

**BEFORE THE JUDICIAL INQUIRY COMMISSION OF ALABAMA**

**Inquiry Concerning a Judge, No. \_\_\_\_.**

**COMPLAINT AGAINST JUDGE KENNETH GOMANY**

**I. INTRODUCTION**

1. Judge Kenneth Gomany is the sole judge for the Municipal Court of the City of Gardendale. He was appointed by the Gardendale City Council on December 19, 2016, and previously served as Municipal Court Judge from approximately 2005 to 2008.

2. Judge Gomany has systematically denied due process and other constitutionally-protected rights to those who appear before him with traffic tickets and misdemeanor charges. Individuals are forced to waive their rights to counsel and plead guilty without understanding the rights they are giving up and in some instances, without the benefit of a translator to understand the proceedings. Individuals are also forced onto probation with a private for-profit company solely because they cannot afford to pay.

3. Judge Gomany allows that company, Professional Probation Services, Inc. ("PPS"), to set the terms of probation, knowing that it charges each person a \$40 per month fee, at minimum. Because PPS's entire revenue derives from these fees, the company is unable to fulfil its duty to act as a neutral probation officer. Yet Judge Gomany continues to let PPS make decisions that are infected by this bias, including how frequently individuals must report, whether they can complete community service in lieu of payment, and how much they must pay monthly. Judge Gomany then sends individuals to jail for probation "non-compliance" solely based on the allegations of PPS, without giving these individuals notice or a meaningful

opportunity to be heard, and allows PPS to decide whether to give individuals another chance or return to probation to continue paying fees.

4. These practices constitute flagrant violations of the U.S. Constitution, the Alabama Constitution, and Alabama law and in turn, violate Canons 1, 2, and 3 of the Canons of Judicial Ethics and merit appropriate sanctions under article VI, §§ 156, 157 of the Alabama Constitution.

## **II. FACTUAL BACKGROUND**

### **A. Adjudicating Guilt and Sentencing Individuals to Private Probation and the Court Referral Program**

5. At all times relevant to this Complaint, Judge Gomany was the sole municipal court judge in the Gardendale Municipal Court (the “Court”), responsible for the administration of the Court, oversight of all court officers, and the adjudication of criminal cases.

6. The typical experience of a person appearing before the Gardendale Municipal Court on traffic or misdemeanor charges issued by the City of Gardendale is as follows.

- a. Judge Gomany calls the name of the defendant at his first court appearance. The defendant approaches the bench, at which Judge Gomany, at least one clerk, and at least one PPS probation employee are seated.
- b. Judge Gomany generally does not ask the defendant if she would like a lawyer or if she is able to afford her own lawyer. Nor does he generally conduct an ability-to-pay determination. If Judge Gomany believes the charge to be “serious,” Judge Gomany may encourage the individual to obtain counsel and allow time to do so. He does not usually conduct an indigency determination at this time or use an Affidavit of Substantial Hardship form to elicit relevant financial information; if,

after any questioning from Judge Gomany, the person states that she is employed, he encourages the person to seek her own attorney.

- c. Judge Gomany questions the person about her case, eliciting incriminating statements from defendants charged with jailable offenses and who are not represented by a lawyer.
- d. There is rarely a prosecutor present during these interrogations by Judge Gomany. If a prosecutor is present, it is usually in the case of a defendant represented by counsel, either at the trial or plea stage.
- e. Based on the representation made by the defendant in the exchange with the judge, which often lasts less than one minute, Judge Gomany will adjudge the defendant guilty. Yet Judge Gomany often does not pronounce a conviction of “guilty,” instead only furnishing the defendant a red form.
- f. Judge Gomany does not explain the red form to the defendant but tells them to “sign on the X.” The form entitled “PLEA OF GUILTY AND WAIVER OF RIGHTS.” The form is filled in by the Court Clerk and dated with a court stamp; the defendant signs this waiver form without any communication with Judge Gomany about whether her waiver of rights is knowing, voluntary, and intelligent.<sup>1</sup>

7. Once Judge Gomany has convicted the defendant of a crime, his standard practice is to order the defendant to pay court costs and fines, even if a jail sentence is ordered. Judge Gomany then engages in the following pattern:

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<sup>1</sup> An example is attached as Exhibit B.

- a. Judge Gomany asks the defendant if she can pay the entirety of the fines and costs that day. If the defendant cannot pay, Judge Gomany asks how much the person can afford to pay, stating that she must pay “something” today.
- b. Judge Gomany will instruct those who represent that they cannot pay anything that day to “make some calls” to family and friends to get money to pay the court, or to visit an ATM.
- c. If the defendant is unable to pay the full amount, Judge Gomany automatically assigns her case to private probation to pay the remainder of the fines and costs. He does not offer community service as an alternative to payment. Nor does he inquire about the defendant’s ability to pay the cost, fines, and probation fees.
- d. Judge Gomany also assigns some individuals assigned to probation to a court referral program under the Alcohol and Drug Abuse Court Referral and Treatment Program.

**B. Probation Supervision by PPS Pursuant to the Contract**

8. At all times relevant to this Complaint, there has been an active contract among PPS, and the Municipal Court, and the City to outsource to PPS the collection of fines and court costs assessed against Municipal Court defendants who were too poor to pay at sentencing. *See* Contract for Probation Supervision and Rehabilitation Servs. (“Contract”) (1998), attached as Exhibit A.

9. PPS is a private for-profit company. Its revenue is entirely dependent on collection of \$40 monthly “service” fees from individuals on probation. The Contract allows PPS to collect monthly service fees, although lists these fees as \$30 per month.



