

**FILED**

**AUG - 4 2022**

ALABAMA COURT OF THE JUDICIARY  
Nathan P. Wilson  
Secretary

**IN THE ALABAMA COURT OF THE JUDICIARY**

**IN THE MATTER OF: \***  
**TRACIE TODD \***  
**CIRCUIT COURT JUDGE \***  
**BIRMINGHAM DIVISION \***  
**CRIMINAL DIVISION \***  
**JEFFERSON COUNTY, AL \***

**CASE NO. 61**

**MOTION TO ALLOW ON-LINE INFORMATION SERVICES**  
**CUSTODIAN TO TESTIFY VIRTUALLY**

COMES NOW, the Judicial Inquiry Commission (hereinafter “the Commission”), and hereby moves this Honorable Court, to allow the Custodian for On-Line Information Services (hereinafter “OLIS”)—which administers Alacourt for the Administrative Office of Courts (hereinafter “AOC”)—to testify on August 15, 2022, virtually. In support thereof, the Commission states the following:

1. The Commission has been informed that there may be issues for the OLIS custodian, located in Mobile, to travel to Montgomery for testimony on August 15, 2022. They have inquired whether testimony via a virtual platform such as Zoom would be possible.

2. Since the emergence of COVID-19, virtual testimony has become more common. See, e.g., N.T.C. v. M.S.C., No. 2200088, 2021 WL

2387862, at \*6 (Ala. Civ. App. June 11, 2021); United-Johnson Bros. of Alabama, LLC v. Billups, No. 2200122, 2021 WL 4234152, at \*3 (Ala. Civ. App. Sept. 17, 2021).

3. The Commission knows that it is technically feasible for virtual testimony to take place in the Alabama Supreme Court courtroom as it was achieved during a Court of the Judiciary proceeding last year.

4. The Confrontation Clause applies only to criminal prosecutions, not civil cases or other proceedings, so it is not in full force here. See Wheeler v. Marvin, No. 1200282, 2021 WL 4235427, at \*3 (Ala. Sept. 17, 2021) (“the right to confront an accuser in a civil matter is not an absolute right”) (cleaned up).

5. The Commission plans to call the OLIS custodian only briefly to introduce orders uploaded to Alacourt and data pulled from Alacourt, and to answer a few basic questions regarding what the data signifies.

6. Commission counsel reached out to both counsel of record for Judge Todd via email yesterday morning to ask their position but have not yet received a response.

7. Judge Todd will not be prejudiced if the OLIS custodian is permitted to testify virtually.

**WHEREFORE**, premises considered, the Commission respectfully requests that this Court allow virtual testimony for the OLIS custodian.

Respectfully submitted this the 4th day August, 2022.

/s/ John A. Selden

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/s/ Elizabeth C. Bern

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### **CERTIFICATE OF SERVICE**

I hereby certify that I have, on this 4th day of August, 2022, electronically filed the foregoing with the Court of the Judiciary, and that I have further served a copy upon the following via email as follows:

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