to Rule 6.

GENERAL OBJECTIONS

These objections apply to each and every request for production and are incorporated by reference in each response thereto.

1. The Commission objects to the requests for production to the extent they, individually or cumulatively, purport to impose on the Commission duties and obligations beyond those permitted by the Rules of Procedure of the Judicial Inquiry Commission, Rules of Procedure of the Court of the Judiciary, and/or the Alabama Rules of Civil Procedure.

2. The Commission reserves all objections as to the competency, relevancy, materiality, and admissibility of all of its documents or information or the subject matter thereof, all objections as to burden, vagueness, over breadth and ambiguity, and all rights to object on any ground to the use of any document or information, or the subject matter thereof, in any subsequent proceeding, including without limitation the trial of this or any other action.

3. The Commission objects to the requests to the extent they are overly broad, vague, ambiguous, unduly burdensome or fails to specify the information or documents sought with reasonable particularity, and to the extent it seeks information or documents that are not relevant to the subject matter of this action or reasonably calculated to lead to the discovery of admissible evidence or are otherwise outside the scope of discovery permitted by the Rules of Procedure of the Judicial Inquiry Commission, Rules of Procedure of the Court of the Judiciary, and/or the Alabama Rules of Civil Procedure.

4. The Commission objects to the requests to the extent they require the Commission to produce any documents or information that are publicly available on the grounds such documents and information are just as readily available or obtainable by Respondent, and, therefore, the Commission should not have to bear the burden of disclosure outside the Commission's mandated duties under the Commission's Rules of Procedure.

5. The Commission objects to the requests to the extent they are repetitive and/or substantially overlap with other requests and the Commission's duty to disclose under the Commission's Rules of Procedure, and/or require the Commission to provide the documents more than once, on the ground such duplicative disclosure is unduly burdensome.

6. The Commission objects to the requests to the extent they seek documents that constitute or disclose confidential information, not mandated for disclosure pursuant to the Commission's Rules of Procedure. The Commission objects to the requests to the extent they

require the Commission to violate any applicable constitutional obligations.

7. The Commission objects to the requests to the extent they require the Commission to produce documents that were prepared for or in anticipation of litigation, constitute attorney work-product, are protected by the attorney-client privilege, constitute or disclose the mental impressions, conclusions, opinions, or legal theories of any attorney or other representative of the Commission concerning this or any other litigation, or are protected by another applicable privilege, statute, rule, or immunity. Such document will not be produced to Respondent, and any inadvertent production shall not be deemed a waiver of any privilege with respect to such document or of any work-product doctrine which may apply.

8. The specific responses of the Commission to Respondent's requests made now or in the future are based upon documents now in possession, custody, or control of the Commission and the Commission reserves the right at any time to revise, correct, add to, or clarify these responses

or objections now made or made hereinafter to Respondent's requests.

9. Any response or objection to any or all of the requests does not necessarily mean that any documents exist or are in possession, custody, or control of the Commission that are responsive to any specific request.

10. In each and every response where the Commission interposes an objection, such objection shall be construed to preserve all of the Commission's rights to enter similar objections as to any future supplemental response to such request. Moreover, a failure to object herein shall not constitute a waiver of any objection the Commission may interpose as to any future supplemental answer or response.

11. The Commission's responses and objections to the requests are made expressly without in any way waiving or intending to waive, but, rather, to the contrary, preserving and intending to preserve:

(a) All questions as to the competence, relevance, materiality, privilege, admissibility as evidence, or use for any purpose of the documents or

information, or the subject matter thereof, in any aspect of this or any other action, proceeding, or investigation;

(b) The right to object on any ground to the use of any such document or information, or the subject matter thereof, in any aspect of this or any other action, proceeding, or investigation;

(c) The right to object at any time to a demand for any further response to this or any other request for production; and

(d) The right at any time to revise, supplement, correct, amend, or clarify these objections and responses.

Respectfully submitted this 29th day of August, 2017.

William A. Gunter V
Attorney for the Commission

CERTIFICATE OF SERVICE

I certify that, on this 29th day of August, 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:

H. Lewis Gillis
Kristen J. Gillis
**MEANS GILLIS LAW, LLC**
60 Commerce Street, Suite 200
Montgomery, AL 36104
(334)270-1033 Tel
(334)260-9396 Fax
hlgillis@meansgillislaw.com
kjgillis@meansgillislaw.com

Mark Englehart
**ENGLEHART LAW OFFICES**
9457 Alysbury Place
Montgomery, AL 36117-6005
(334)782-5258 Tel
(334)270-8390 Fax
jmenglehart@gmail.com

William A. Gunter V
Attorney for the Commission