10. The Contract has been renewed each year since it was originally entered in 1998. Though it gives PPS exclusive rights to supervise all persons on probation, it was not, and has never been, publicly bid, as the Constitution and Alabama's public bidding law require.

11. The Contract also prohibits PPS from "profit[ing] or attempt[ing] to profit from any fines, restitution, or court cost collected from the offenders," though this prohibition is contradicted by the provision authorizing PPS to charge a monthly "service" fee for its collection of fines, restitution, and court costs from individuals.

12. When money is paid by offenders, the Contract is silent on how that money will be divided between probation fees owed to PPS and fines and costs owed to the Municipal Court.

13. The Contract also requires PPS to supervise, at no cost, any individuals whom the Municipal Court deems indigent.

14. PPS employs at least two probation officers in Gardendale: Rachel McCombs and Courtney Waters.

15. When assigning individuals to probation, Judge Gomany engages in the following pattern:

- a. Judge Gomany hands defendants a second form, which is a white form with a yellow carbon copy entitled "ORDER OF PROBATION."<sup>2</sup> The defendant signs this form in a similar fashion as the red waiver form, without any explanation from Judge Gomany and without access to counsel.
- b. He instructs the defendant to speak to one of the PPS probation employees—without an explanation of what private probation entails, and without an

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<sup>2</sup> An example is attached as Exhibit C.

explanation that the defendant will be required to pay PPS monthly supervision fees.

- c. Judge Gomany includes a suspended jail sentence with each Order of Probation, including for those individuals who have “waived” their right to counsel. He marks the line indicating the defendant has waived her right to an attorney with a “X.”
- d. When individuals meet with PPS, they are given a separate form entitled “Sentence of Probation.”<sup>3</sup> This “Sentence of Probation” form is signed in Judge Gomany’s name by a Municipal Court Magistrate. Its terms include additional conditions of probation not included in, or that are modified from, the Order of Probation signed by Judge Gomany, including:
  - i. the number of months of probation, which is typically 24 months—even though the Municipal Court’s Probation Order regularly specifies a shorter period of 12 months, *compare* Ex. C (12 months), *with* Ex. D (24 months);
  - ii. the amount the individual must pay PPS each month, including a monthly probation service fee of \$40.00 to PPS (corrected by hand from a printed version of \$45.00), and an amount that goes towards the fines and court costs owed to the Municipal Court, which is at least an additional \$40, *see* Ex. D;
  - iii. a requirement to report to the probation supervisor as directed; and
  - iv. sixteen other possible conditions of probation that PPS may select on the Form. For example, PPS specifies in the Form that persons such as

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<sup>3</sup> An example is attached as Exhibit D.

Plaintiffs must abstain from the use of alcohol or drugs and submit to random testing and not drive without a valid driver's license.

e. Judge Gomany does not further review or approve the Form.

16. The primary purpose of an individual's in-person appointments is for PPS to collect its "supervision" fees; any additional money the person can pay is then applied to her Municipal Court costs and fines.

17. PPS, without oversight from Judge Gomany, also enforces the conditions of probation in a way that will maximize its fees. For example, it increases the amount of fines owed from what Judge Gomany ordered and charges its monthly fees by calendar month instead of based on when the person began probation. It does not allow individuals to access alternatives like community service in lieu of payment or to seek a waiver of PPS's fees.

18. Any money defendants can pay PPS is first applied to PPS's fee, and then to the underlying court debt that PPS is charged with collecting.

19. PPS does not provide defendants with any services contemplated in its Contract, or that would be assumed as part of a traditional probation scheme.

20. If individuals do not pay the full amount owed for the month, PPS requires defendants to report weekly, so it can coerce defendants to pay their supervision fees and court costs, fees, and fines. It uses periodic review hearings before the Court to sanction defendants whom it perceives as "non-compliant" with the probation conditions it sets.

21. At review hearings for probation and court referral, Judge Gomany's typical practice is as follows:

- a. Judge Gomany will call the name of the person, and then immediately ask the PPS employees and the Court Referral Officer (CRO) if the person is “one of theirs.”
- b. PPS or the CRO will then begin testifying (unsworn) about the person’s compliance with probation terms, i.e., in the case of PPS, whether the person is “current” with their PPS supervision fees and court-ordered costs and fines.
- c. Judge Gomany does not require either PPS or the CRO to submit in advance a written accusation of contempt or probation revocation petition. Nor does Judge Gomany issue an order to show cause or a contempt citation that provides the facts constituting the alleged contempt.
- d. If alleging that a defendant has missed probation appointments, PPS also does not supply proof of this allegation at the hearing or testify about specific incidents. Judge Gomany does not afford Court defendants an opportunity to cross-examine the PPS employee or CRO officer presenting her unsworn testimony.
- e. If Judge Gomany believes there are grounds to hold the defendant in criminal contempt, or revoke the defendant’s probation entirely, he will do so at the review hearing without given the defendant notice as required by the Due Process Clause and Alabama law. He also fails to disclose the evidence on which he relies to find a person has willfully disobeyed a court order or a condition of probation, provide the defendant written reasons for the contempt finding or revocation, or provide the defendant with access to counsel.
- f. If not revoking a defendant’s probation, Judge Gomany will defer to PPS or CRO as to when to set the next court review date.

22. The undersigned have observed the above patterns and practices by Judge Gomany on several occasions. In addition, numerous defendants have reported to the undersigned their observations of, or experiences of being subjected to, these patterns and practices by Judge Gomany. Some examples follow.

