



**IN THE MATTER OF:
ARMSTEAD LESTER HAYES III
Municipal Judge, Municipal Court,
City of Montgomery, Alabama**

FINAL JUDGMENT

On November 17, 2016, the Alabama Judicial Inquiry Commission ("the Commission") filed a complaint with the Alabama Court of the Judiciary against Armstead Lester Hayes III. The 91-page complaint, which sets forth 7 charges, alleges that Judge Hayes, in his capacity as a judge of the Municipal Court for the City of Montgomery, Alabama, committed multiple violations of the Canons of Judicial Ethics.

On November 18, 2016, the Commission, with the consent of Judge Hayes, filed a motion to expedite the determination of the complaint and requested that this matter be set for a hearing. This Court granted the motion and set the matter for a public hearing on January 5, 2017.

More than 10 days before the scheduled hearing, the Commission and Judge Hayes jointly moved to resolve the charges of the complaint at the public hearing in accordance with Art. VI, § 157, Ala. Const. 1901 (Off. Recomp.). See Rule 10, R.P. Jud. Inq. Comm'n. The parties filed an

agreement and stipulation pursuant to which Judge Hayes expressly waived (1) his right under Rule 5, R.P. Ala. Ct. Jud., to file an answer or other responsive pleading to the complaint; (2) his right under Rule 8, R.P. Ala. Ct. Jud., to 30 days' notice of the date and time for a hearing of the complaint; and (3) his right of appeal under Art. VI, § 157, Ala. Const. 1901 (Off. Recomp.).

In accordance with their agreement, Judge Hayes and the Commission stipulate to the following:

"1. The Commission can prove the following facts by clear and convincing evidence:

"a. At all times relevant to this Complaint, Judge Hayes was a Municipal Court Judge of the City of Montgomery, Alabama.

"b. From 2002 to the present, Judge Hayes has been the presiding judge of the Municipal Court of the City of Montgomery, Alabama.

"c. The Municipal Court of the City of Montgomery has jurisdiction over cases involving criminal misdemeanor defendants and defendants with traffic tickets.

"d. Many of these defendants are given fines and court costs in connection with their convictions or guilty pleas.

"e. On multiple occasions, defendants in the Municipal Court have not paid their fines and costs in full, even though they were always initially given additional time to pay beyond the conviction date to do so, i.e., 30, 60, or 90 days.

"f. On many occasions prior to 2014, Judge Hayes incarcerated traffic offenders for failure to pay fines and costs without first, in compliance with Rule 26.11, Ala. R. Crim. P.: (a) making sufficient inquiry into the offenders' financial, employment, and family standing to determine if the offenders had the ability to pay court-ordered financial assessments;¹¹ (b) determining reason(s) for an offender's inability to pay or failure to pay; and/or (c) considering alternatives to incarceration other than initially providing additional time to pay, resulting in the incarceration of indigent defendants, in some cases for several months.

"g. On numerous occasions, Judge Hayes failed to permit a traffic offender to fully explain the reason for either the offender's failure or inability to pay court-ordered financial assessments.

"h. The Judges of the Municipal Court had before them, when a defendant was presented to them in the situations that are made the basis of the Complaint, the following information contained on a 'warrant list' which listed the outstanding traffic tickets and misdemeanor cases with the case number and the nature of any outstanding warrants connected therewith, from which the following information could be gleaned: the general age of the tickets/cases; the number of tickets/cases; whether tickets/cases were given for the same offenses on multiple occasions; whether failure-to-appear warrants had been issued in connection with those tickets/cases; and the amount still due on the tickets/cases listed on the 'warrant list' which would be a general indicator of prior efforts to pay.

¹¹The complaint states that "[t]he term 'court-ordered financial assessment' includes fees, fines, restitution, court costs, attorney fees, and any other financial obligation imposed upon a criminal defendant by a court of law."

"i. When determining whether to convert fines and costs to jail time, Judge Hayes took into consideration the information on the warrant list, and he represents he took into consideration any information provided by the defendant. However, there was generally neither a written order nor a general oral pronouncement in Court that sets out the basis for the Court's decision to convert fines and costs to jail time.

"j. For that reason, the Court's records do not reflect the extent, if any, of the Court's inquiry into the reasons the individual did not pay nor the basis for the Court's decision regarding indigency; whether the individual had made a bona-fide effort to pay the fines and costs; and whether alternative punishments were adequate.

"k. Judge Hayes ordered some defendants to a private entity called Judicial Correction Services, an entity which was commonly referred to as a private-probation company.

"l. In connection with the charges at issue in this case, Judicial Correction Services acted as a service to monitor defendants solely in connection with the collection of outstanding fines and costs.

"m. Judge Hayes did delegate to Judicial Correction Services the judicial functions of ordering monitored defendants to appear in court to show cause why they should not be removed from Judicial Correction Services's oversight and/or issuing a summons to a 'probation revocation' hearing.

"n. In connection with his use of Judicial Correction Services, Judge Hayes placed some municipal court defendants who appeared before him on what was nominally referred to in the court's order as 'probation' even though they had not received a suspended sentence or any jail time, but had been given only fines and court costs. Under Alabama law as applied to municipal courts, only

those individuals who have suspended sentences are subject to probation. However, Judge Hayes, when assigning people to Judicial Correction Services, used forms and orders provided by Judicial Correction Services which indicated that individuals were in fact on probation.

"o. In converting fines and costs to jail time and incarcerating traffic and misdemeanor defendants, Judge Hayes and other judges of the Municipal Court failed to enter a signed order indicating the nature of the court's ruling, the number of days the individual was to spend in jail, and/or the amount owed, which was to be converted to days in jail. There was a practice in place for a clerk to enter the aforementioned information on what was referred to as a 'jail transcript,' the document presented to the jail upon receiving an inmate from court. Even after the court converted to its current electronic system in 2012 and a system was implemented allowing for an electronic signature on the case action summary, the case action summary on numerous occasions failed to show the identity of the judge or an electronic signature on the order.