**C. Court Proceedings in Gardendale Municipal Court**

***i. Proceedings on May 5, 2017***

23. On May 5, 2017, Judge Gomany convicted Catherine (“Gina”) Harper,<sup>4</sup> an unrepresented, indigent defendant, of driving on a suspended license. He sentenced her to 48 hours in jail and a \$500 fine and \$215 in court costs. She could not pay in full, and Judge Gomany ordered her to pay the outstanding balance through probation. He handed her an Order of Probation, which she signed.

24. PPS met with Ms. Harper and explained that she would be required to pay \$80, including \$40 to PPS, each month. She became upset and asked questions, including whether PPS’s business was legal and whether she could get community service, because she could not afford to pay. PPS told her she had to discuss this at a later appointment. She refused to sign the Sentence of Probation form but was told she had to report to probation.

25. Judge Gomany did not conduct any ability to pay inquiry, review these separate conditions in the Sentence of Probation Form, or make findings, based on evidence, that Ms. Harper would be able to pay \$80 per month.

***ii. Proceedings on July 21, 2017***

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<sup>4</sup> The undersigned has filed a class action complaint in the U.S. District Court for the Northern District of Alabama on behalf of Ms. Harper and Ms. Jennifer Essig, whose experiences are referenced throughout this complaint.

26. On July 21, 2017, Judge Gomany convicted Jennifer Essig, an unrepresented, indigent defendant, of trespassing and sentenced her to a \$50 fine and \$232 in court costs. When she told Judge Gomany she could afford to pay only \$40 because she was on a fixed income, Judge Gomany signed an Order of Probation and ordered her to pay the outstanding balance through probation.

27. PPS then met with Ms. Essig and had her sign a separate Sentence of Probation Form with additional conditions, including requiring that she would need to pay at a rate of \$80 per month. Judge Gomany's name was signed to the form by Magistrate Sherry Baggett. Judge Gomany did not conduct any ability to pay inquiry, review these separate conditions in the Sentence of Probation Form, or make findings, based on evidence, that the defendant would be able to pay \$80 per month.

28. Judge Gomany did not tell Ms. Essig that the first \$40 paid every month would be applied to a PPS supervision fee and not to her outstanding court debt. Judge Gomany did not inform Ms. Essig about the terms of her probation, including when or how often she would need to report.

29. Ms. Essig paid PPS \$160 in supervision fees (four months' worth) for a probation period that lasted just under two-and-a-half months, from July 21, 2017, to October 3, 2017.

30. Ms. Essig paid PPS \$382 in fines to the Municipal Court—\$100 more than the \$282 she was told she owed on the day she was sentenced.

*iii. Proceedings on August 4, 2017*

31. On August 4, 2017, during the Court's afternoon session, an individual plead guilty to a charge of "animals running wild," i.e., without a leash. When the resident informed the judge that she could not pay the fine and costs and asked for a payment plan, Judge Gomany

told her that she had to pay immediately and could not be placed on a payment plan. She was allowed to call relatives and friends to ask for money, but only with a police escort. When she again told Judge Gomany she could not pay, Judge Gomany told her that she had no choice but to pay a minimum of \$332 that day or face incarceration. The defendant was not represented by counsel or informed of her constitutional right to an ability to pay determination before incarceration.

32. Judge Gomany repeatedly threatened other defendants who appeared in Gardendale Municipal Court on August 4, 2017, with incarceration if they could not pay the minimum amount of costs and fines imposed by the court. Judge Gomany told more than one person that they must “pay the fine today,” even though several persons informed the judge that they could not afford to pay.

33. Gina Harper, inquired about the possibility of doing community service in lieu of paying her fines, and Judge Gomany told her that the Municipal Court itself did not offer community service because of liability concerns. PPS indicated that it offered community service to some individuals on probation; Judge Gomany did not know that PPS offered this option, and he allowed PPS to continue offering this program in its own discretion, without oversight from the Municipal Court.

34. During the proceedings on August 4, 2017, court magistrates and clerks, including Sherry Baggett, and PPS probation officers, including Rachel McCombs, sat to the left of Judge Gomany at the bench and participated in several hearings, often answering questions from Judge Gomany about various cases. None of these court-affiliated personnel was sworn under oath, and no defendant was permitted to cross-examine them to challenge their statements. Judge

Gomany would defer to the statements of PPS employees over those of defendants appearing before him, and would not allow defendants to speak in their own defense.

35. On this date, Judge Gomany ordered the jailing of at least two persons who appeared for probation review hearings, based solely on the unsworn statements made by PPS employee Rachel McCombs. These individuals were not given access to counsel, the opportunity to defend themselves, prior notice that the hearing would be a probation revocation or contempt hearing, or written notice of the claimed violations that would be considered at the hearing. Judge Gomany also failed to disclose the evidence on which he relied to revoke probation or find the person in contempt, and failed to provide the defendant written reasons for his findings.

36. In the case of a jailed individual who was brought into the courtroom by the bailiff on the same day, Judge Gomany asked PPS employee Rachel McCombs whether the individual should be jailed, decided to give him “another chance” based on her response, and told Ms. McCombs to decide the individual’s next review and release dates.

37. Judge Gomany questioned several defendants who appeared that day for their first court appearance. The prosecutor was not present. Judge Gomany directly questioned unrepresented defendants about the facts of their alleged offenses without offering them an attorney or informing them of their right to counsel and their right against self-incrimination. Judge Gomany ordered several persons at these hearings to PPS probation, including paying court costs or fines and a suspended sentence, without any input from an adversarial prosecutor and while defendants were unrepresented by counsel.

38. Another defendant appeared on charges of driving with a suspended license. Judge Gomany immediately jailed the defendant without giving him a trial or access to counsel.



*iv. Proceedings on August 18, 2017*

39. During review hearings on August 18, 2017, Judge Gomany deferred to the PPS employees, taking testimony to decide whether to jail defendants without administering an oath to the PPS employees and without providing defendants an opportunity to present evidence or cross-examine the PPS employees.

40. Ms. Essig, who had been sentenced to probation on July 21, 2017, was sentenced to 24 hours jail time by Judge Gomany. PPS employee Rachel McCombs told Judge Gomany that the defendant had missed several appointments. When the defendant attempted to show Judge Gomany receipts from her PPS appointments to show she had not missed appointments, Judge Gomany would not look at the receipts or listen to the defendant. He sentenced her to 24 hours of jail time, without explaining on the record the reasons for incarcerating her. This defendant was unrepresented by counsel at this review hearing, and not given any opportunity to answer the charges of the PPS employee, on which Judge Gomany exclusively relied to jail this defendant.

*v. Proceedings on September 15, 2017*

41. On September 15, 2017, during the afternoon court session in Gardendale Municipal Court, Judge Gomany refused to provide a translator to a defendant who did not speak English and could not understand the proceedings. Judge Gomany asked her, in English, how she got to court that day. He told her to have a seat and that she was in custody. A police officer attempted to translate by typing into his phone, and informed Judge Gomany that a friend had driven her to court. Judge Gomany repeatedly stated, again in English, that he would not allow her to leave until he could see her ride.

42. Judge Gomany called up another defendant and asked him if he could translate for the female defendant. Judge Gomany proceeded to ask the female defendant several questions through translation and then to find her guilty and assess her costs and fines of over \$700.

*vi. Proceedings on October 6, 2017*

43. On October 6, 2017, a defendant appeared before the Court to address a speeding ticket. She was charged with Failure to Appear. Judge Gomany did not make any finding of guilt or willfulness before handing the defendant, without any explanation, a red waiver of her right to counsel and the plea of guilty, telling her to sign the form “to show [she] understand[s].” He then read off to the court clerk her court costs and fines on both the failure to appear charge and the speeding charge.

44. Multiple defendants who had been ordered to supervision with, and ordered to pay, both the CRO and PPS reported for review hearings that day.

45. On that date, Judge Gomany called forward a defendant who did not speak English. Judge Gomany asked the court room if anyone present could translate, and the defendant’s wife stepped forward. Judge Gomany had her sign a paper to be an “official translator” in the case. Then the court looked at the charge—driving without a license—and said, “he doesn’t have a driver license, and you can’t drive without driver license, so I’m going to find you guilty.” Judge Gomany then assessed the defendant a fine and court costs and imposed a 90-day sentence. At no point did Judge Gomany offer the defendant access to counsel or an official interpreter, or ask the defendant if he wanted to waive his constitutional rights to a trial and a defense attorney. Neither the defendant nor his “translator” spoke to Judge Gomany about the charges; Judge Gomany made the determination of guilt solely on the basis of the ticket, without testimony from any witnesses, including the officer who wrote the ticket. Judge

Gomany then handed the defendant the red form—the waiver of the right to counsel and the plea of guilty—saying, “this piece of paper here you’ve got to sign. Both of you sign that please.”

46. Also on October 6, 2017, Judge Gomany convicted a man of having improper vehicle tags and assessed him costs based on the legal determinations of the clerk, Jennifer Mayfield Hayes. Ms. Hayes was seated next to Judge Gomany’s left on the bench. When the defendant was called, he asked the Judge why he received a ticket for having an improper tag on his car when he had only purchased the car four days prior to being issued the ticket. The defendant repeatedly stated that he thought he had ten days to get a tag for the car. Ms. Hayes interceded and asked the defendant if he showed the officer his bill of sale at the time he was pulled over. The defendant replied no, and Ms. Hayes said that the failure to furnish the bill of sale during the traffic stop was why he got the ticket. The judge repeated this to the defendant, who continued to say that he did not think he had violated the law. Ms. Hayes then asked the defendant if he wanted to pay the \$190 in court costs, to which he replied, “I guess I have to.”

47. Also on this date, Judge Gomany called forward a defendant who had been charged with driving without car insurance. The defendant was not represented by counsel, was not informed by Judge Gomany that he had a right to counsel, and was not asked if he waived his right to counsel before Judge Gomany questioned him. There was no prosecutor present during the colloquy between the defendant and Judge Gomany. When the defendant produced proof of insurance, Judge Gomany noted that the defendant had in fact been insured the day he was ticketed, but simply had not had proof of insurance in his car. Instead of dismissing the ticket for lack of evidence or finding the defendant not guilty of the alleged offense, Judge Gomany ordered the defendant to pay court costs of \$165 and to complete driving school. He ordered the

defendant to return to court on December 1, 2017, with a certificate of completion from a driving school.

48. The practices detailed above are routine in the Gardendale Municipal Court and represent the standard manner in which Judge Gomany processes the cases of defendants who appear before him.

*vii. Proceedings on October 20, 2017*

49. On October 20, 2017, a young defendant appeared in the Gardendale Municipal Court for a review hearing. She had been previously sentenced by Judge Gomany to supervision by both CRO and PPS. The defendant, who lived in Huntsville, Alabama, was “reporting” to PPS solely by mailing in payments. PPS reported that she was up to date with her payments, and Judge Gomany told the defendant to keep mailing in her payments.

**D. Court Record Requests**

50. On September 19, 2017, four days after Gina Harper was sent to jail for alleged noncompliance with probation conditions, the undersigned submitted a written records request on behalf of Ms. Harper, seeking her court files. In response, the Court Clerk informed the undersigned that Ms. Harper’s request for her own court records was being treated as a “motion for discovery” that required review by the prosecutor, even though she sought only official public court records in a case for which she had pled guilty and been sentenced. She received her paper records only after the time for appeal of her contempt sentence had run. She is still waiting on the audio recordings.