"p. Judges Hayes's practice, and that of other judges on the Municipal Court generally, in cases involving the commuting (i.e., converting) of fines and costs to jail time was to give oral instructions to the clerks and in some instances written notations to the effect that individuals' fines and costs, or certain portions thereof, for certain cases were to be commuted (converted) to days in jail at a set rate per day. Neither Judge Hayes nor other judges created a written and signed instrument containing the formal indicia of a court order, although the clerks created a document known as the 'jail transcript' which was forwarded to the jail.

"q. The 'jail transcript' had a blank for both the 'mandatory time release date' (those days that were part of a sentence) and 'commuted time release date' (which indicated a period of incarceration that resulted from converting outstanding fines and

costs to jail time). It also listed each open case and the disposition of that case, i.e., whether the court had given time to pay on a ticket, had commuted outstanding fines and costs to jail time, or had given 'mandatory days,' i.e., an actual jail sentence rather than, or in addition to, fines and costs.

"r. In addition, the 'jail transcripts' would occasionally indicate that a defendant could be released early with the payment of a specified portion (with the remainder due within a set period of time) or the full amount of the fine due. Often this instruction, if given, was given orally without a judicial signature, though the clerk would sometimes indicate the judge who had issued the ruling. There was, however, no consistent method for indicating which judge had given the oral order or written instruction upon which the 'jail transcript' was based. The transcript was rarely signed by a judge.

"2. Except as stipulated above, Judge Hayes denies the allegations in the Complaint."

Both parties represent that, at a trial of this matter, they would offer additional evidence in support of their respective positions; much of that evidence is set out in the agreement of the parties.

Based upon the stipulations, and considering the evidence and testimony that each party has stated it would offer if the matter were to go to trial, the parties have agreed that Judge Hayes violated Canons 1, 2, 2A, 2B, 3, 3A(1), 3A(3), 3A(4), 3B(1), and 3B(2) as described in Charges 1 through 7 of the Complaint, and the parties have requested that this Court

enter a judgment to that effect. The parties have further agreed upon and proposed to this Court the following resolution of this matter:

a. Judge Hayes is to be suspended without pay from his position as a Municipal Judge for the City of Montgomery for 11 months. This term of suspension shall end on October 1, 2017, and it specifically shall include (I) Judge Hayes's voluntary leave without pay, which, with the approval of the City, began on November 3, 2016; (ii) Judge Hayes's interim suspension, which he elected to serve without pay, which started on November 17, 2016--the date that the complaint was filed in this matter--and concludes on January 5, 2016, the date of this order; and (iii) the suspension following this Court's adoption of the parties proposed resolution of this matter.

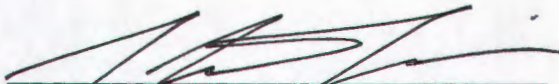
b. Judge Hayes is to be taxed with the costs of this proceeding.

In considering the complaint filed in this matter, this Court finds the allegations deeply troubling. In adopting the parties' proposed resolution, this Court notes Judge Hayes's acceptance of responsibility in this matter; his apparent efforts, beginning in 2014, to remedy the problems that eventually gave rise to this proceeding; and his cooperation with the Commission in attempting to resolve this matter. This Court also notes that Judge Hayes's current term as Presiding Municipal Judge is set to expire in January 2018, roughly four months after he completes his suspension in this matter.

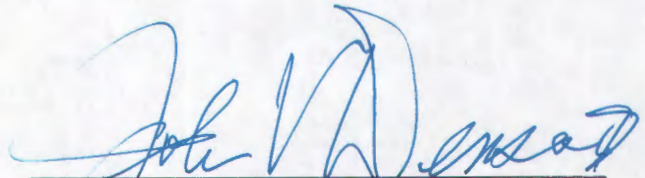
In accordance with the joint motion filed by the Commission and Judge Hayes, this Court hereby ORDERS the following:

1. Judge Hayes is adjudicated guilty of seven charges of violating the Canons of Judicial Ethics as alleged in the complaint in this matter;
2. Judge Hayes is suspended without pay for 11 months; he is given credit for time served since November 3, 2016, and the term of suspension shall end on October 1, 2017.
3. Judge Hayes is taxed with the costs of this proceeding including the amount of \$4,312.82 incurred by the Commission.

DONE this 5th day of January, 2017.




J. MICHAEL JOINER
CHIEF JUDGE



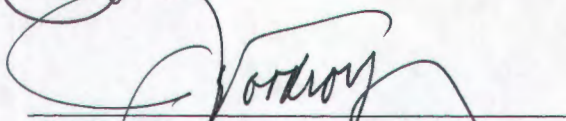
JOHN V. DENSON, II



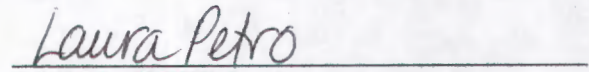
JEFFREY T. BROCK



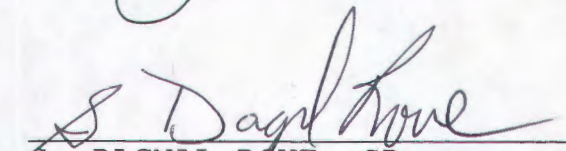
L. GWALTNEY MCCOLLUM, JR.



JAMES W. WOODROOF, JR.



LAURA PETRO



S. DAGNAL ROWE, SR.



DARYL O. PERKINS