51. On October 17, 2017, another Court defendant called the Gardendale Municipal Court to ask about retrieving her court records. The individual had been found guilty of two traffic tickets and sentenced to pay fines and costs on PPS probation, with a suspended sentence, on December 2, 2016. She had appeared in court for review hearings and reported to the PPS

office for probation since her sentencing date. The Clerk on the phone told The defendant she would need to pay for her court records. When the defendant appeared at the Court in person to collect and pay for her records, she was told by Court Clerk Breanna Dunn that she could not access records for “pending” cases without permission of the prosecutor. The Clerk considered the defendant’s case “pending” because she still owed fines and costs on one of her tickets, even though she had already be adjudged guilty and received a sentence. For the case that she had paid in full through probation, she was allowed a copy only of the Case Action Summary, and was charged \$5 for this record.

### III. ALLEGATIONS

52. Canons 1, 2, and 3 of the Canons of Judicial Ethics, respectively, require a judge to uphold the integrity and independence of the judiciary; to avoid impropriety or its appearance in his duties, including by complying with the law and avoid prejudicial administration of justice; and to impartially and diligently perform his judicial duties, including by upholding the law, being courteous to parties, and requiring those employees and others under his direction and control to do so.

53. Because Judge Gomany has violated each of these provisions, he has failed to comply with Canons 1, 2, and 3.

#### **A. Convicting or Sanctioning Defendants Without Affording Them Constitutional and Other Legal Rights Violates Canons 1, 2, and 3 of the Canons of Judicial Ethics.**

54. Canons 1, 2, and 3 require Judge Gomany to uphold, and entitle defendants in adversarial proceedings in Gardendale Municipal Court to, the following rights under the U.S. Constitution, the Alabama Constitution, and Alabama statutory law:

- a. The right to an attorney if indigent and if facing the possibility of imprisonment, *see* U.S. Const. amend. VI; Ala. Const. art. I, § 6; Ala. Code § 15-12-5, including

when a suspended sentence is imposed, *see generally Alabama v. Shelton*, 535 U.S. 654 (2002); *Ex parte Shelton*, 851 So. 2d 96 (2000).

- b. The right to be informed of the defendant's constitutional rights (to counsel, to a trial, against self-incrimination, and to confront the witnesses against the defendant) before making a voluntary and intelligent waiver of those rights, *see* U.S. Const. amends. V, VI, XIV; *see generally Johnson v. Zerbst*, 304 U.S. 458 (1938); *see also Cobb v. State*, 155 So. 3d 318, 320 (Ala. Crim. App. 2014); Ala. R. Crim. P. 6.1(b);
- c. The right to an impartial and fair tribunal, *see* U.S. Const. amend. VI, XIV; Ala. Const. art. I, §§ 6, 13;
- d. The right against self-incrimination, *see* U.S. Const. amend. V; Ala. Const. art. I, § 6;
- e. The right to an interpreter for persons who do not speak English and therefore cannot understand the charges against them or present a defense, *see* U.S. Const. amend. XIV; Ala. Const. art. I, § 6; Ala. Code § 15-1-3; *see generally Terry v. State*, 105 So. 386 (Ala. Ct. App. 1925); *United States v. Tapia*, 631 F.2d 1207, 1209–10 (5th Cir. 1980);
- f. The right to confront the witnesses against the defendant, *see* U.S. Const. amend. VI; Ala. Const. art. I, § 6; and
- g. The right to present a defense to the charges, *see* U.S. Const. amend. VI; Ala. Const. art. I, § 6.

55. First, Judge Gomany routinely questions unrepresented defendants, as if he were a prosecutor, even though the defendants have not been informed of their legal rights. Once he

determines—often without any formal finding on the record—that the person is guilty of the offense, he furnishes them with a Guilty Plea and Waiver of Counsel form without explaining the form. He tells the defendants to sign the form and then immediately imposes a sentence upon them, without giving the defendants the opportunity to be advised by counsel about the plea, to present witnesses or evidence in their own defense, to demand a trial, or to speak on their own behalf before sentencing. Judge Gomany's routine violation of these due process rights results in a farcical "justice" system, in which defendants are tried, convicted, and sentenced in a matter of minutes without any presentation of evidence or knowing acceptance of guilt.

56. Second, Judge Gomany routinely conditions the dismissal of non-meritorious tickets and charges on the payment of court costs, instead of dismissing the ticket outright or finding the defendant not guilty. Though often uncounseled, some defendants ably represent themselves when interrogated by Judge Gomany at their initial appearance and present sufficient evidence to warrant, at minimum, a trial. Instead of setting a trial, however, Judge Gomany will suggest that the person could deal with the issue by simply paying court costs. Without an impartial advisor or counsel to inform the defendant of their right to be found not guilty at trial, many defendants accept this deal from Judge Gomany at their own expense.

57. Alabama law is clear, however, that "[d]ocket fees and other court costs in criminal cases shall be assessed upon conviction"; the only exception allowing costs to be assessed against those whose cases are dismissed involves instances where the judge decides, "in the interest of justice," that costs are warranted "following *an arrest or the issuance of a warrant for the arrest* of a defendant." Ala. Code § 12-19-150. Judge Gomany routinely orders costs to be paid on dismissed cases even where there was no warrant or arrest.

58. Third, Judge Gomany routinely violates Ala. Code § 15-1-3 and the Alabama and U.S. Constitutions by failing to provide non-English-speaking defendants with an official, certified court interpreter. Instead, Judge Gomany will ask the audience in the courtroom if anyone speaks the language of the defendant, and then have that person unofficially translate for the defendant. This unlawful procedure also violates the Administrative Office of the Courts Policies and Procedures for Foreign Language Interpreters.<sup>5</sup>

59. These practices exemplify the system of injustice established by Judge Gomany in the Gardendale Municipal Court, in violation of the First Judicial Canon of Ethics. Judge Gomany has failed to establish, maintain, enforce, and observe “high standards of conduct” to ensure the judiciary’s integrity and independence. Judge Gomany’s failure to follow the law, and to ensure that the rights of persons who are adjudged guilty or assessed fines have been protected, undermine the essential purpose and function of the judiciary.

60. This unjust system also violates the Second Judicial Canon of Ethics, because Judge Gomany does not “respect and comply with the law.” Canon 2.A. Indeed, he routinely acts unlawfully, at the expense of numerous criminal defendants.

61. Finally, Judge Gomany’s failure to afford defendants the above constitutional rights violates the Third Judicial Canon of Ethics’s requirement to be “faithful to the law” and “patient, dignified, and courteous to litigants” in the Gardendale Municipal Court, which he has overwhelmingly failed to do. Canon 3.A.1; Canon 3.A.3. By restricting defendants’ ability to confront evidence and testify in review hearings, he also has failed to “accord every person who is legally interested in a proceeding . . . full right to be heard according to law.” Canon 3.A.4.

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<sup>5</sup> See Sue Bell Cobb & Callie T. Deitz, Alabama’s Unified Judicial System, *Policies & Procedures for Foreign Language Interpreters* (Sept. 2008), available at <http://www.alacourt.gov/docs/InterpreterPolicies.pdf>.



This routine, unlawful processing of criminal defendants—many of whom are uncounseled and indigent—by Judge Gomany amounts to a total abdication of his adjudicative responsibilities to comply with the law.

**B. Jailing Defendants and Revoking Their Probation Without Due Process of Law Violates Judicial Canons 1, 2, and 3.**

62. Canons 1, 2, and 3 require Judge Gomany to afford defendants certain procedural protections mandated by state and federal law before revoking probation—namely:

1. Written notice to the probationer of the claimed violations of probation.
2. Disclosure to the probationer of evidence against him or her.
3. Opportunity of probationer to be heard in person and to present witnesses and documentary evidence.
4. The right to confront and cross-examine adverse witnesses (unless the judge specifically finds good cause for not allowing confrontation).
5. A written statement by the judge as to the evidence relied on and reasons for revoking probation.

See *Armstrong v. State*, 312 So. 2d 620, 622–23 (Ala. 1975) (citing *Gagnon v. Scarpelli*, 411 U.S. 778 (1973); *Morrissey v. Brewer*, 408 U.S. 471 (1972)).<sup>6</sup> The Court must also address the probationer personally and determine that the probationer understands these rights. Ala. R. Crim. P. 27.6(c).

63. Due process requires similar procedural protections before finding an individual in contempt, namely:

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<sup>6</sup> The Alabama Supreme Court has held that this final requirement can be satisfied by an order made orally by the judge, but only if there is an adequate transcription of this order into the record. See *McCoo v. State*, 921 So.2d 450, 462 (Ala. 2005) (“[O]ur holding in this case does not diminish the duty of the trial court to take some affirmative action, either by a statement recorded in the transcript or by written order, to state its reasons for revoking probation, with appropriate reference to the evidence supporting those reasons.”).

that the accused shall be advised of the charges, and have a reasonable opportunity to meet them. This includes the assistance of counsel, if requested, the right to call witnesses, to give testimony, relevant either to the issue of complete exculpation or extenuation of the offense and in mitigation of the penalty imposed.

*Hunter v. State*, 251 Ala. 11, 14, 37 So. 2d 276, 278 (1948) (citing *Cooke v. United States*, 267 U.S. 517 (1925)). These requirements have been codified into Alabama law and rules of procedure. See Ala. R. Crim. P. 33.3. Judges must ensure that the person facing contempt charges receives advance notice of the charges and the essential facts at issue and the hearing date and time, either through a citation with a notice to show cause or a written accusation. *Id.*; *Thomas v. State*, 550 So. 2d 1057, 1064 (Ala. Crim. App.) (“[A] written accusation is essential to initiate an indirect contempt proceeding.”), *aff’d*, 550 So. 2d 1067 (Ala. 1989). Judges must also set a hearing that “allow[s] a reasonable time for the preparation of the defense,” allow the defendant “the opportunity to present exculpatory evidence and evidence of mitigating and extenuating circumstances,” and appoint counsel for indigent defendants. Ala. R. Crim. P. 33.3(d).

64. Judge Gomany does not comply with the U.S. or Alabama Constitutions before jailing persons on contempt or revocation charges. Though Judge Gomany often fails to make any judicial findings on the record—thereby making it difficult to know whether he is jailing individuals for contempt of court, a probation violation, failure to appear, or failure to pay—the result in each of these cases is the same: Judge Gomany jails indigent persons without making sufficient findings on the record to justify their incarceration. Persons who are sentenced to pay costs and fines but who cannot afford to make an initial payment are coerced into begging family and friends for help. If those efforts fail, Judge Gomany sentences the person to jail until they can find the funds or sit out their fines.

65. Judge Gomany routinely jails those on probation without providing prior notice of the fact that a contempt or revocation hearing will take place and without giving the defendant access to the essential facts that will be considered, often relying solely on the unsworn testimony of PPS employees and denying individuals the opportunity to speak on their own behalves. Judge Gomany does not make findings on the record to substantiate probation violations, failure to appear violations, or contempt orders.

66. Instead of affording defendants the process guaranteed by the federal and state constitutions, Judge Gomany jails individuals at the whim of PPS. Judge Gomany's routine violations of these fundamental rights of criminal defendants violate his obligation to remain "independent and honorable," as required by Canon 1, because his actions do not comply with the law and result in the unjust enrichment of the City of Gardendale and the private corporation, PPS. Judge Gomany's tendency to alternate between prosecutor and judge in these proceedings also violates his obligation to be impartial under Canon 1.

67. These practices also violate his duties under Canons 2 and 3 to "respect and comply with the law." Canon 2.A; *see also* Canon 3.A.1 ("A judge should be faithful to the law and maintain professional competence in it.").

**C. Ordering Defendants to Private Probation, Pursuant to the Unconstitutional, Unlawful PPS Contract, Without Due Process or Judicial Oversight, Violates Judicial Canons 1, 2, and 3.**

68. Canons 1, 2, and 3 also require Judge Gomany to afford defendants due process of law guaranteed by the U.S. Constitution and to uphold certain state procedures mandated by the Alabama Constitution and Alabama statutory law and public policy.

69. The Due Process Clause of the Fourteenth Amendment of the U.S. Constitution requires all judicial actors—including those with adjudicatory and enforcement functions—to be free of conflicts of interest. Probation providers must serve as neutral information gatherers and

neutrally assist the Municipal Court in fairly discharging sentences and prohibits probation providers from having a personal financial interest in the probation cases they supervise. *See Tumey v. Ohio*, 273 U.S. 510, 523 (1927) (holding that judge compensated for convictions has a “direct, personal, substantial, pecuniary interest” that disqualifies him to serve as neutral decisionmaker); *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242 (1980) (“A scheme injecting personal interest, financial or otherwise, into the enforcement process may bring irrelevant or impermissible factors into the prosecutorial decision.”); *see also* U.S. Dep’t of Justice, Civil Rights Div., Office of Access to Justice, *Dear Colleague Letter on Fines and Fees* at 8, Mar. 16, 2016, available at <https://www.justice.gov/crt/file/832461/download> (“[D]ue process concerns arise when these designees have a direct pecuniary interest in the management or outcome of a case—for example, when a jurisdiction employs private, for-profit companies to supervise probationers.”).

70. Furthermore, a municipal contract must be publicly bid if the contract grants an “exclusive franchise” prohibited by section 22 of Article I of the Alabama Constitution. *See Beavers v. Cnty. of Walker*, 645 So. 2d 1365, 1373 (Ala. 1994); *Brown’s Ferry Waste Disposal Ctr., Inc. v. Trent*, 611 So. 2d 226, 229–30 (Ala. 1992); *Kennedy v. City of Prichard*, 484 So. 2d 432, 433–35 (Ala. 1986). Section 22 of Article I of the Alabama Constitution of 1901 states: “[N]o ex post facto law, nor any law, impairing the obligation of contracts or making any irrevocable or exclusive grants of special privileges or immunities, shall be passed by the legislature; and every grant of franchise, privilege, or immunity shall forever remain subject to revocation, alteration, or amendment.” *See also Franklin Solid Waste Servs., Inc. v. Jones*, 354 So. 2d 4, 6 (Ala. 1977) (“[T]his court said . . . the City, being an agency of the State, would likewise be prohibited.” (citing *Birmingham & Pratt Mines Street Railway Co. v. Birmingham*

*Street Railway Co.*, 79 Ala. 465 (1885))). To avoid violating this provision of the constitution, any exclusive franchise must be “subjected to a free, open, and competitive market.” *Kennedy*, 484 So. 2d at 434.

71. In addition, longstanding Alabama Supreme Court precedent provides that “[c]osts and fees can only be taxed when expressly provided by law.” *Melton v. State*, 1 So. 2d 920, 921 (Ala. Ct. App. 1941); *see also State, for Use & Ben. of Morgan Cnty. v. Norwood*, 26 So. 2d 577, 582 (1946); *Cabler v. Mobile County*, 159 So. 692, 694 (Ala. 1935); *Hawkins v. State ex rel. O’Brien*, 27 So. 215, 216 (Ala. 1899). Alabama law mandates that all penalties for violations of ordinances must be provided for by municipal ordinance. *See* Ala. Code § 11-45-9(a). These ordinances can provide penalties of fines, imprisonment, hard labor, or one or more of such penalties, with no sentence of imprisonment or hard labor exceeding six months except for DUIs. Ala. Code § 11-45-9(a), (b). Municipal courts may also impose court costs pursuant to law. Ala. Code § 12-19-153(a). The court costs that may be imposed are set out in various statutes, but no statute authorizes a municipality to set and collect supervision fees once a person is on probation. *Cf.* Ala. Code § 15-22-2(a)(1) (allowing circuit and district courts to impose probation supervision fees for those supervised by the Board of Pardons and Paroles).<sup>7</sup>

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<sup>7</sup> Ala. Code § 12-14-13(d) notes the general conditions of probation that the municipal court may impose, mirroring the statute applicable to the district and circuit courts, Ala. Code § 15-22-52. It does not authorize a court to charge a fee for probation. In contrast, fees that can be charged to defendants—through probation or otherwise—clearly state the purpose and nature of the fees, as required by Alabama law. *See* Ala. Code § 15-22-2(a)(1) (persons “subject to supervision by *the Board of Pardons and Paroles*” shall pay \$40 per month (emphasis added)); § 12-23-7 (certain persons “convicted of an alcohol or drug-related offense” must do testing “at his own expense”); § 12-23-12 (persons convicted of DUIs or other alcohol or drug-related offenses “shall be ordered by the court to pay an alcohol and drug abuse court referral officer assessment fee”); § 12-23-13 (alcohol or drug-related offender referred for assessment and placed on probation “shall pay a monitoring fee to the court referral officer”); § 12-23-15 (“each offender” in court referral program shall pay fee to the Indigent Offender Alcohol and Drug Treatment Trust Fund); § 13A-12-284 (requiring defendant to “agree[] to pay for all or some portion of the costs

72. If the court orders a defendant to sign up for monitoring through CRO, the CRO monitoring fee authorized in Ala. Code § 12-23-13 is the only supervision fee that may be assessed against that defendant, “to the exclusion of any other ‘supervisory’ fee.” Ala. Att’y Gen. Op. No. 2003-151 (May 29, 2003). Municipal Court defendants may not be assessed another probation supervision fee, such as the one PPS collects here.

73. Based on the foregoing allegations, Judge Gomany has failed to guarantee the constitutional rights of those who appear before him by assigning them to probation with a private actor that has a financial stake in each case. *See* Judicial Inquiry Commission, Advisory Opinion 14-926. Due to its financial interest, PPS is not incentivized to operate as a neutral public court officer or to instruct individuals to seek waivers of any fees, assist individuals in reporting their indigency to the Judge, or evaluate the indigency of individuals itself. Rather, PPS is incentivized to maximize corporate profit from the decisions it makes in imposing probation conditions, how to enforce them, what information it provides individuals about their rights and obligations under probation, the statements it submits to Judge Gomany about individuals’ compliance with probation, and sanctions it recommends to for alleged probation violations. Judge Gomany defers to PPS’s recommendations, despite knowing about PPS’s financial interest in these probation decisions.

74. Furthermore, in assigning defendants to unlawful probation under PPS, Judge Gomany has delegated judicial functions to non-judicial officers. By allowing PPS employees to set the terms of probation, including the monthly payment amounts and the regularity of appointments individuals were required to attend; by deferring to PPS employees at probation review hearings; by allowing PPS employees to set the dates for review hearings; and by

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associated with” rehabilitation program); § 15-18-180 (“user fees may be assessed to help defray the cost of” community punishment and correction plan).

allowing PPS to determine the amount credited to court-ordered assessments versus PPS fees when individuals were not able to make their full monthly fee, Judge Gomany has failed to meet the administrative responsibilities discussed in Canon 3.B.1 and Canon 3.B.2; violated his responsibility to “uphold the integrity and independence of the judiciary,” Canon 1; and has not “avoid[ed] conduct prejudicial to the administration of justice which brings the judicial office into disrepute,” Canons 2.B.

75. Judge Gomany has also clearly and repeatedly violated the Alabama Constitution and Alabama public bidding law by ordering defendants to probation under PPS, pursuant to a contract that was not publicly bid. He also has violated Alabama law by allowing PPS to charge monthly probation fees that are not unauthorized by state law. Finally, in ordering some defendants to both CRO and PPS, Judge Gomany has violated Alabama law.

76. Judge Gomany, as a judicial officer and attorney, is assumed to know the law and must comply with it; yet he continues to sentence defendants to private probation under this unconstitutional, unlawful Contract that authorizes PPS to charge illegal probation fees.

77. Thus, these repeated violations of Alabama law by Judge Gomany’s also violate the First, Second, and Third Judicial Canons of Ethics. *See* Canon 1; Canon 2.A; Canon 3.A.1; *see also supra* ¶¶ 62, 63, 69.

**D. Failing to Keep Records of Court Proceedings or Criminal Defendants’ Cases, and Failing to Provide Defendants with Access to Their Records Violates Judicial Canon 3.**

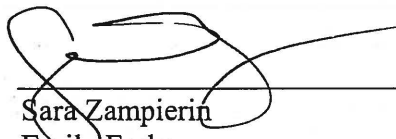
78. Canon 3 requires Judge Gomany to diligently and professionally execute all of his judicial duties, including the administrative responsibilities of his office, and to ensure that his staff and other court officials also do so

79. Judge Gomany does not sign court orders condemning defendants to private probation under PPS, including those documents that define the terms of the probation. Nor does he issue written probation revocation or contempt orders with sufficient reasoning.

80. Moreover, Judge Gomany has allowed the Clerk of the Court, under his direction, *see* Ala. Code § 12-14-50, to impede Court defendants' access to their own court records and other public records, which in turn significantly hinders defendants' ability to appeal their cases, represent themselves, or seek legal advice. Instead of producing a defendant's own court records, the clerk of the court refers the request to the prosecutor as a "motion for discovery," thereby delaying access to records the defendant has a right to possess and which are, by no means, "discovery."

81. Judge Gomany's failure to sign court orders, to maintain records in criminal cases, and to keep recordings of all criminal proceedings violates his administrative responsibilities under Canon 3.B.1 and Canon 3.B.2.

The allegations and statements of fact set forth above and in any additional attached pages are true and correct to the best of the undersigned's knowledge, information, and belief, and the undersigned understand that a copy of this Complaint and all supporting materials will be provided by the Judicial Inquiry Commission to Judge Gomany, the judge against whom this Complaint is made.



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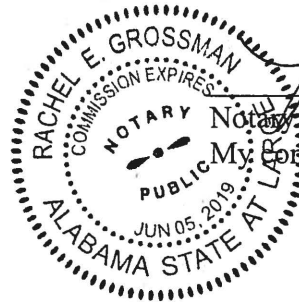
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Subscribed and affirmed before me this 24<sup>th</sup> day of October, 2017.



Notary Public  
My Commission expires:

