THE ALABAMA LAWYER

NOVEMBER 2021 | VOLUME 82, NUMBER 6

**Why Appellate Courts Commonly Dismiss or Summarily Deny Relief in Appellate Proceedings in Civil Matters**

Page 413

**Tips Regarding Appeals to the Alabama Supreme Court in Civil Matters**

Page 420

ALABAMA SUPREME COURT ISSUE

**"Your staff is fantastic, and the attorneys we have worked with have been professional and knowledgeable."**

"I've been with AIM since I started practicing almost 14 years ago, and my father was with AIM for longer...Your staff is fantastic, and the attorneys we have worked with have been professional and knowledgeable. We also appreciate the cost of the premium each year...I wouldn't consider using another company."

**– AIM Insured**

**Don't take our word for it. Hear from our insureds on why AIM is your best choice for lawyer malpractice insurance.**

At AIM, our mission is to provide unparalleled customer service, unmatched claims defense, and high-quality legal malpractice insurance to lawyers in Alabama and Tennessee.

**GET A QUOTE TODAY | 205.980.0089 | WWW.ATTORNEYSINSURANCEMUTUAL.COM**

877.478.3376

LOCALLY OWNED. NATIONWIDE COVERAGE.
UNBEATABLE CUSTOMER SERVICE.

**OFFICES IN**

BIRMINGHAM
HUNTSVILLE
MONTGOMERY
MOBILE
TUSCALOOSA
FLORENCE
GADSDEN

COURT REPORTERS
VIDEOGRAPHERS
REALTIME
VIDEOCONFERENCING
TRIAL TECHNICIANS
DAILY COPY
NATIONWIDE SCHEDULING

BRINGING THE EXPERIENCE YOU NEED FOR YOUR NEXT BIG CASE.

WHERE VOICE BECOMES VISIBLE.®

WWW.ACRLITIGATION.COM

LawPay®
AN AFFINIPAY SOLUTION
+
Alabama State Bar
Member Benefit Provider
"I love LawPay! I'm not sure why I waited so long to get it set up.
– Law Firm in Ohio
Trusted by more than 150,000 professionals, LawPay is a simple, secure solution that allows you to easily accept credit and eCheck payments online, in person, or through your favorite practice management tools.
22% increase in cash flow with online payments
Vetted and approved by all 50 state bars, 70+ local and specialty bars, the ABA, and the ALA
62% of bills sent online are paid in 24 hours
YOUR FIRM LOGO HERE
Trust Payment
IOLTA Deposit
New Case Reference
**** **** **** 9995
***
TOTAL: $1,500.00
VISA
AMEX
POWERED BY LawPay
eCheck
DISCOVER
PAY ATTORNEY
PAYMENT RECEIVED
Get started at
lawpay.com/alabar
877-591-1627
Data based on an average of firm accounts receivables increases using online billing solutions.
LawPay is a registered agent of Wells Fargo Bank N.A., Concord, CA and Synovus Bank, Columbus, GA.

THE ALABAMA LAWYER

NOVEMBER 2021 | VOLUME 82, NUMBER 6

## On The Cover

Green Mountain Log Cabin

Log cabin to represent early Green family settlers on Madison County Nature Trail of Green Mountain Nature Preserve just outside Huntsville

*Photo credit, Charley Carter, iStock / Getty Images Plus*

## FEATURE ARTICLES

Alabama Law Foundation Announces New Executive Director
409

ALABAMA SUPREME COURT ISSUE

Why Appellate Courts Commonly Dismiss or Summarily Deny Relief in Appellate Proceedings in Civil Matters
*By Justice William B. Sellers*
413

Tips Regarding Appeals to the Alabama Supreme Court in Civil Matters
*By Justice A. Kelli Wise*
420

30 + 1 Faces of Pro Bono: Part 6 of 6
427

Law Firm Challenge
431

## COLUMNS

President's Page
404

Executive Director's Report
408

Editor's Corner
410

Important Notices
412

Disciplinary Notices
433

Legislative Wrap-Up
436

Memorials
440

Opinions of the General Counsel
442

The Appellate Corner
444

About Members, Among Firms
454

W. Gregory Ward, Lanett......Chair and Editor
*wgward@mindspring.com*

Wilson F. Green, Tuscaloosa......Associate Editor
*wgreen@fleenorgreen.com*

Jonathan C. Hill (Rudy), Montgomery......Associate Editor
*rhill@bradley.com*

*facebook.com/AlabamaStateBar*

*@AlabamaStateBar*

*@AlabamaStateBar*

*youtube.com/TheAlabamaStateBar*

*flickr.com/AlabamaStateBar*

# ADVERTISERS


ABA Retirement Funds....................405

Alabama Court Reporting, Inc.........399

Alabama Legal & Investigative Services, Inc..................................411

Attorneys Insurance Mutual Of the South..................................398

CLE Alabama ..................................407

Cain & Associates Engineers........426

Davis Direct.....................................437

J. Forrester DeBuys, III.................425

Fidelity Fiduciary Co. LLC...........406

The Finklea Group, Inc.................445

Insurance Specialists, Inc..................456

LawPay.............................................400

McFerrin Mediation ........................421

National Academy of Distinguished Neutrals..................403

Schreiber Dispute Resolution Inc................................423

Vargas Vocational Consulting........415

Veritext Legal Solutions..................455

*The Alabama Lawyer*
GRAPHIC DESIGN

*The Alabama Lawyer*
PRINTING


**BOARD OF EDITORS:** Marc James Ayers, Birmingham • R. Champ Crocker, Cullman • Aaron L. Dettling, Birmingham • Diane L. Dunning, Birmingham • Jesse P. Evans, III, Birmingham • K. Dee Hutsler, III, Birmingham • Sarah S. Johnston, Montgomery • Jacob J. Key, Lanett • Margaret H. Loveman, Birmingham • Allen P. Mendenhall, Troy • Keith S. Miller, Montgomery • Anil A. Mujumdar, Birmingham • Sherrie L. Phillips, Montgomery • Christopher E. Sanders, Prattville • Tazewell T. Shepard, III, Huntsville • William L. Smith, Lanett • Marc A. Starrett, Montgomery • Matthew J. Ward, Montgomery • David G. Wirtes, Jr., Mobile


## ALABAMA STATE BAR STAFF


**415 Dexter Avenue**
**Montgomery, AL 36104**
**(334) 269-1515 • (800) 354-6154**
***www.alabar.org***



### ADMINISTRATION
**Terri Lovell**...........Executive Director
**Michelle Shaw**...........Executive Assistant
**Hunter Harris**...........Information Systems Manager
**Matt Mara**...........Building and Security Superintendent
**Stephanie Oglesby**...........Receptionist

### ACCOUNTING AND TRAVEL
**Merinda Hall**...........Director of Finance
**Kristi Neal**...........Financial Assistant

### ADMISSIONS
**Sonia Douglas**...........Administrative Assistant
**Morgan Lott**...........Administrative Assistant

### ATTORNEY LICENSING
**Cathy Sue McCurry**...........Licensing and Regulatory Coordinator
**Angie Fuqua**...........Administrative Assistant
**Doris McDaniel**...........Administrative Assistant

### CENTER FOR PROFESSIONAL RESPONSIBILITY
**Roman Shaul**...........General Counsel
**Melissa Lawson**...........Paralegal to General Counsel
**Jeremy McIntire**...........Deputy Chief General Counsel
**Mark Moody**...........Assistant General Counsel
**Dawynrico McCain**...........Paralegal/Investigator
**Stacey Moseley**...........Disciplinary Clerk
**Laurie Blazer**...........Client Security Fund Coordinator
**Julie Lee**...........Receptionist

### CENTER FOR PROFESSIONAL RESPONSIBILITY–ETHICS DIVISION
**Tripp Vickers**...........Ethics Counsel
**Autumn Caudell**...........Assistant Ethics Counsel

### COMMUNICATIONS AND MEDIA
**Melissa Warnke**...........Director of Communications
**Megan Hughes**...........Communications and Outreach Manager
**Margaret Murphy**...........Director of Publications

### LAWYER ASSISTANCE PROGRAM
**Jeremy Rakes**...........Director of Lawyer Assistance Program
**Shannon Knight**...........Case Manager
**Joycelyn Hill**...........Administrative Assistant/ Program Coordinator

### LAWYER REFERRAL SERVICE
**John Dunn**...........Lawyer Referral Service Representative

### PROGRAMS
**Robyn Bernier**...........Meetings and Events Coordinator

### VOLUNTEER LAWYERS PROGRAM
**Linda Lund**...........Volunteer Lawyers Program Director
**Hilaire Armstrong**...........Pro Bono Clinic Coordinator
**Debbie Harper**...........Intake Specialist
**Carol Mott**...........Intake Specialist
**Katarina Essenmacher**...........Alabama Bankruptcy Assistance Program Coordinator

### OFFICERS AND EXECUTIVE COUNCIL
**Tazewell T. Shepard, III, Huntsville**...........President
**C. Gibson Vance, Montgomery**...........President-Elect
**Robert G. Methvin, Jr., Birmingham**...........Past President
**T. Thomas Perry, Jr., Demopolis**...........Vice President
**Terri B. Lovell, Montgomery**...........Secretary
**Frederick G. Helmsing, Jr., Mobile**...........Executive Council
**Elizabeth C. Smithart, Union Springs**...........Executive Council
**John T. Stamps, III, Bessemer**...........Executive Council
**Mark S. Boardman, Chelsea**...........Ex Officio
**R. Aaron Chastain, Birmingham**...........Ex Officio
**Leon Hampton, Jr., Montgomery**...........Ex Officio
**M. Clay Martin, Huntsville**...........Ex Officio
**Angeline J. Sperling, Birmingham**...........Ex Officio

### BOARD OF BAR COMMISSIONERS
1st Circuit, Halron W. Turner, Chatom • 2nd Circuit, Jason T. Simmons, Greenville • 3rd Circuit, Elizabeth C. Smithart, Union Springs • 4th Circuit, Kyra L. Sparks, Selma • 5th Circuit, Larry W. Morris, Alex City • 6th Circuit, Place No. 1, Terri O. Tompkins, Tuscaloosa • Place No. 2, Scott B. Holmes, Tuscaloosa • 7th Circuit, William H. Broome, Jr., Anniston • 8th Circuit, David W. Langston, Decatur • 9th Circuit, Dana J. Grimes, Fort Payne • 10th Circuit, Place No. 1, James M. Terrell, Birmingham • Place No. 2, John A. Smyth, Birmingham • Place No. 3, Barry A. Ragsdale, Birmingham • Place No. 4, S. Freddy Rubio, Birmingham • Place No. 5, LaBella S. McCallum, Birmingham • Place No. 6, Michael D. Ermert, Birmingham • Place No. 7, Allison O. Skinner, Birmingham • Place No. 8, Ryan P. Robichaux, Birmingham • Place No. 9, Erik S. Heninger, Birmingham • Bessemer Cut-off, L. Kenneth Moore, Bessemer • 11th Circuit, Leigh Anne Landis, Florence • 12th Circuit, Carmen F. Howell, Enterprise • 13th Circuit, Place No. 1, R. Edwin Lamberth, Mobile • Place No. 2, Frederick G. Helmsing, Jr., Mobile • Place No. 3, William R. Lancaster, Mobile • Place No. 4, Bryan E. Comer, Mobile • Place No. 5, James Rebarchak, Mobile • 14th Circuit, Charles C. Tatum, Jr., Jasper • 15th Circuit, Place No. 1, George R. Parker, Montgomery • Place No. 2, Patrick L. Sefton, Montgomery • Place No. 3, Joel D. Connally, Montgomery • Place No. 4, Vacant, Montgomery • Place No. 5, Felicia A. Long, Montgomery • Place No. 6, J. David Martin, Montgomery • 16th Circuit, Bradley W. Cornett, Gadsden • 17th Circuit, T. Thomas Perry, Jr., Demopolis • 18th Circuit, Place No. 1, Clay R. Carr, Chelsea • Place No. 2, Mark S. Boardman, Chelsea • Place No. 3, Anne Malatia Glass, Birmingham • 19th Circuit, Terinna S. Moon, Prattville • 20th Circuit, R. Cliff Mendheim, Dothan • 21st Circuit, J. Kirkman Garrett, Brewton • 22nd Circuit, Manish H. Patel, Andalusia • 23rd Circuit, Place No. 1, J. Mark Debro, Huntsville • Place No. 2, Douglas C. Martinson, II, Huntsville • Place No. 3, Rebekah K. McKinney, Huntsville • Place No. 4, M. Clay Martin, Huntsville • 24th Circuit, B. Scott Foster, Carrollton • 25th Circuit, Chrissy L. Riddle, Haleyville • 26th Circuit, F. Patrick Loftin, Phenix City • 27th Circuit, Clint L. Maze, Arab • 28th Circuit, Place No. 1, J. Lynn Perry, Gulf Shores • Place No. 2, J. Langford Floyd, Fairhope • 29th Circuit, Sarah Clark Bowers, Sylacauga • 30th Circuit, John W. Rea, Pell City • 31st Circuit, D. Edgar Black, Muscle Shoals • 32nd Circuit, Jason P. Knight, Cullman • 33rd Circuit, Robert H. Brogden, Ozark • 34th Circuit, Jeffrey L. Bowling, Russellville • 35th Circuit, W. Robert McMillan, Monroeville • 36th Circuit, Christy W. Graham, Moulton • 37th Circuit, Andrew D. Stanley, Opelika • 38th Circuit, Deborah L. Dunsmore, Scottsboro • 39th Circuit, Donald B. Mansell, Athens • 40th Circuit, Mallory B. Whitley, Rockford • 41st Circuit, Brett A. King, Locust Fork

### AT-LARGE BOARD MEMBERS
Angela E. Kennedy, Bessemer • Raymond L. Bell, Jr., Mobile • Holly L. Sawyer, Dothan • Judge Charles Price, II, Birmingham • Karen L. Laneaux, Montgomery • Kira Y. Fonteneau, Birmingham • Leila H. Watson, Birmingham • Richard M. Kemmer, Jr., Centreville • John T. Stamps, III, Bessemer



*The Alabama Lawyer* (USPS 743-090) is published six times a year by the Alabama State Bar, 415 Dexter Avenue, Montgomery, Alabama 36104. Periodicals postage paid at Montgomery, Alabama and additional mailing offices. POSTMASTER: Send address changes to *The Alabama Lawyer*, P.O. Box 4156, Montgomery, AL 36103-4156.



*The Alabama Lawyer* is the official publication of the Alabama State Bar. Views and conclusions expressed in articles herein are those of the authors, not necessarily those of the board of editors, officers or board of commissioners of the Alabama State Bar. Advertising rates will be furnished upon request. Advertising copy is carefully reviewed and must receive approval from the Office of General Counsel, but publication herein does not necessarily imply endorsement of any product or service offered. *The Alabama Lawyer* reserves the right to reject any advertisement. Copyright 2021. The Alabama State Bar. All rights reserved.

# THE NATIONAL ACADEMY OF DISTINGUISHED NEUTRALS

## ALABAMA CHAPTER

## WWW.ALMEDIATORS.ORG

**Check preferred available dates or schedule appointments directly with the state's top mediators & arbitrators. For free.**

Phil Adams
OPELIKA

Reggie Copeland
MOBILE

Sam Crosby
DAPHNE

Charles Denaburg
BIRMINGHAM

Charles Fleming
MOBILE

Langford Floyd
FAIRHOPE

Stevan Goozee
BIRMINGHAM

Arthur Hanes
BIRMINGHAM

Bernard Harwood
TUSCALOOSA

Braxton Kittrell
MOBILE

Debra Leo
BIRMINGHAM

Michael Maddox
BIRMINGHAM

Charles Malone
TUSCALOOSA

Rodney Max
BIRMINGHAM

Boyd Miller
MOBILE

Larry Moore
FLORENCE

William Ratliff
BIRMINGHAM

Ben Rice
HUNTSVILLE

Jim Rives
MONTGOMERY

Allen Schreiber
BIRMINGHAM

Kenneth Simon
BIRMINGHAM

Spin Spires
BIRMINGHAM

Harold Stephens
HUNTSVILLE

Glynn Tubb
DECATUR

Michael Upchurch
MOBILE

Marty VAN TASSEL
BIRMINGHAM

Michael WALLS
BIRMINGHAM

Brad Wash
BIRMINGHAM

The National Academy of Distinguished Neutrals is an invitation-only association of over 900 top-rated premier mediators & arbitrators throughout the US, and proud Neutral Database Partner to the national defense (DRI) & plaintiff (AAJ) bar associations. For more info, see www.nadn.org/about

PRESIDENT'S PAGE

*Tazewell T. Shepard, III*
*taze@ssmattorneys.com*

*President Shepard has designated a theme for each month of his term as president. State bar sections and local bars are encouraged to plan events and activities for each topic. Be sure to let us know about your activities relating to these themes so that we can report them to our members statewide!*

**November:** Law Practice Management and Technology

**December:** Federal and State Government Lawyers

**January:** Human Trafficking

**February:** Diversity and Inclusion

**March:** Women in the Law

**April:** Mediation and Dispute Resolution

**May:** Lawyer Health and Wellness

**June:** Annual Meeting

We are a little more than a third of the way through this bar year, if you measure it from the 2021 annual meeting to the 2022 annual meeting. This seems like an appropriate time to review what we have accomplished so far. Keep in mind our motto for this bar year:

## Responsive, Transparent, Accountable

### *Your State Bar Works for You*

I began writing this column soon after the first meeting of the Board of Bar Commissioners during my presidency. At this September meeting, we initiated or revived several important features that will continue throughout this bar year.

1. The meeting was broadcast live on the internet so anyone could watch it on their computer or mobile device. The internet link for the meeting was provided in *The Scoop* newsletter on the Monday before the Friday meeting. Visitors could watch and listen, and bar commissioners who could not attend in person were able to participate in the meeting, including voting on motions.
2. Our special guest for this meeting was Alabama Governor Kay Ivey, who led the commissioners in the Pledge of Allegiance and then addressed the meeting with her comments.
3. Dean Campbell and several students from the Thomas Goode Jones School of Law were invited to attend the meeting. They were

recognized during the meeting, and afterwards several commissioners talked with them.

4. Meetings of the board have often taken over two hours and sometimes three hours in the past, but our September meeting concluded in 1 1/2 hours. Efficiency is a good thing.

There were two significant measures approved by the board. The first was making the position of parliamentarian for the board and for the Executive Council permanent, including a description of the position that will be added to the bar records. You may recall that I had appointed Mark Boardman as a temporary parliamentarian until the board could make it official, and Mark will continue to serve as parliamentarian for the rest of this bar year. The second measure was elevating two task forces to standing committee status (Bench & Bar Relations and Quality of Life, Health & Wellness).

By the time that you read this column, the second meeting of the Board of Bar Commissioners will have occurred in October, and we continued the special features as described above. I hope that you see these as examples of our constant efforts to live up to the motto of this bar year.

Now I will briefly describe several other events and activities that are relevant to our goals for this bar year.

Soon after the annual meeting in July, I designated a theme for each month of this bar year. August's theme was military lawyers, September's was solo and small firms, October's was pro bono service, and so on. You can see the list of monthly themes in each issue of *The Alabama Lawyer*. We have encouraged the state bar's sections, committees, and task forces and the local bar associations to plan meetings and CLE sessions in line with these themes.

For example, in concert with the August theme of military lawyers, the state bar's Military Law Section held their 40th annual Military Law Symposium in Birmingham. Both Governor Ivey and I spoke. Given September's theme of solo and small firms, the state bar's Solo & Small Firm Section and the Birmingham Bar's Solo & Small Firm Practitioner Section held a joint Zoom meeting in September with Mark Boardman speaking on Alabama's Sunshine Laws and with Catherine Reach from the North Carolina Bar Association speaking on making your practice more efficient. More than 370 lawyers attended this free CLE event.

Do you think your law firm is too small to sponsor a retirement plan?

The ABA Retirement Funds Program ("Program") is an employer-sponsored 401(k) plan uniquely designed for the legal community. For nearly 60 years we have been committed to the goal of providing the tools necessary to help all law professionals to reach financial security.

No Firm is too Small.

The Program leverages its size to offer a platform of investments and a service package that is typically available to only the largest of corporate retirement plans. Sole proprietors and smaller firms are invited to join and enjoy the same service and attention as the nation's largest law firms.

- $7.2 billion in retirement assets
- 4,000 law firms and legal organizations
- 38,000 lawyers and legal professionals
- 99% retention rate[1]

Contact an ABA Retirement Funds Program Regional Representative to set up a complimentary consultation and plan comparison. Call today and experience the difference.

800.826.8901

joinus@abaretirement.com

1 Measured as a percentage of clients who remained with the Program from January 1, 2020, through December 31, 2020; includes only plan conversions to another provider.
The ABA Retirement Funds Program is available through the Alabama State Bar as a member benefit.
Please read the Program Annual Disclosure Document (April 2021) carefully before investing. This Disclosure Document contains important information about the Program and investment options. For email inquiries, contact us at: joinus@abaretirement.com.
Registered representative of and securities offered through Voya Financial Partners, LLC (member SIPC).
Voya Financial Partners is a member of the Voya family of companies ("Voya"). Voya, the ABA Retirement Funds, and the Alabama State Bar are separate, unaffiliated entities, and not responsible for one another's products and services.
CN1474756_0123

*(Continued from page 405)*

By the way, *The Alabama Lawyer* has been very helpful with our monthly themes. The September issue of the magazine included several articles directly related to the Solo and Small Firm theme, and the March issue will be largely devoted to the theme of Women in the Law. Our magazine editor, Greg Ward, is working with the task force I appointed, chaired by Allison Skinner, on this March issue. The task force will also plan numerous March events.

Since 2001, Fidelity Fiduciary Company has been a valued partner – providing responsible, objective third party administration of medical and pharmacy cash disbursements to the appropriate providers.

Our team brings their expertise to each account with the goal of making sure each interest-bearing account is managed honestly and ethically, as well as meeting all legal and IRS guidelines.

Fidelity Fiduciary Company stands ready to comply with all applicable Medicare regulations while providing compassionate professional service.

**REFERRING CLIENTS IS EASY.**
**Visit: FFCadmin.com Or call: 866.642.1237**

Bennett L. Pugh, JD, Chief Executive Officer | Ben@FFCadmin.com
Jan Peine, MA, AIC, Chief Operations Manager | Jan@FFCAdmin.com

© 2021 Fidelity Fiduciary Company, LLC. All Rights Reserved.


I also created a Past President Advisory Council. Our state bar past presidents are a great source of institutional knowledge and suggestions, and they really care about the future of our state bar. I appointed Sam Irby, Lee Copeland, Anthony Joseph, and Dag Rowe, and I invited our executive director, Terri Lovell, to attend the first meeting of the council, which took place in September. The discussion was lively and very helpful, and I expect to call another meeting of the council in January.

The most daunting task I have addressed as president came in late July and August when I appointed the leaders and members of over 40 state bar committees and task forces. I probably made it harder on myself by setting a goal of having a telephone conversation with every chair that I appointed or reappointed, but it will be very useful to have that personal connection as we work together to deliver value to our bar members this year.

Also, our executive director and I authored procedural guidelines for the state bar's sections, committees, and task forces. These guidelines expect each section, committee, or task force to have at least one meeting this fall and to file two reports – one in September or early October explaining their goals for this bar year, and another in May describing how successful they were in reaching those goals. These reports will be placed permanently in an archive for each section, committee, or task force and will be accessible on the state bar's website.

By the time you read this column, we will have followed up with an online meeting with the section leaders and a

separate meeting with the committee and task force leaders. Both Terri Lovell and I will be involved, along with other bar leaders, in helping the chairs and vice chairs of the sections, committees, and task forces hone their leadership skills. In so doing, we are not only making these leaders more productive now, but also training the state bar leaders of the future.

There are too many other projects in the works for me to describe in this column, but I will close by telling you about one that I find exciting. The Practice Management Assistance Program will be going in a different direction, and I think you will be pleased. This type of support is especially needed by the solo and small firm lawyers, who make up over half of the lawyers in Alabama.

So, as of October 1, the state bar began advertising for a full-time director of law practice management, and I hope that person will be hired and in place by the time you read this column. That person's duties will include reviewing member benefit proposals, participating in the planning of CLE programs, speaking at CLE programs, writing for Alabama State Bar publications and other publications related to law practice management, giving written and oral consultations regarding management-related issues to lawyers and firms, and collecting and disseminating information about effective law practice management, including but not limited to books, videos, and software relating to accounting issues, client relations, marketing, and technology.

In closing (I mean it this time), I encourage you to become familiar with and use the state bar website. Here are a few of my favorite links:

### *https://alabar.org*

Click or tap on Find Members in the top right corner of the front page of the state bar's website. You can find contact info on most Alabama lawyers and judges.

Click or tap on Members and then Member Benefits. You will find discounts and services from Avis and Brooks Brothers to Ruby Receptionists and UPS.

### *https://alabar.prolearn.io/*

Create your free account and then peruse recorded CLEs from the state bar. Watch a session and get CLE credit if you have not already gotten credit for that CLE session.

### *https://www.ssfalabar.org/*

The website of the state bar's Solo & Small Firm Section, an excellent source of CLEs, useful forms, and a very active Listserv for discussing legal issues and mentoring ▲

**Looking for CLE Hours?**
**In Person or by Webcast, we have programs to meet all your needs!**

**Webcasts:** No need to leave the house to get your CLE! Most of our live seminars will be webcast. Watch the seminar as it happens from your own computer, without leaving your home or office.

**On-Line, On Demand:** Visit CLEalabama.com for 24/7 access to over 300 online programs and teleconferences.

**McElroy's Alabama Evidence**
**SEVENTH EDITION**
**now available in print or digital format**

*The complete and final authority regarding Alabama evidence issues for judges and lawyers alike*

**Visit CLEalabama.com to order your copy today!**

**Upcoming Seminars**

**NOVEMBER**
19 **Bankruptcy Law** *Birmingham or webcast*

**DECEMBER**
1 **Alabama Update** *Tuscaloosa or webcast*
3 **Employment Law** *Birmingham or webcast*
10 **Estate Planning** *Webcast only*
16 **Tort Law Update** *Birmingham or webcast*
17 **Alabama Update** *Birmingham or webcast*
20 **Trial Skills** *Birmingham or webcast*

For more information or to register, visit CLEalabama.com
or call 800.627.6514 or 205.348.6230

ALABAMA LAW
THE UNIVERSITY OF ALABAMA®

EXECUTIVE DIRECTOR'S REPORT

**Terri Lovell**
*terri.lovell@alabar.org*

# Growing Ever Stronger

For more than 142 years, the Alabama State Bar has been a mainstay of our profession. Organizations can have the best policies, procedures, and practices, but they are only realized when supported by an organizational culture that continues to evolve and grow.

In 2017, the Alabama State Bar completed a thorough and updated long-range plan. Identified in this key document are the core values of trust, integrity, and service. Never do I pass on an opportunity to remind our staff, lawyers, or the public of these guiding principles. In serving our members and protecting the public, we should always reinforce and celebrate those values. Creating a culture of excellence should be the cornerstone of our profession and the foundation of everything we do at the Alabama State Bar.

As we continue to grow, the Alabama State Bar Governance & Internal Operations Task Force is completing a new and thorough evaluation. Few organizations would have the courage or the commitment to continually take on a self-assessment in furtherance of our mission. I thank our members who are serving in this role to create a stronger and better Alabama State Bar. The Governance committee is co-chaired by Raymond Bell and Pat Sefton, and members include Kenyan Brown, Brannon Buck, Greg Butrus, Christy Crow, Guy Lescault, Felicia Long, Matthew McDonald, Barry Ragsdale, James Rebarchak, Jeanne Rizzardi, Gibson Vance, and Taze Shepard. The Internal Operations committee is chaired by Terri Tompkins and Leon Hampton, and members include Kira Fonteneau, Fred Helmsing, Scott Holmes, Anthony Joseph, Leigh Ann Landis, Othni Lathram, George Parker, Tom Perry, Rich Raleigh, Taze Shepard, Allison Skinner, Elizabeth Smithart, Rocky Watson, and Ricardo Woods.

While many areas of the legal profession are at a crossroads, the vision for the Alabama State Bar is not. We are determined to forge a path that will be a model of service not only for the lawyers of our state, but for other states as well. With the work of lawyer-volunteers, devoted staff, and stakeholders, we will continue to build on our solid foundation as we grow ever stronger.

# Alabama Law Foundation Announces New Executive Director

Dawn Hathcock assumed the position of executive director of the Alabama Law Foundation in September.

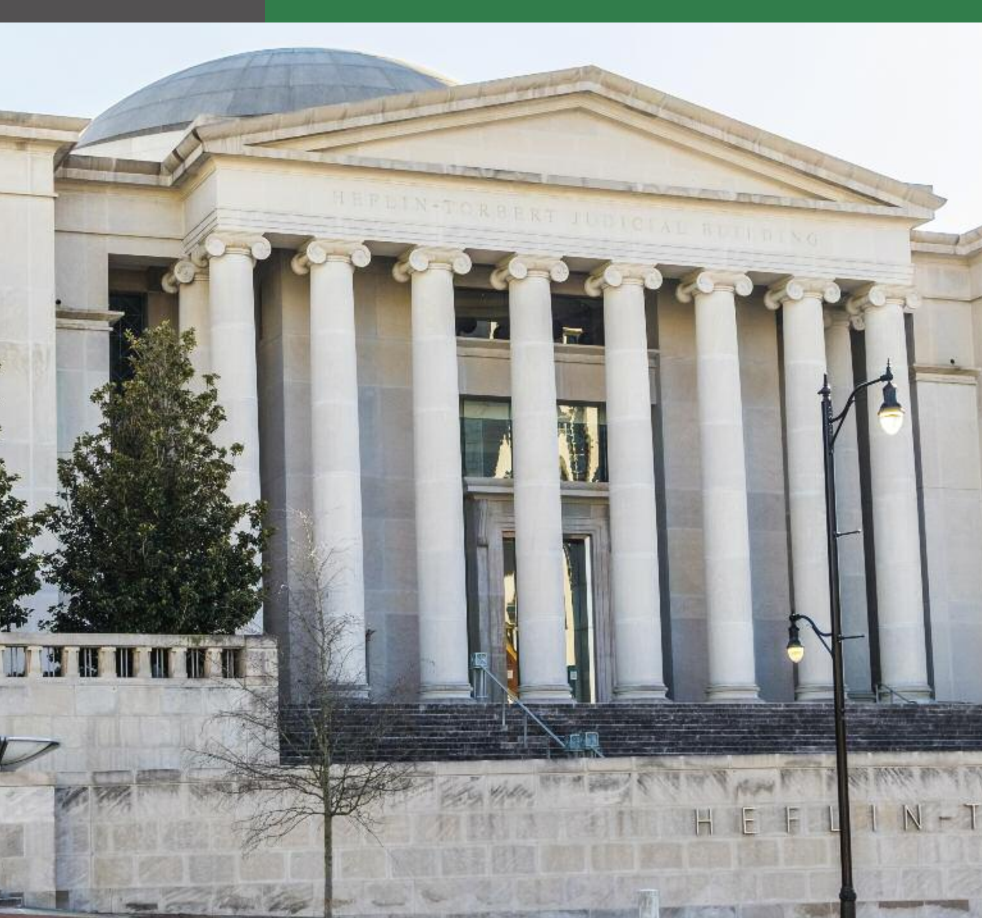
Hathcock is a native of Dothan and a graduate of Auburn University, where she received a degree in public administration. After a career in promotions and public relations, as well as communications and events organizations, she moved to Montgomery in 2001 to begin working as vice president of the Montgomery Area Chamber of Commerce Convention and Visitor Bureau.

As executive director, Hathcock will assist in fulfilling the Alabama Law Foundation's mission to help people in need through improving access to justice by providing opportunities, funding, resources, education, and awareness.

The Alabama Law Foundation is a charitable, tax-exempt organization composed of several separate programs, each providing ways for lawyers to better their profession and their communities. The foundation makes annual grants to organizations that provide free legal aid to the poor in civil cases, for projects that improve the administration of justice, and for law-related education. ▲

# EDITOR'S CORNER

***W. Gregory Ward***
*wgward@mindspring.com*




Welcome to the Alabama Supreme Court edition of *The Alabama Lawyer.* If you remember, our last issue was about the solo and small firms. When someone saw that the next edition was about the Alabama Supreme Court, they told me that we'd gone from one extreme to the other.

Not so.

Even though our bar largely consists of solo practitioners and small firms, the decisions of the Alabama Supreme Court impact us all just the same. We should all do all we can to understand its working and how to deal with it. To that end, this issue.

We are honored that Alabama Supreme Court Chief Justice Tom Parker wrote our introduction (page 413). He reminds us that the court has a goal of equipping and assisting us to practice before it by helping us understand the rules that must be followed and the pitfalls to watch out for. Those are all worthy goals.

We have articles by two justices.

The first is by Justice Will Sellers (page 413). First, some inside baseball: Not

only did his article come to me well-written, but I took careful note of the excellent job he did with signals. You remember signals: when you cite a case you can introduce it with one or two words that tell everyone why you are mentioning that case. For example, *See*; *See also; Cf.; E.g.; Contra*. And while signals may not be as exciting as a field goal attempt in a championship game with three seconds on the clock, they are important. There are a bunch of them, and by my careful and precise count, Justice Sellers uses a bunch of them. When is the last time you used *But cf.?*

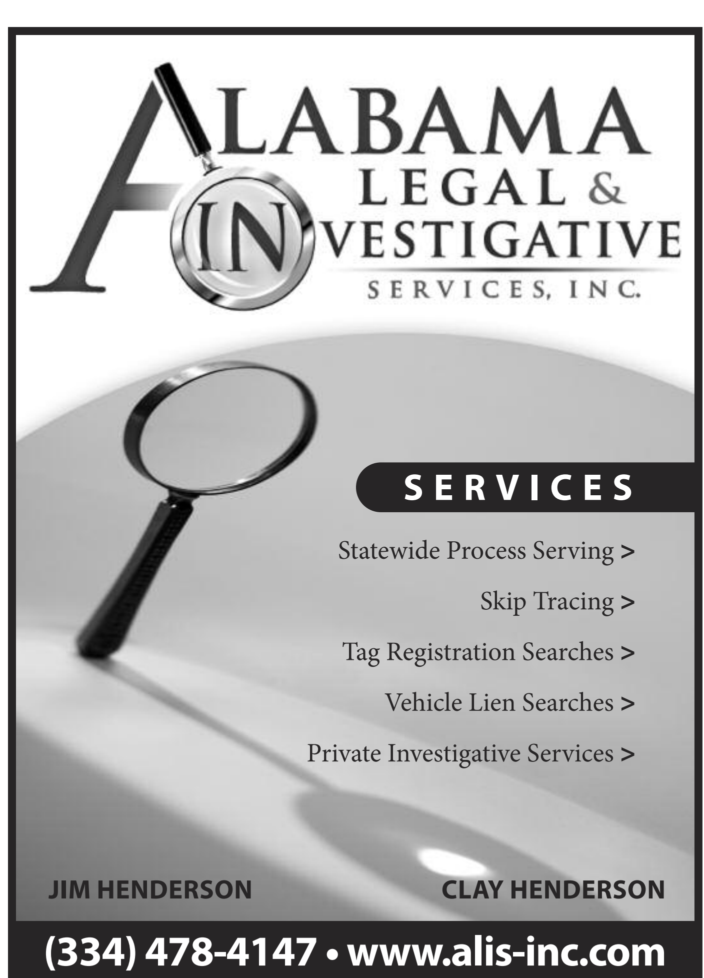
But more to the point, his article reminds us of some important things. He tells us how long we have to file an appeal (not just a simple number, it also requires you to know when the tock begins ticking and why). He points out that there are several appellate avenues besides a direct appeal, and if you need a beginning point for understanding a mandamus petition or a petition for a writ of certiorari, this is your pot of gold. Do you have questions about an appeal from the probate court? How about how to remove a case from the probate court to the circuit court. Those can both be tricky, but Justice Sellers explains those processes.

Justice Kelli Wise supplies us with a series of tips on appealing civil cases (page 420). Any time a sitting justice gives me tips on how to do something in a way that makes them happy, I sit up and listen. She begins – logically enough – with how to file the appeal; then she moves to how the court looks at the record on appeal, with a clear reminder that attachments to appellate briefs that are not part of the record on appeal won't be considered. But she also tells us how to supplement the record – good to know.

A little more inside baseball: her article came to me well-written, too. Her cites were clear and on point, and the article came to me in in wonderful form. I was impressed.

As always, I hope you enjoy this issue as much as we enjoyed putting it together for you. And just wait until you see what we have for you next time.

So, enjoy the articles. And email me at *wgward@mindspring.com* if you have questions or comments or want to write. We are always looking for the next group of excellent writers.



**Notice of and Opportunity for Comment on Amendments to The Rules of the United States Court of Appeals for the Eleventh Circuit**

# Notice of and Opportunity for Comment on Amendments To the Rules of the United States Court of Appeals for The Eleventh Circuit

Pursuant to 28 U.S.C. § 2071(b), notice and opportunity for comment is hereby given of proposed amendments to the Rules of the United States Court of Appeals for the Eleventh Circuit. The public comment period is from Monday, December 6, 2021, to Wednesday, January 5, 2022.

A copy of the proposed amendments may be obtained on and after Monday, December 6, 2021 from the court's website at *http://www.ca11.uscourts.gov/rules/proposed-revisions.* A copy may also be obtained without charge from the Office of the Clerk, U.S. Court of Appeals for the Eleventh Circuit, 56 Forsyth St., NW, Atlanta 30303; phone (404) 335-6100.

Comments on the proposed amendments may be submitted in writing to the Clerk at the above address or at *http://www.ca11.uscourts.gov/rules/proposed-revisions*, by 5:00 p.m. Eastern Time on Wednesday, January 5, 2022.

*The Alabama Supreme Court is still seeing too many appeals and petitions denied for failure to comply with the Alabama Rules of Appellate Procedure. Regretfully, this can occur even when there is probable merit to the arguments of counsel. Our court desires to equip and assist practitioners to represent their clients well. As part of our continuing effort, Justice Kelli Wise and Justice Will Sellers have written the following articles to call attention to potential pitfalls and to rules that must be followed to perfect an appeal, to timely and properly present a petition, or to correctly argue the merits on matters before the Alabama Supreme Court. I recommend these articles to all members of the Alabama State Bar, whether as a first-time primer or a refresher course on the do's and don't's on supreme court practice in Alabama.*

–Chief Justice Tom Parker has served on the Alabama Supreme Court for 18 years. He was elected chief justice in 2018.

# Why Appellate Courts Commonly Dismiss or Summarily Deny Relief in Appellate Proceedings in Civil Matters

***By Justice William B. Sellers***

It goes without saying (but I will nevertheless state it for the record): practice before the Alabama appellate courts in civil matters requires familiarity with the Alabama Rules of Appellate Procedure, the Alabama Rules of Civil Procedure, statutory law, and judicial precedent.

This article is intended as a reminder that, generally, a final judgment is necessary to support an appeal, and it highlights certain situations that commonly result in the dismissal of, or the summary denial of relief in, appellate proceedings in civil matters.

# Filing Appeals Generally – Rule 4, Ala. R. App. P.

The timely filing of a notice of appeal pursuant to Rule 4(a), Ala. R. App. P., is a jurisdictional act. The prescribed time in which to file a notice of appeal cannot be waived or extended by the parties or an appellate court. *See* Rule 2(a)(1), Ala. R. App. P. (providing that "[a]n appeal shall be dismissed if the notice of appeal was not timely filed to invoke the jurisdiction of the appellate court"); *Buchanan v. Young*, 534 So. 2d 263, 264 (Ala. 1988) ("The failure to file a notice of appeal within the time provided in Rule 4, [Ala. R. App. P.], is a jurisdictional defect and will result in a dismissal of the appeal."). *But cf*. Rule 77(d), Ala. R. Civ. P. (authorizing circuit courts in civil cases to extend the time for filing an appeal by 30 days when a party wishing to appeal fails to learn of the entry of a judgment due to excusable neglect).

Rule 4(a)(1), Ala. R. App. P., typically requires that a notice of appeal be filed within 42 days of the date of the entry of the judgment or order appealed from. Rule 4(a)(2), Ala. R. App. P., provides that, after a notice of appeal has been timely filed by a party, "any other party may file a notice of appeal within 14 days ... of the date on which the first notice of appeal was filed, or within the time otherwise prescribed by [Rule 4]," whichever period last expires.

Postjudgment motions filed pursuant to Rules 50, 52, 55, and 59, Ala. R. Civ. P, toll the time for filing a notice of appeal in civil cases. *See* Rule 4(a)(3), Ala. R. App. P.

Pursuant to Rule 59.1, Ala. R. Civ. P., a trial court has 90 days in which to rule on a postjudgment motion filed pursuant to one of those rules and, unless that period is extended pursuant to the specific requirements of Rule 59.1, the postjudgment motion will be deemed denied by operation of law after 90 days. A motion to reconsider an order denying a postjudgment motion does not toll the running of the time for taking an appeal. *Ex parte Dowling*, 477 So. 2d 400, 404 (Ala. 1985) ("In the usual case, after a post-judgment motion has been denied, the only review of that denial is by appeal; a judge has no jurisdiction to 'reconsider' the denial."). Thus, generally, if a trial court has not ruled on a postjudgment motion within 90 days, then an appeal must be commenced before 42 additional days elapse, giving an appellant 132 days after the date the postjudgment motion was filed in which to appeal.

*Thus, generally, if a trial court has not ruled on a postjudgment motion within 90 days, then an appeal must be commenced before 42 additional days elapse, giving an appellant 132 days after the date the postjudgment motion was filed in which to appeal.*

Rule 4(a)(1) also sets forth five specific categories of judgments or orders from which appeals are required to be commenced within 14 days of the date of the entry of the judgment or order appealed from (or within 14 days from the denial of a timely filed postjudgment motion, if applicable. *See, e.g*., Rule 1(B), Ala. R. Juv. P.). Those categories are:

> "(A) any interlocutory order granting, continuing, modifying, refusing, or dissolving an injunction, or refusing to dissolve or to modify an injunction; (B) any interlocutory order appointing or refusing to appoint a receiver; (C) any interlocutory order determining the right to public office; (D) any judgment in an action for the validation of public obligations, including any action wherein a judgment is entered with respect to the validity of obligations of the State of Alabama or any agency or instrumentality thereof; and (E) any final order or judgment issued by a juvenile court."

Practitioners also should be aware that certain statutes provide for a different period in which to commence an appeal in particular cases. For example, Ala. Code § 37-1-140 (1975), provides that appeals from "an action or order" of the Alabama Public Service Commission involving "rates and charges of telephone companies or public utilities" shall lie directly to the Alabama Supreme Court and shall be commenced within 30 days from the date of the "action or order" appealed from.

Because filing a notice of appeal is the act that invokes the jurisdiction of the appellate court, understanding the interplay of the rules discussed to determine when a notice of appeal is due to be filed is crucial to avoid dismissal of an appeal on the basis that it is untimely.

# Final Judgments – Rule 54(b), Ala. R. Civ. P.

One of the most fundamental principles of appellate practice is that, typically, only final judgments are appealable. *See Ex parte Wharfhouse Rest. & Oyster Bar, Inc.*, 796 So. 2d 316, 320 (Ala. 2001) ("Without a final judgment, this Court is without jurisdiction to hear an appeal."). "A final judgment that will support an appeal is one that puts an end to the proceedings between the parties to a case and leaves nothing for further adjudication." *Id*. Nonetheless, a trial court can certify a judgment as final and appealable with respect to less than all claims or all parties. *See* Rule 54(b), Ala. R. Civ. P. In such a case, the trial court may "direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment." Rule 54(b). When a trial court certifies a judgment as final as to certain claims or parties, only the judgment as to those claims or parties may be reviewed on appeal.

But a trial court's Rule 54(b) certification is not always conclusive. Appellate courts will review whether such a certification was proper under the factors noted in *Lighting Fair, Inc. v. Rosenberg*, 63 So. 3d 1256 (Ala. 2010), which include whether the issues resolved in the judgment that was certified as final and appealable are so "intertwined" with other issues remaining before the trial court that a separate adjudication might result in inconsistent results and whether resolving issues that are still pending before the trial court will render moot the issues presented in the appeal. The fundamental policy behind Rule 54(b) is one of judicial economy.[1]

# Extraordinary Writs

### A. The Writ of Mandamus – Rule 21, Ala. R. App. P.

Appellate courts have the power to issue extraordinary writs. *See, e.g.*, Rule 21, Ala. R. App. P. A petition


PROVIDING

Vocational Assessments in Legal Cases

- Life Care Planning
- Long Term Disability
- Veterans TDIU
- Personal Injury
- Collaborative Divorce
- Traditional Divorce

CONTACT US TODAY

704-825-2914 · info@vargasvoc.com

Vargas Vocational Consulting

vargasvoc.com

**Qualified, Former or Retired Alabama Judges Registered with the Alabama Center for Dispute Resolution**

**Hon. S. Phillip Bahakel**
*phillip@bahakellaw.net*
(205) 987-8787

**Hon. John B. Bush**
*jbush@courtneymann.net*
(334) 567-2545

**Hon. Suzanne S. Childers**
*judgesuzanne@gmail.com*
(205) 908-9018

**Hon. W. Scott Donaldson**
*scottdonaldsonlaw@gmail.com*
(205) 860-0184

**Hon. R.A. "Sonny" Ferguson**
*raferguson@csattorneys.com*
(205) 250-6631

**Hon. J. Langford Floyd**
*floydmediation@outlook.com*
(251) 610-1001

**Hon. Arthur J. Hanes, Jr.**
*ahanes@uww-adr.com*
(205) 933-9033

**Hon. James E. Hill, Jr.**
*jimhill@hhglawgroup.com*
(205) 640-2000

**Hon. J. David Jordan**
*jdjordan@ottsmoorelaw.com*
(251) 867-7724

**Hon. Charles "Chuck" R. Malone**
*chuck@malonenelson.com*
(205) 349-3449

**Hon. Julie A. Palmer**
*judgejuliepalmer@gmail.com*
(205) 616-2275

**Hon. Eugene W. Reese**
*genereese2000@yahoo.com*
(334) 799-7631

**Hon. James H. Reid, Jr.**
*bevjam@bellsouth.net*
(251) 709-0227

**Hon. James H. Sandlin**
*judge@jimmysandlin.com*
(256) 319-2798

**Hon. Ron Storey**
*ron@wiregrasselderlaw.com*
(334) 793-7635

**Hon. Edward B. Vines**
*evinesattorney@yahoo.com*
(205) 586-0222

**Hon. J. Scott Vowell**
*jsv@scottvowell.com*
(205) 214-7320

**FAST • EASY • APPEALABLE**
AL Acts No. 2012-266 and 2018-384

For more information, search "Find a Private Judge" at
***www.alabamaADR.org***


for the writ of mandamus, for example, may be used to seek review of an otherwise nonappealable interlocutory order.

A mandamus petition must include: (1) a table of authorities; (2) a statement of the case; (3) a statement of the facts; (4) a statement of the issue presented and the relief sought; (5) a statement of why the writ should issue; and (6) an appendix that includes copies of all parts of the trial-court record necessary for an appellate court's review. *See* Rule 21(a)(1), Ala. R. App. P. Some of the most common mistakes resulting in the dismissal or denial of a mandamus petition include the failure: (1) to timely file the petition, (2) to demonstrate that the matter complained of comes within any of the recognized situations in which mandamus review is appropriate, and/or (3) to attach all the materials essential for review. Mandamus petitions must be filed "within a reasonable time." Rule 21(a)(3), Ala. R. App. P. "The presumptively reasonable time for filing a [mandamus] petition seeking review of an order of a trial court or of a lower appellate court shall be the same as the time for taking an appeal." *Id*. If a petition is filed outside that window, the petitioner must include with the petition a statement of good cause why the appellate court should consider the petition despite its untimeliness. *Id*. A petitioner who fails to timely file a petition for a writ of mandamus and who offers no good cause for doing so risks having the petition denied or dismissed. Note, too, a motion to reconsider a trial court's order does not toll the time for filing a petition for a writ of mandamus seeking review of that order. *See Ex parte Troutman Sanders, LLP*, 866 So. 2d 547 (Ala. 2003).

Moreover, because a petition for the writ of mandamus is not a substitute for an appeal, our appellate courts will not review all types of alleged trial-court error on a mandamus petition. Rather, mandamus review has essentially been limited to specific recognized situations in which a petitioner has a clear legal right to the relief sought from the lower court, but the lower court has refused to provide that relief. *See, e.g., Ex parte U.S. Bank Nat'l Ass'n*, 148 So. 3d 1060 (Ala. 2014), and *Ex parte Hodge*, 153 So. 3d 734 (Ala. 2014) (identifying situations in which mandamus review is appropriate). Thus, a petition for the writ of mandamus will often be denied when the issue presented

in the petition does not fit within one of the recognized situations in which mandamus review is proper. *See Ex parte Brown*, [Ms. 1190962, Jan. 22, 2021] ___ So. 3d ___ (Ala. 2021) (denying a mandamus petition because the matter challenged did not come within an exception to the general rule that a petition for the writ of mandamus is not the appropriate means by which to seek review of the merits of an order denying a motion to dismiss).

A petition for the writ of mandamus must include "all parts of the record that are essential to understanding the matters set forth in the petition." Rule 21(a)(1)(F), Ala. R. App. P. The failure to include with the petition all essential materials, such as, for example, a key trial-court order, deprives an appellate court of the means by which to properly conduct a review of the issues presented in the petition, thus often resulting in the dismissal or denial of the petition. *See Ex parte Staats-Sidwell,* 16 So. 3d 789 (Ala. 2008) (holding that the failure to include essential materials with a petition for the writ of mandamus rendered the petition fatally defective).

*A petition for the writ of mandamus must include "all parts of the record that are essential to understanding the matters set forth in the petition."*

## B. The Writ of Certiorari – Rule 39, Ala. R. App. P.

The writ of certiorari is "[a]n extraordinary writ issued by an appellate court, at its discretion, directing a lower court to deliver the record in the case for review." *Black's Law Dictionary* 284 (11th ed. 2019). The filing of an application for rehearing in the Alabama Court of Civil Appeals is not a prerequisite for certiorari review in the Alabama Supreme Court. Rule 39(b)(1), Ala. R. App. P. Petitions for a writ of certiorari seeking review of a decision of the Alabama Court of Civil Appeals, when no application for rehearing was filed, are required to be filed with the Alabama Supreme Court within 14 days after the release of the decision of the Alabama Court of Civil Appeals; if an application for rehearing was filed in the Alabama Court of Civil Appeals, the petition must be filed within 14 days of the ruling on the application for rehearing. Rule 39(b)(3), Ala. R. App. P.

In most cases, the deadline to file a petition for a writ of certiorari is jurisdictional and cannot be enlarged. Thus, a petition for a writ of certiorari will be denied if the petition has not been timely filed to invoke the jurisdiction of the Alabama Supreme Court.

Whether to grant a petition for the writ of certiorari is discretionary, and the writ will be issued only in special and important circumstances and then only when there has been strict compliance with Rule 39, Ala. R. App. P. Many petitions for a writ of certiorari are denied because they are procedurally noncompliant or because they fail to demonstrate a probability of merit. In the last term of the Alabama Supreme Court, from October 1, 2019 to September 30, 2020, approximately 130 civil certiorari petitions were filed, and 120 of them were denied. Thus, knowledge of Rule 39 and other requirements applicable to certiorari review is imperative.

# Appeals from Probate Matters – Strict Compliance with Probate Statutes Required

## A. Removal of Administration of Estates from Probate Court to Circuit Court – Ala. Code § 12-11-41 (1975)

Probate statutes were unknown to the common law; thus, strict compliance with the requirements of those statutes is mandatory. Section 12-11-41, a part of the

Alabama Probate Code, provides, in relevant part, that the administration of any estate may be removed from a probate court to a circuit court at any time before a final settlement. To perfect a removal, an order of removal must be entered by the circuit court. *See DuBose v. Weaver*, 68 So. 3d 814, 822 (Ala. 2011) (holding that "the filing of a petition for removal in the circuit court and the entry of an order of removal by that court are prerequisites to that court's acquisition of jurisdiction over the administration of an estate pursuant to § 12-11-41") (Emphasis in original). When a removal order has not been entered by a circuit court, that court's purported judgment on the merits is void. An appeal from a void judgment typically will be dismissed. *Holt v. Holt*, [Ms. 1190025, Aug. 21, 2020] ___ So. 3d ___, ___ (Ala. 2020) ("It ... appears that a removal order was not entered in this case. As a result, the circuit court never acquired subject-matter jurisdiction over the administration of [the decedent's] estate; its ... order, therefore, is void, and the appeal is due to be dismissed."); *Pickett-Robinson v. Estate of Robinson*, 164 So. 3d 1175, 1179 (Ala. Civ. App. 2014) (dismissing an appeal with instructions to vacate a judgment on the merits entered by a circuit court lacking jurisdiction over a purportedly removed estate administration).

*Moreover, a circuit court does not acquire subject-matter jurisdiction to enter an order of removal unless the statutory requirements of § 26-2-2 have been met with regard to the petition for removal.*

### B. Removal of Guardianship and Conservatorship Proceedings from Probate Court to Circuit Court – Ala. Code § 26-2-2 (1975)

Probate courts have jurisdiction over petitions for the appointment of guardians and conservators of minors or incapacitated persons. A guardianship or conservatorship proceeding may be removed to the circuit court pursuant to § 26-2-2. As is the case with the removal of estate administrations, the filing of a petition for the removal of a guardianship or conservatorship proceeding to the circuit court and the entry of an order of removal by the circuit court are prerequisites for the circuit court to acquire jurisdiction. *See Beam v. Taylor*, 149 So. 3d 571, 576 (Ala. 2014). Thus, when a removal order has not been entered by the circuit court, any order entered by that court is void and will not support an appeal. Moreover, a circuit court does not acquire subject-matter jurisdiction to enter an order of removal unless the statutory requirements of § 26-2-2 have been met with regard to the petition for removal. Those requirements are that the petition: (1) be "sworn"; (2) recite in what specified capacity the petitioner is acting; and (3) state that, in the opinion of the petitioner, the guardianship or conservatorship proceeding can be better administered in the circuit court than in the probate court.

*In Ex parte Tutt Real Estate, LLC v. Smith*, [Ms. 1190963, Mar. 26, 2021] ___ So. 3d ___ (Ala. 2021), the Alabama Supreme Court explained that, for a removal petition to meet the requirement of being "sworn," the petitioner must declare under oath that the petitioner believes, and has made sufficient inquiry to confirm, that the contents of the petition are accurate. The court in *Tutt Real Estate* held that such a declaration must be properly acknowledged by a notary public or a judge and that the filing of an unsworn petition does not comply with § 26-2-2 because that statute requires one petitioning under the statute to fully appreciate the significance and seriousness of their actions by swearing under oath and thus invoking penalties for perjury should the petition be knowingly false. Section 26-2-2 also provides that, "without assigning any special equity," a petition for removal may be filed by only a "guardian or conservator or guardian ad litem or next friend for the ward or such person entitled to support out of the estate of such ward." The petitioner is required to state in which specified capacity the petitioner is acting, and the failure to do so is fatal. A recitation of capacity is still required even if the petitioner has a blood relationship or is the next of kin to the protected person. In *Tutt Real Estate*, the Alabama Supreme Court issued a writ of mandamus directing

the circuit court to vacate an order purporting to remove an action involving a guardianship/conservatorship from the probate court to the circuit court because the removal petition was unsworn and did not recite the capacity in which the petitioners were acting. Thus, the circuit court, which entertained the action for an extensive amount of time, had never acquired jurisdiction over the action, and the action remained in the probate court. As noted, appeals from judgments of courts without jurisdiction typically will be dismissed.[2]

## State or Sovereign Immunity – Art. I, §14, Ala. Const. 1901

There are also certain defenses that could result in the dismissal of an appeal. For example, Article I, § 14, Alabama Constitution of 1901, provides generally that the State is immune from suit: "[T]he State of Alabama shall never be made a defendant in any court of law or equity." The immunity afforded the State by § 14 also applies to agencies of the State, as well as State officers sued in their official capacities when an action against the State officer is effectively an action against the State. An action is one against the State when a favorable result for the plaintiff would directly affect a contract or property right of the State or would result in the plaintiff's recovery of money from the State. Section 14 immunity is a jurisdictional bar that deprives a trial court of subject-matter jurisdiction. If a trial court lacks subject-matter jurisdiction to enter a judgment, such a judgment is void and will most likely result in the dismissal of an appeal. *See, e.g., Russo v. Alabama Dep't of Corr.*, 149 So. 3d 1079, 1081 (Ala. 2014) (holding that an inmate's action against the Alabama Department of Corrections was barred by State immunity and dismissing the inmate's appeal from an adverse judgment); *Alabama Dep't of Pub. Health v. Noland Health Servs., Inc.*, 267 So. 3d 873, 875 (Ala. Civ. App. 2018) (holding that an action was barred by State immunity and dismissing an appeal with instructions to vacate the trial court's judgment on the merits).

## Miscellaneous

There are other reasons an appeal might be dismissed. For example, an appeal can be dismissed when the issue presented by the appeal has become moot. In addition, Rule 2(a), Ala. R. App. P., provides that an appeal may be dismissed for failing to file a brief within the time provided by Rule 31, Ala. R. App. P.; when an appeal is frivolous; when an appellate court determines that there is an obvious failure to prosecute an appeal; or when a party fails to substantially comply with the Rules of Appellate Procedure. Moreover, non-attorneys cannot represent other parties, and an appeal filed by a non-attorney might therefore be dismissed. And, as a general rule, an attorney's authority to act on behalf of a client ceases on the death of that client, and an appeal filed on behalf of a deceased client might be dismissed.

## Conclusion

Review by an appellate court typically is the last opportunity to challenge a lower court's adverse judgment. Familiarity with, and adherence to, court rules, statutes, and judicial precedent regarding appellate review is therefore imperative to avoid the dismissal of, or the summary denial of relief in, appellate proceedings in civil matters. ▲

### Endnotes

1. Interlocutory orders are not always considered unappealable. For example, under Rule 5(a), Ala. R. App. P., the Alabama Supreme Court is authorized to grant a party permission to appeal from an interlocutory order that "involves a controlling question of law as to which there is substantial ground for difference of opinion" when "an immediate appeal ... would materially advance the ultimate termination of the litigation" and would "avoid protracted and expensive litigation." Additionally, as noted earlier in this article, Rule 4(a)(1), Ala. R. App. P., permits appeals from interlocutory orders in certain circumstances, and Rule 4(d), Ala. R. App. P., allows immediate appeals from orders denying (or granting) motions to compel arbitration.
2. The third requirement of § 26-2-2, namely, that a removal petition contain a statement or allegation that, "in the opinion of the petitioner such guardianship or conservatorship can be better administered in the circuit court than in the probate court," is subjective in nature and does not require any magic words on the part of the petitioner. *See Tutt Real Estate, supra*.

**Justice William B. Sellers**

Justice Will Sellers is an associate justice on the Supreme Court of Alabama. He can be reached at *jws@willsellers.com*.

# Tips Regarding Appeals to the Alabama Supreme Court in Civil Matters

**By Justice A. Kelli Wise**

When appealing to the Alabama Supreme Court, practitioners must comply with the Alabama Rules of Appellate Procedure. Those rules set forth the steps for filing an appeal, information regarding time limitations, and detailed and technical requirements for filings in the court. It is also imperative that practitioners keep abreast of any recent amendments to those rules. This article touches on a few of those rules and on some practical matters that might be helpful to practitioners as they prepare to navigate the appellate process and to file a brief in the Alabama Supreme Court.[1]

## General Filing Provisions

Rule 25(a)(1), Ala. R. App. P., provides that documents required or permitted to be filed in an appellate court must be filed with the clerk of that court. Filing may be accomplished by mail addressed to the clerk, Rule 25(a)(3)(A), or electronically using the Appellate Courts' Online Information Service ("ACIS"), located at *https://acis.alabama.gov*. ACIS is a separate and distinct system from Alafile, which is used to file documents electronically at the trial-court level. With regard to electronic filing, Rule 25(a)(2), provides: "Documents filed electronically shall be filed consistent with Rule 57, Interim Electronic Filing and Service Rule, originally adopted effective October 3, 2007, and incorporated as Rule 57 of these rules on October 1, 2010." Rule 57(a), provides:

> "Documents in proceedings before an appellate court may be filed, served, and preserved in an electronic format in lieu of the traditional paper format. Except for service of the record on appeal as provided in subsection (j)(3), the provisions for e-filing and service do not apply to parties who are proceeding pro se. These Rules of Appellate Procedure shall be fully applicable to e-filed documents to the extent these rules are not modified by this rule."

Unfortunately, technological difficulties on a deadline date could cause a party to miss a filing deadline. Rule 57(k) sets forth the steps a practitioner must take in such an event. Specifically, the party must file the document and a motion to accept the document as timely filed in the appellate court "no later than the first day on which the appellate court is open for business following the deadline date for filing the document." Rule 57(k). In the motion, the party must include a declaration stating the reason or reasons why they missed the deadline and stating why the document should be accepted as timely filed. Form B to Rule 57(k). It is imperative that practitioners filing documents electronically familiarize themselves with Rule 57.

Rule 32 sets forth detailed provisions regarding the form of briefs, petitions, motions, and other papers.[2] Included in Rule 32 are formatting details regarding paper size, line spacing, margins, font, type style, and justification.

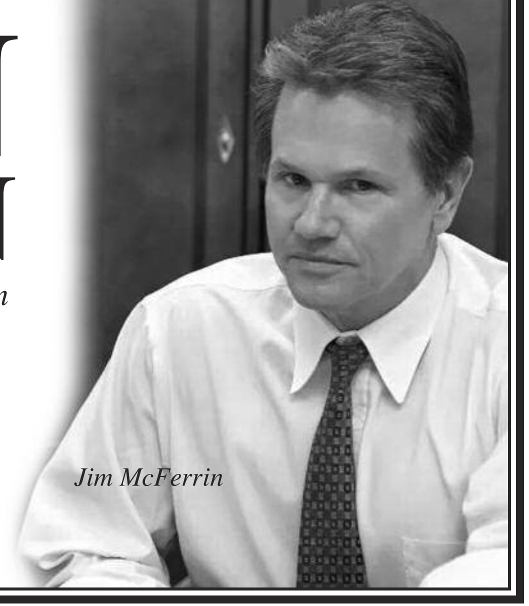
Practitioners should be aware that, effective October 1, 2020, Rule 32 was amended to provide that the font to be used for the text of all documents filed in our appellate courts, including the text of footnotes, is Century Schoolbook 14, "unless the attorney or unrepresented party certifies at the end of the document filed that access to equipment capable of producing

McFERRIN MEDIATION

*Civil, Probate & Worker's Compensation Mediation*

Your client's case is a serious matter.
Let me help.

Contact Jim to schedule your mediation
(205) 910-8597 • jhmcferrin@gmail.com



*Jim McFerrin*

that font is not reasonably available and that the font style used or the handwriting constitutes the closest approximation of Century Schoolbook 14 under the circumstances." Rule 32(a)(7).

## The Record On Appeal

The Alabama Supreme Court "'cannot consider evidence that is not contained in the record on appeal because this court's appellate review "'is restricted to the evidence and arguments considered by the trial court.'"'" *Startley Gen. Contractors, Inc. v. Water Works Bd. of Birmingham*, 294 So. 3d 742, 751-52 (Ala. 2019) (quoting *Roberts v. NASCO Equip. Co.*, 986 So. 2d 379, 385 (Ala. 2007), quoting in turn other cases). Also, attachments to appellate briefs are not part of the record on appeal and will not be considered on appeal. *See, e.g., Locklear Auto. Grp., Inc. v. Hubbard*, 252 So. 3d 67, 91 (Ala. 2017).

Rule 10, Ala. R. App. P., governs the composition of the record on appeal, what is to be included in the record on appeal, and methods for supplementing the record on appeal. Rule 10(a) provides that certain items are not to be included in the record on appeal unless a particular question has been raised in the trial court regarding those items *and* a party has specifically designated those items to be included in the record on appeal.

Rule 10(b) provides that the record on appeal in civil matters is composed of two parts – the clerk's record and the reporter's transcript. It also allows parties in a civil case to designate that certain materials be included in the clerk's record and to designate what portions of the proceedings will be included in the reporter's transcript. Rule 10(b) provides specific instructions for making such designations and the process for ordering transcripts of the proceedings. It is imperative that practitioners ensure that they designate for inclusion in the clerk's record all materials that were filed and admitted in the trial court and designate for inclusion in the reporter's transcript all portions of the proceedings that are relevant to the issues they intend to raise on appeal.

> 'An error asserted on appeal must be affirmatively demonstrated by the record, and if the record does not disclose the facts upon which the asserted error is based, such error may not be considered on appeal.'

Rule 10(d) provides a method by which an appellant may prepare and file a statement of the evidence or proceedings when "no report of the evidence or proceedings at a hearing or trial was made" or when a transcript is unavailable. Rule 10(e) provides that the parties may prepare and sign "a statement of the case showing how the issues presented by the appeal arose and how they were decided in the trial court and setting forth only so many of the facts averred and proved or sought to be proved as are essential to a decision of the issues presented" in lieu of the record on appeal.

Once the record on appeal has been filed, "'[i]t is the appellant's duty to check the record and to ensure that a complete record is presented on appeal. *Tarver v. State*, 940 So. 2d 312, 316 (Ala. Crim. App. 2004).' *Alabama Dep't of Pub. Safety v. Barbour*, 5 So. 3d 601, 606 n.1 (Ala. Civ. App. 2008). 'An error asserted on appeal must be affirmatively demonstrated by the record, and if the record does not disclose the facts upon which the asserted error is based, such error may not be considered on appeal.' *Martin v. Martin*, 656 So. 2d 846, 848 (Ala. Civ. App. 1995)."

*Brady v. State Pilotage Comm'n*, 208 So. 3d 1136, 1141 (Ala. Civ. App. 2015). In particular, a practitioner should make sure that attachments to motions are included in the clerk's record and that all relevant portions of the proceedings have been included in the reporter's transcript.

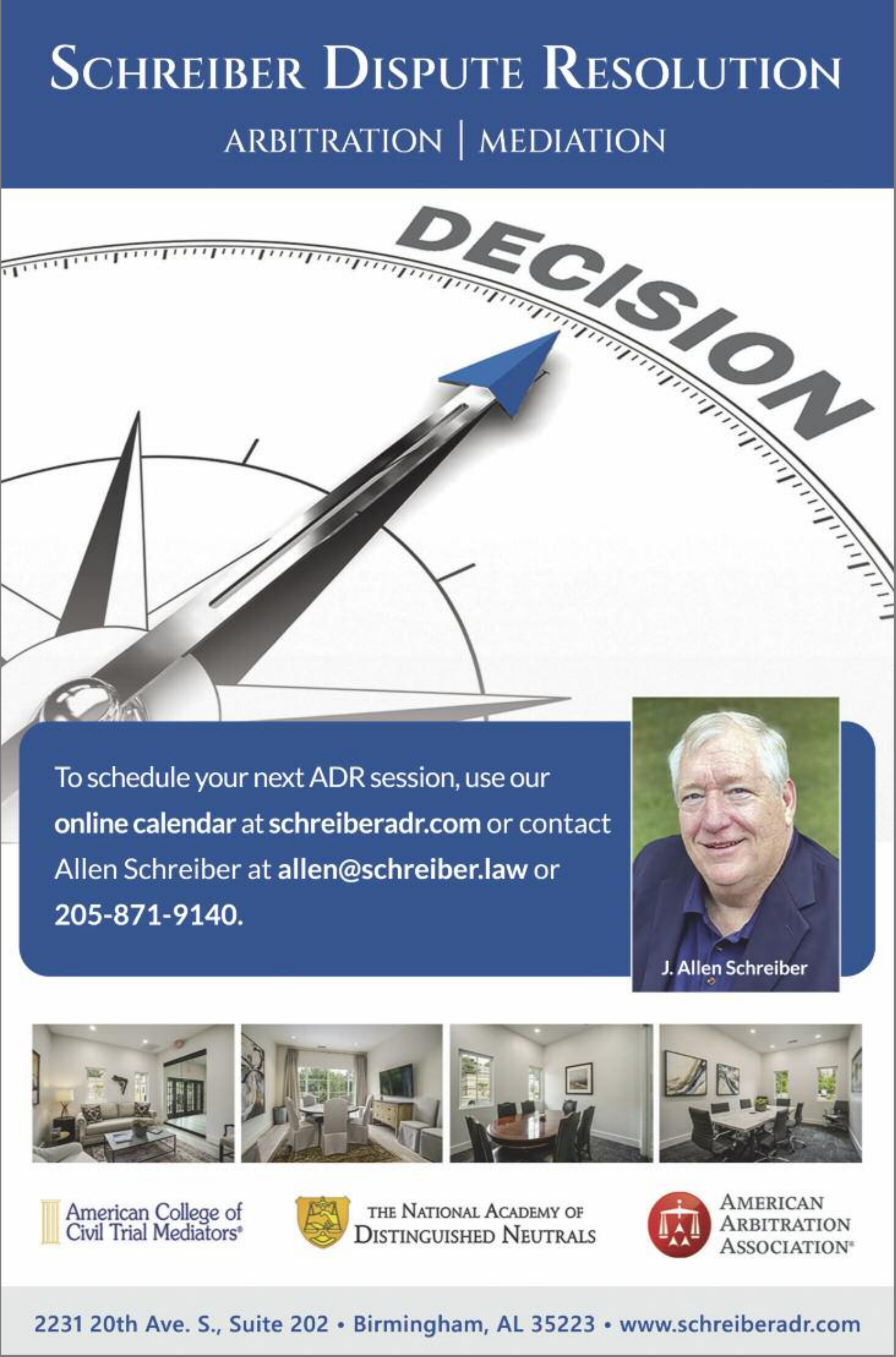
Rule 10(f) provides for filing a motion to supplement or correct the record on appeal in civil cases when "admitted or offered evidence that is material to any issue on appeal is omitted from the record after being designated for inclusion as required in Rule 10(b)" or when "any question arises as to whether the record correctly reflects what occurred in the trial court and the parties cannot stipulate what action should be taken to supplement or correct the

record." If a party seeks to supplement the record with portions of the reporter's transcript that have been omitted, the motion must be accompanied by copies of the transcript purchase order to prove that the omitted portions were originally requested. Also,

> "[i]t is well settled that Rule 10(f) cannot be used to supplement the record on appeal to include matters that were not before the trial court at the time the order being appealed was entered. *See Cowen v. M.S. Enters., Inc.*, 642 So. 2d 453, 455 (Ala. 1994) (holding that Rule 10(f) 'was not intended to allow the inclusion of material in the record on appeal that had not been before the trial court' and concluding that the trial court erred in granting the appellant's Rule 10(f) motion to supplement the record with evidence that was not provided to the trial court before it entered the judgment supporting the appeal); and *Houston Cty. Health Care Auth. v. Williams*, 961 So. 2d 795, 810 n.8 (Ala. 2006) ('Rule 10(f) does not allow ... for the addition to the record on appeal of matters not before the trial court when it entered its decision ....')."

*Facebook, Inc. v. K.G.S.*, 294 So. 3d 122, 126 (Ala. 2019), *cert.*

> If a party seeks to supplement the record with portions of the reporter's transcript that have been omitted, the motion must be accompanied by copies of the transcript purchase order to prove that the omitted portions were originally requested.



*denied*, 140 S. Ct. 2739, 206 L. Ed. 2d 917 (2020).

Practitioners should note that a motion to supplement or correct the record on appeal must be filed with the trial court, that a copy of the motion must also be filed in the appropriate appellate court, and that the motion must also be served on the court reporter if it seeks to supplement or correct the reporter's transcript. Rule 10(f) also provides that a trial court must rule on a motion to supplement or correct the record within 14 days or the motion is deemed denied by operation of law, and it sets out the procedure a party dissatisfied with the trial court's ruling must follow to seek appropriate relief in the appellate court. Practitioners should also note that, although a motion to supplement or correct the record on appeal does not suspend the running of the time for filing of briefs, a party may file a motion to suspend the time for filing briefs with the appellate court. *See* Rule 10(f)(1).

Practitioners should also note that, although a motion to supplement or correct the record on appeal does not suspend the running of the time for filing of briefs, a party may file a motion to suspend the time for filing briefs with the appellate court.

## Briefs on Appeal

Rule 28, Ala. R. App. P., governs the content of appellate briefs. Before preparing a brief for this court, carefully review Rule 28. The appellant's brief is the appellant's chance to try to convince

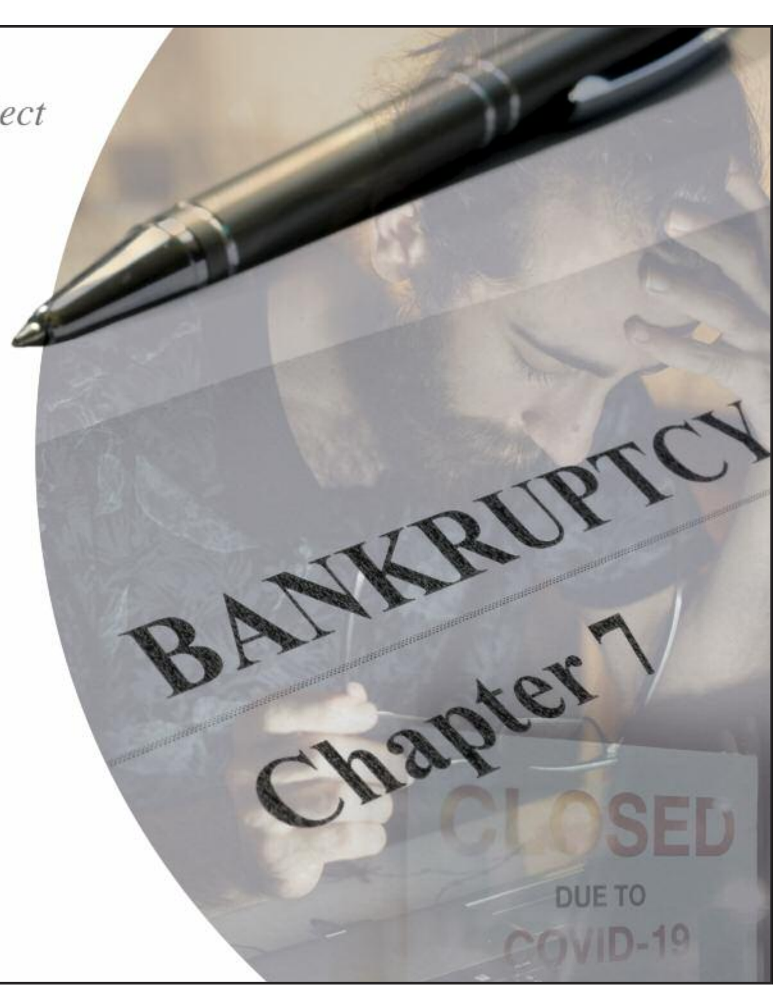
Alabama Bankruptcy Assistance Project

Want to make a difference?

Covid-19 and its economic consequences have touched all of our communities. Providing Pro Bono assistance in Chapter 7 bankruptcies is a great way to help yours.

Call your local Volunteer Lawyers Program to learn how you can help your community.

(334) 517-2108



this court to rule in their favor. However, even if a party raises an interesting issue or a potentially meritorious argument, the failure to properly brief the issue or to comply with certain requirements of Rule 28 may cause that party to lose on appeal.

Rule 28(a) provides that the appellant's brief shall comply with the requirements as to form set out in Rule 32, and also lists the requirements for the various parts of the brief.

A few provisions in Rule 28(a) warrant specific discussion.

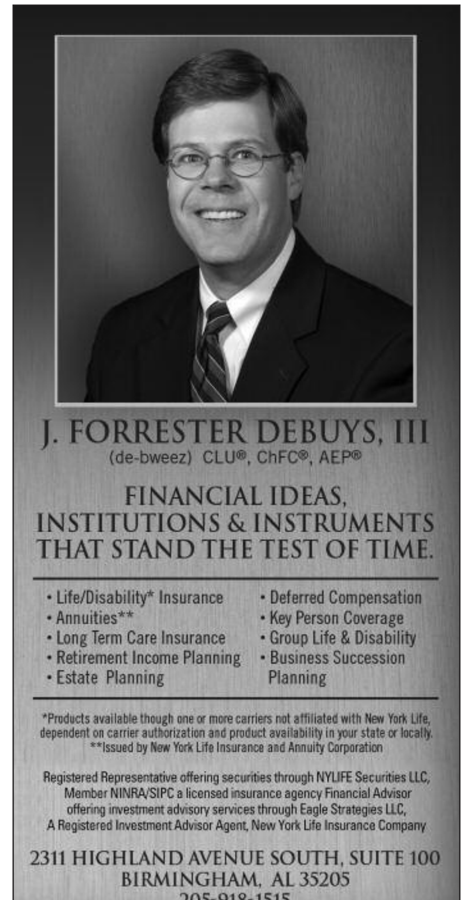
Rule 28(a)(1) addresses requests for oral arguments. Rule 34(a), provides, in part, that "[o]ral argument will be allowed when it is determined by the court, or the panel to which the case is assigned, from examination of the briefs and record that oral argument is desirable." However, oral argument will not be allowed when the appeal is frivolous; when the dispositive issue or issues raised have been recently authoritatively decided; or when the facts and legal arguments have been adequately presented in the brief and the court's decision will not be aided by oral argument. *Id*. When requesting oral argument, a practitioner should be as specific as possible as to why oral argument would be beneficial.

Rule 28(a)(10) may be seen as addressing the heart of brief writing. It requires that a brief include "[a]n argument containing the contentions of the appellant/petitioner with respect to the issues presented, and the reasons therefor, with citations to the cases, statutes, other authorities, and parts of the record relied on." This court will not consider arguments that do not comply with the requirements of Rule 28(a)(10). *See Harris v. Owens*, 105 So. 3d 430, 436 (Ala. 2012). The burden is on the appellant to articulate an issue or issues and to include citations to authority that support their position, and it is not the duty of this court to do the appellant's research or to create legal arguments for the appellant. *See, id*. Arguments should clearly and concisely explain why the appellant is entitled to relief. The importance of properly supporting an argument with citations to relevant legal authority cannot be understated. When an appellant does not support an argument with relevant legal authority, the effect is the same as if the appellant made no argument at all. *Steele v. Rosenfeld, LLC*, 936 So. 2d 488, 493 (Ala. 2005). Additionally, such a failure cannot be cured by including supporting authority for the first time in a reply brief. *Id*. Also, cited authority should support the specific arguments raised in the brief on appeal because """general propositions of law are not considered 'supporting authority' for purposes of Rule 28. *Ex parte Riley*, 464 So. 2d 92 (Ala. 1985).'""" *Harris*, 105 So. 3d at 436 (quoting *Allsopp v. Bolding*, 86 So. 3d 952, 960 (Ala. 2011), quoting in turn *S.B. v. Saint James Sch.*, 959 So. 2d 72, 89 (Ala. 2006)).

> The importance of properly supporting an argument with citations to relevant legal authority cannot be understated.

Rule 28(b) provides that the appellee's brief shall also conform to the requirements set forth in Rule 28(a)(1)-(12). However, an appellee need not include statements of jurisdiction, the case, the issues, the facts, or the standard of review unless the appellee is dissatisfied with those statements made by the appellant.

Rule 28(c) provides that the appellant may file a reply brief and that when the appellee has cross-appealed, the appellee may file a brief replying to the appellant's response to the issues presented by the cross-appeal. Rule 28(c) also



provides that no additional briefs may be filed without leave of the court. It is important to remember that appellants may not raise new arguments in a reply brief. *Steele*, 936 So. 2d at 493.

Rule 28(j) provides for the lengths of various briefs. Effective October 1, 2020, Rule 28(j) was amended to provide word limits for most briefs, consistent with Rule 32. However, Rule 28(j) retains page limits for briefs that are filed by pro se litigants. Practitioners should be aware that Rule 32(c) provides that headings, footnotes, and quotations are included in computing the word limits for filings, and it also includes a list of items that are not included in that computation. Rule 28(a)(12) provides that, unless the brief is filed by a pro se litigant, it must include "[a] certificate showing compliance with the font and word limits as required by Rule 32(d)."

Finally, practitioners should be aware that, although Rule 28(j)(3) provides for motions requesting permission to exceed word or page limitations in briefs, the Alabama Supreme Court will not routinely grant such motions.

Finally, practitioners should be aware that, although Rule 28(j)(3) provides for motions requesting permission to exceed word or page limitations in briefs, the Alabama Supreme Court will not routinely grant such motions. Rather, parties must establish good cause for granting such a motion and "specify[] extraordinary circumstances that warrant a suspension of the rules." Rule 28(j)(3). Such motions must be filed at least seven days before the date on which the brief is due.

# Conclusion

These are just a few observations to aid practitioners who are engaged in appellate practice before the Alabama Supreme Court. Practitioners cannot underestimate the importance of careful compliance with the Alabama Rules of Appellate Procedure and any other court rules or statutes that govern. ▲

## Endnotes

1. In this article, I focus on direct appeals in civil cases that are brought in the Alabama Supreme Court. Some of the rules discussed in this article are applicable to other types of cases and to appeals brought in the lower appellate courts. However, this article does not address the specific rules applicable to other types of appellate proceedings, such as Rule 21, governing petitions for extraordinary writs, or Rule 39, governing petitions for the writ of certiorari. Additionally, it does not address the specific rules that govern appeals in criminal cases.
2. Rule 32, Ala. R. App. P., also sets out requirements for other documents, such as applications for rehearing, petitions for the writ of certiorari, petitions for extraordinary writs, petitions for permissive appeals pursuant to Rule 5, Ala. R. App. P., and motions and other papers and memoranda in support of, or in opposition to, motions.

**Justice A. Kelli Wise**

Justice Kelli Wise is an associate justice on the Supreme Court of Alabama and served as presiding judge of the Alabama Court of Criminal Appeals. She can be reached at *kelli.wise@alappeals.gov*.

CONSTRUCTION & ENGINEERING EXPERTS

Forensic engineering and investigative inspections:

Commercial • Industrial • Residential

*Our specialists have Testifying Expertise*

- Construction delay damages
- Construction defects
- Acceleration of schedule
- Structural issues
- Foundations, settlement
- Stucco & EIFS
- Electrical issues
- Mechanical Systems
- Roofing problems
- Flooding & Retention Ponds
- Engineering Standard of Care issues
- Radio & Television Towers

Cain and Associates
Engineers & Constructors, Inc.

Contact: Hal K. Cain, Principal Engineer
halkcain@aol.com
251.473.7781 • 251.689.8975
www.hkcain.com

# 30 +1 Faces of Pro Bono

## PART 6 OF 6

This year marks the 30th anniversary of the Alabama State Bar's Volunteer Lawyers Program. As a way to thank all of our volunteers, we selected 30 representatives and have been sharing their stories over the past year. Each volunteer represents hundreds of others who have made the program successful. That success is not confined to the program, but is shared with every volunteer and every client who received assistance.

In our final part of this series, we also recognize the plus one, VLP Director Linda Lund. Her work and the work of past directors have truly made an impact on civil legal aid services. Thank you to everyone who plays a role in expanding access to justice. We can make a difference together!

## Emily L. Baggett, City Attorney's Office, Decatur

The motto of the Alabama State Bar is *Lawyers Render Service*. "As lawyers, we should be the ones leading our communities in setting the example that we choose to give back. We have the ability to save one or be the lifeline for someone with just a few hours of our time. I can't imagine not giving a few hours each year to serving my community."

Emily encourages others to get involved in pro bono work as a way to show citizens of your community that you care about them and want to help them. It also gives lawyers a chance to step out of their comfort zone or area of practice, to challenge them so that they continue to learn.

She got involved with the Volunteer Lawyers Program as a young lawyer when she volunteered at a Wills for Heroes Clinic. This clinic is near and dear to Emily's heart because her brother is a firefighter and has been a recipient of these services. She remembers the gratitude in his voice when he told her, "You love being a lawyer and are trained to be one. I love being a firefighter, and I'm trained to be one. You know that if something happens, everything is taken care of, and I died doing what I love. Don't you ever forget that."

Emily has served as a bar commissioner and as a member of the Pro Bono Celebration Task Force and the Pro Bono Committee. Her passion for the Wills for Heroes clinics ignited her passion for providing the same services to a new group of heroes, healthcare workers. She is the co-chair of the Helping Healthcare Heroes Task Force, whose goal is to provide estate-planning documents for the men and women who have continued to serve and risk their lives during this pandemic.

## David K. Hogg, The Hogg Law Firm, Dothan

Time management is key to having a successful practice, but how you manage your time also determines your personal success. David has found the perfect combination of pro bono work and paid legal assistance, giving back a small portion to the profession that has done so much for him. During his 25 years of practicing, he has truly intermingled the two.

David joined the VLP in 1998 and continues to make pro bono work a pillar of his practice. One of his professors explained, "Law is a profession and not a business. The purpose of a profession is to serve the public, and the purpose of a business is to make money." David decided that day that he would be a professional and not a businessman.

As a volunteer, he has represented clients in contested domestic relation issues. These cases are often hard to place because of their inherent complexities, but David never wavered. He treated his pro bono clients with the same level of professionalism and expertise as the paying ones.

Some of his favorite pro bono activities are providing services to the first responders and frontline workers, explaining that serving those who serve us every day is extremely rewarding. David encourages everyone to get involved in pro bono work and believes that "if every lawyer would pitch in, we could correct some of the injustices in the world."

## Nancy M. Kirby, Nancy Kirby Law Office, Rockford and Prattville

Nancy started with the Volunteer Lawyers Program during her first year of law school and is still volunteering. Her passion for pro bono work stemmed from "thinking it would be nice to help others. And while that is, of course, still a perfectly good reason to do pro bono work, over the years [I] came to realize that 'liberty and justice for all' all too often really means 'liberty and justice for all who can afford it.' This was not okay with me."

In private practice, Nancy handles a broad range of cases, but also takes on as many pro bono cases as she can. "If money were no object, it's all that I would do," she said. These cases are often domestic relations and probate matters with clients in desperate need of assistance.

Not every pro bono case results in a legal victory, but Nancy doesn't feel that diminishes the value of the work. She explained, "When you help people because they need it, and because you can, when they know they cannot afford to pay you, even if we are not successful in winning their case, we have succeeded for a moment in time in

restoring someone's faith in humanity. We've encouraged another person and let them know they matter, in a very tangible way. That's the biggest win there is."

Nancy encourages others to volunteer because "the reward is to be reminded that you can make a huge difference in the life of another, just by giving a damn. Our justice system can work, but only as well as the people who work in it. Many hands make light work."

## David W. Trottier, Trottier Law LLC, Gadsden

Faith can be a driving force in what we do and how we respond. As a Christian, David has tried to pattern his life according to scripture. He was raised to always help the poor. "About 30 years ago, I had a dream that I was in a room with only a fireplace and a picture on the wall of Jesus. As I approached the picture, it began speaking to me. I fell on my face and told the picture, as it was speaking, that I was not worthy to be in the presence of Jesus. When I finally stopped talking to listen, the picture asked me what I wanted. Before I could think to answer with wealth, fame, or fortune, my response was to help other people. At that moment, Jesus smiled at me and nodded his head. Then I woke up." After this dream, he knew exactly what he needed to do and how he needed to do it.

David joined the VLP in 2007 because he believed that "everyone is entitled to their day in court, regardless of whether they can pay for it or not." He has represented his clients zealously to keep his promise and stay true to his faith. David knew that he was doing the right thing when this scripture came to mind, "'Truly I tell you, whatever you did for one of the least of these brothers and sisters of mine, you did for me.' Matthew 25:40."

Doing pro bono work has allowed David to put his faith into action, but also make a difference. One memorable case involved helping a client and her two young children get away from an abusive ex-husband. Without his aid, this family may not have escaped the situation.

He encourages lawyers to volunteer because "helping the poor is one of the best things that we can do."

## Albert L. Vreeland (deceased), Tuscaloosa

Legacy is determined by the impact that you had on the lives of others. Al had a major impact on his community and the legal profession and was recognized for his great work. In 1996, he received the first Alabama State Bar Pro Bono Award along with Pam Bucy and Luke Coley. In 2007, after his death, the Alabama State Bar renamed it the "Al Vreeland Pro Bono Award."

This award recognizes an individual who demonstrates outstanding pro bono efforts through the active donation of time to the civil representation of those who cannot otherwise afford legal counsel and by encouraging greater legal representation in, and acceptance of, pro bono cases.

Al was vibrant and full of life. He never met a stranger and always had a smile. He loved people and tried to understand things from their point of view, even if they disagreed with him. His legacy survives him for being an attorney, social activist, and advocate for the legal rights of the poor. While his career path wasn't the traditional one, it prepared him for the impact he made.

His career began as a minister in Alabama and Florida. His passion for helping people turned to working with social programs on alcohol abuse, prison reform, training for disadvantaged youth, and mental retardation. However, Al knew there was more to be done, so he moved to Washington, D.C., where he assisted with community organizing for inner-city neighborhoods. While there, he realized that there were barriers to what he could do, which spurred him to become a lawyer.

After graduating from the University of Alabama School of Law, he worked to expand access to justice. Al is remembered by his colleagues for his famous comment of "eliminating the lawyer tax." He desired to eliminate the false complexity in the legal system to allow people to resolve their own issues whenever possible. Even though he integrated pro bono work in his practice, he knew that wouldn't enough to fix the lack of civil legal aid. So, he got involved with organizations that worked to serve the poor. Al served on the Board of Directors of Legal Services Corporation of Alabama and the Alabama State Bar Access to Legal Services Committee, and was a huge supporter of the bar's Volunteer Lawyers Program.

Albert Vreeland, II hopes his father's life will continue to motivate and inspire lawyers to do more. When asked what advice he thinks his father would give to lawyers, he said, "Follow your passion in your legal practice, and don't just use it as a way to make a living."

## Linda Lund, ASB Volunteer Lawyers Program Director

A leader is one who has a vision and works with a group to bring that to fruition, and the leaders of the Alabama State Bar Volunteer Lawyers Program (VLP) are examples of that.

The program was officially sanctioned by the state bar in 1991. The first two directors were Melinda Waters (1991-1995) and Kim Ward (1995-1999). The third and current director is Linda Lund. These three leaders have built the foundations of pro bono work in Alabama.

The VLP offers a wide variety of civil legal aid services and in-person clinics, including Wills for Heroes, Senior Wills clinics, and Counsel and Advice clinics throughout 60 of the 67 counties.

Under Linda's leadership, the program has flourished. She has helped secure over $3,500,000 in program funding, recruited hundreds of new volunteers, and serviced thousands of clients statewide. Without her tenacity, many vulnerable Alabamians would not have access to pro bono civil legal aid. Her passion for ensuring the program's continued success and expansion led her to hire the first staff attorney. To show appreciation to the volunteers, she established the pro bono awards, recognizing the service of lawyers, and started the annual VLP reception at the Alabama State Bar Annual Meeting.

Linda started the Wills for Heroes program and secured cloud-based estate planning software to allow the clinics to take place anywhere there are computers. She also partnered with Judge Henry Callaway to begin the effort drafting state court forms for pro se litigants. Linda initiated the first monthly counsel and advice clinics in Montgomery and Tuscaloosa and led the charge for getting CLE credit for pro bono work.

She handles the coordination of the Disaster Response Line with the Young Lawyers' Section and mentors new VLP directors. Her vast experience and knowledge make her a vital resource for other lawyers in the state.

Linda has a heart for service and has dedicated her life to it. Her efforts have not only expanded the program for clients, but ignited a fire in attorneys to want to be a part of the cause. She is truly selfless in her service and others agree.

*Linda has been the face, the backbone, and the hands and feet of the state bar's pro bono efforts for years. You cannot discuss pro bono services in Alabama, then or now, without Linda. She is a force!*

**–Cooper Shattuck**

*Linda set the standard for Alabama attorney volunteerism. She challenged us all to make our state better by helping those in need. Linda is Alabama's pro bono icon!*

**–Cassandra Adams**

*Linda's goal is singular and unwavering–help those unable to obtain proper legal services. This involves fundraising and recruiting, and her efforts are amazing. She is the face, force, and fabric of the greatest program our bar has to offer.*

**–Royal Dumas**

*Linda's selfless spirit, positive attitude, and hard work are an inspiration to all of us. Thank you for all that you do!*

**–John Stamps**

*Linda has dedicated countless hours to growing pro bono efforts, and she provides leadership, guidance, and encouragement to the entire pro bono legal community.*

**–Timothy J.F. Gallagher**

*Knowing that "pro bono" means "for the public good" explains why Linda is truly the face of the ASB pro bono effort. She guides our efforts with joy, commitment, and vision, but it is her heart that leads us.*

**–Alyce Spruell**

*Linda lives the words of scripture to do justice, love kindness, and walk humbly with your God.*

**–Sam Crosby**

*Linda has a giving heart for those who need help the most and a fighting spirit to make sure that they receive this help. The world is a better place because of her commitment to helping the most vulnerable receive access to justice!"*

**–Jeanne Dowdle Rizzardi**

*"Lawyers render service," and Linda does. If she is around, things get done. She renders service which makes us render service better.*

**–Honza Prchal**

*Linda is always willing to collaborate behind the scenes to accomplish pro bono goals. She is a perfect representation of the important mission to promote and expand pro bono efforts.*

**–Allen Howell**

*Linda is always willing to help to further pro bono service in Alabama. I am thankful for her guidance and patience when I started as the MCVLP's executive director and honored to call her my friend.*

**–Nicole Schroer**

*Linda's devotion to providing legal aid to low-income residents is an inspiration to everyone working to make Alabama a more just state, and her approach is visionary and practical.*

**–Tracy Daniel**

*Linda's commitment in the face of so many obstacles amazes me. She never passes the buck and is always willing to lend a hand.*

**–Kelly McTear**

# Law Firm Challenge

## In celebration of the 30th anniversary

of the Alabama State Bar Volunteer Lawyers Program, the Pro Bono Committee created the Law Firm Challenge. The committee challenged Alabama attorneys and firms to adopt a pro bono policy to expand access to justice. Participants also had the option of providing pro bono service to the Volunteer Lawyers Program or Alabama Legal Answers, or donating to the Alabama Law Foundation. All donations to the Alabama Law Foundation will be dispersed to the various VLPs throughout the state.

We are excited to announce that 35 firms and 134 attorneys completed the challenge and raised $8,400. Thank you for being our 2020-2021 Pro Bono Partners–one person can have an impact, but together we can make a difference! ▲

## BELOW ARE THE 2020-2021 PRO BONO PARTNERS:

Beasley Allen
The Bertella Law Firm PC
Bond, Botes, Sykstus, Tanner & McNutt
Beverlye Brady & Associates
Carey & Hamner PC
Law Office of Al Danner
Davidson, Davidson, Umbach & Forbus LLC
E. Peyton Faulk
Law Offices of Marcie L. Foster
Autumn Fritsch Law Firm LLC
Dihanne Perez Guilbert
Griess, Shaw & Willingham PC
Hankey Law Firm LLC
Susan K Harmon, Attorney at Law
Betsy M. Harrison
Law Offices of Robert I. Hinson PC
Tommy James Law
Jinks, Crow & Dickson PC
The KJ Law Firm LLC
Key Greer Harrison & Casey
Kinder Law Firm
John E. Medaris
Montgomery Divorce Law
Ogle Law Firm LLC
Law Office of Stephen Perdue LLC
Powell & Hamilton
Prim & Mendheim LLC
Reed Law Firm PC
Cooper Shattuck LLC
Stone Piper Law LLC
Heath Trousdale
Earl P. Underwood, Jr., Attorney at Law
The Samantha Valenzuela Law Firm LLC
Eric Wilson Law LLC
Michael A. Wing LLC

# LICENSE TO HELP AND HEAL

Learn More: alabar.org/lawyers-render-service/

## Alabama State Bar specialty license plate raises money to help lawyers in need.

Proceeds from the sale of this Alabama State Bar license plate will assist fellow members of the legal community who have experienced significant, potentially life-changing events in their lives, through a grant review process.

Once we reach the required number of pre-orders (1,000), the tag will go into production. You don't need to wait until it's time to renew your tag. We need your support now for the license plate to be manufactured.

To complete your pre-commitment form visit:

alabar.org/lawyers-render-service/

- Notices
- Reinstatement
- Transfer to Inactive Status
- Surrender of License
- Disbarments
- Suspensions


# Notices

- The following lawyers, who are licensed to practice in Alabama and whose whereabouts are unknown, have 60 days from the date of this publication to come into compliance with the Mandatory Continuing Legal Education requirements for 2020 pursuant to the Disciplinary Commission's order to show cause dated May 6, 2021. Noncompliance with the MCLE requirements and failure to respond to the Disciplinary's show cause order shall result in a suspension of the lawyer's license to practice law.

  **Cassidy Lee Anderson,** CLE No: 2021-412; **Steven Douglas Andrews,** CLE No. 2021-415; **Stephen Andrew Brown,** CLE No. 2021-419; **Ashley Elizabeth Calhoun,** CLE No. 2020-420; **Antonina Marie Carleton,** CLE No. 2021-421; **Mary Margaret Pittman Carol,** CLE No. 2021-424; **Lanier John Edwards,** CLE No. 2021-428; **Phylicia Helena Hill,** CLE No. 2021-435; **Jimmy Thomas Howell, Jr.,** CLE No. 2021-439; **Bryan Daniel Judah,** CLE No. 2021-446; **Carolyn Ngoc Lam,** CLE No. 2021-448; **Mark Oliver Loftin,** CLE No. 2021-451; **Eric David Logan,** CLE No. 2021-452; **Jason Michael Osborn,** CLE No. 2021-466; **Harry Bartlett Still, III,** CLE No. 2021-485; **Todd Stephen Strohmeyer,** CLE No. 2021-487; **Teri Christine Tenorio,** CLE No. 2021-489; and **Barry Wayne Walker** CLE No. 2021-496

  Disciplinary Commission, Alabama State Bar

# Reinstatement

- Chattanooga, Tennessee attorney **Stuart Fawcett James,** who is also licensed in Alabama, was reinstated to the practice of law in Alabama by the Supreme Court of Alabama, effective June 17, 2021. James was previously suspended from the active practice of law for failing to comply with the 2019 Mandatory Continuing Legal Education requirements of the Alabama State Bar. [CLE No. 2020-574]

# Transfer to Inactive Status

- Montgomery attorney **Michael Aaron Fritz** was transferred to inactive status, effective July 20, 2021, by order of the Supreme Court of Alabama. The Supreme Court of Alabama entered its order based upon the July 20, 2021 order of Panel II of the Disciplinary Board of the Alabama State Bar in response to the Alabama State Bar's petition submitted to the Disciplinary Board requesting Fritz be transferred to inactive status. [Rule 27(B), Pet. No. 2021-807]

*(Continued from page 433)*


You take care of your clients, but

who takes care of YOU?

For information on the Alabama Lawyer Assistance Program's **Free** and **Confidential** services, call **(334) 224-6920**.

ALABAMA LAWYER ASSISTANCE PROGRAM


# Surrender of License

- Eustis, Florida attorney **Catherine Corrine Griffith**, who is also licensed in Alabama, surrendered her license on June 17, 2021. Griffith was issued a show cause order on May 6, 2021 for non-compliance with the 2020 MCLE requirements. On June 1, 2021, Griffith responded to the show cause order voluntarily surrendering her license to practice law in Alabama. The Supreme Court of Alabama entered its order based upon the Disciplinary Commission's order accepting Griffith's surrender of her license to practice law in Alabama, effective June 17, 2021. [CLE No. 2021-433]

# Disbarments

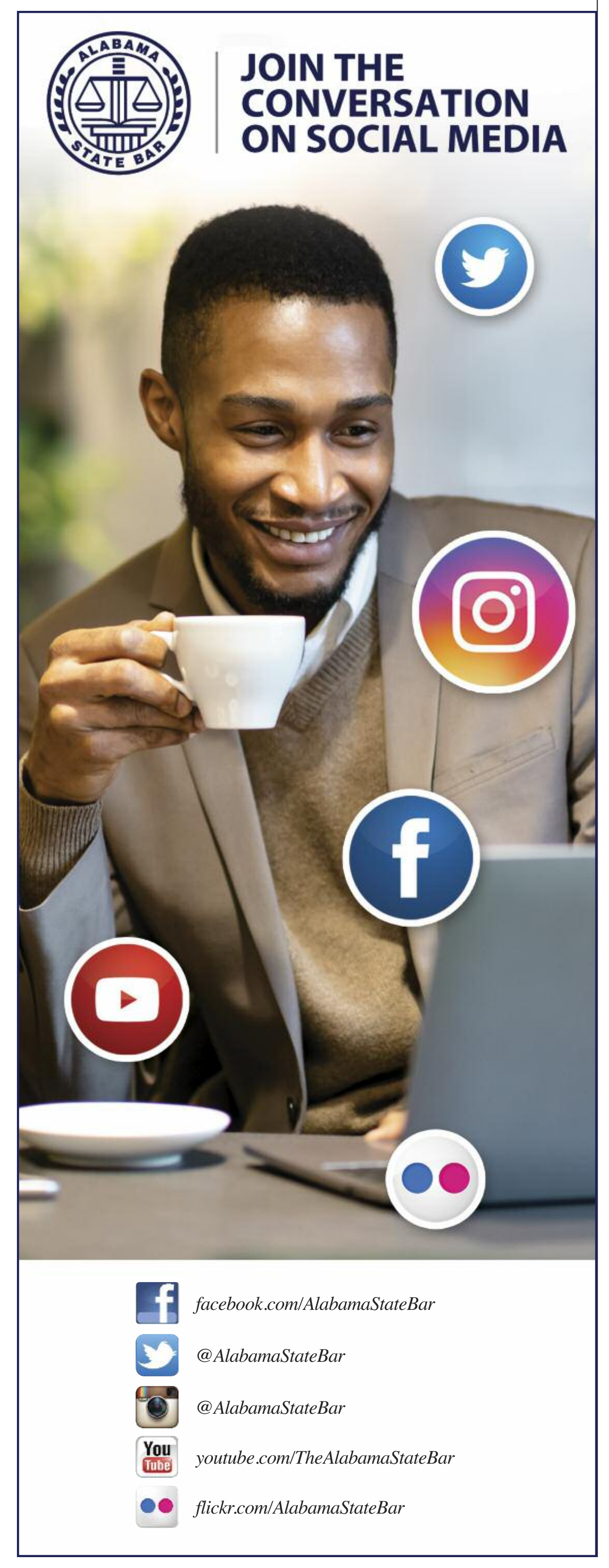
- Birmingham attorney **William Cater Elliott** was disbarred from the practice of law in Alabama by order of the Alabama Supreme Court, effective June 22, 2021. The Supreme Court of Alabama entered its order based on the order of the Disciplinary Commission of the Alabama State Bar disbarring Elliott as a result of his conviction of one count of organized fraud over $50,000 in the Circuit Court of Santa Rosa County, Florida. [Rule 22(a), Pet. No. 2019-979; CSP No. 2019-952]
- Auburn attorney **Brandon Michael Hughes** was disbarred from the practice of law in Alabama by the Supreme Court of Alabama, effective July 20, 2021. The Supreme Court of Alabama entered its order based upon the Disciplinary Board's order accepting Hughes's consent to disbarment, which was based on pending disciplinary matters involving Hughes's recent guilty plea to committing the criminal offenses of first-degree perjury and using his office as district attorney for personal gain. [Rule 23(a), Pet. No. 2021-802; ASB No. 2020-1088]

# Suspensions

- Athens attorney **Morris Hammack Bramlett, II** was suspended from the practice of law for one year in Alabama by the Supreme Court of Alabama, effective June 17, 2021. The Supreme Court of Alabama entered its order based upon the Disciplinary Commission's acceptance of Bramlett's conditional guilty plea, wherein Bramlett pled guilty to violating Rules 1.15 and 8.1(b), Alabama Rules of Professional

Conduct. In ASB No. 2018-757, Bramlett failed to provide requested trust account records. The records were subsequently obtained, and a review of the records showed that Bramlett made numerous cash withdrawals from his trust account. In ASB No. 2018-1102, Bramlett pled guilty to possession of drug paraphernalia in Limestone County, Alabama. [Rule 20(a), Pet. No. 2019-101; ASB Nos. 2018-757 and 2018-1102]

- Mobile attorney **Douglas Kendall Dunning** was suspended from the practice of law in Alabama for five years by the Supreme Court of Alabama, effective June 23, 2021. The Supreme Court of Alabama entered its order based on the Disciplinary Commission's order accepting Dunning's conditional guilty plea wherein he voluntarily entered a plea of guilty to violating Rules 1.3 [Diligence], 1.4 [Communication], 1.15 [Safekeeping Property], 5.3 [Responsibilities Regarding Non-Lawyer Assistants], 8.1 [Bar Admission and Disciplinary Matters], and 8.4(d) and (g) [Misconduct], Alabama Rules of Professional Conduct. Dunning failed to properly supervise a non-lawyer employee resulting in the theft of trust account funds by the employee. [ASB No. 2020-268]
- Monroeville attorney **Leston Curtiss Stallworth, Jr.** was suspended from the practice of law in Alabama for 60 days, effective September 2, 2021. The suspension was based upon the Disciplinary Commission's acceptance of Stallworth's conditional guilty plea, wherein he pled guilty to violating Rules 1.9 and 1.16, Alabama Rules of Professional Conduct. Stallworth jointly represented two clients in an estate matter. In February 2018, one of the clients hired other counsel for representation in the circuit court proceedings, and Stallworth withdrew as client's counsel. Thereafter, the client filed a cross-claim against Stallworth's remaining client and became adverse parties in the circuit matter. Stallworth filed a counter-claim against his former client in June 2018. New counsel for his former client requested that Stallworth withdraw from representation. The circuit court advised Stallworth to seek an ethics opinion from the Alabama State Bar as to whether he had a conflict of interest in representing the adverse party or that Stallworth withdraw from the case. Stallworth did not seek or obtain an ethics opinion. During a hearing on May 1 2019, the court again stated that Stallworth should obtain an ethics opinion as to whether he had a conflict of interest, or alternatively, withdraw from the case. Stallworth later withdrew from representation. [ASB No. 2019-701]



***Othni J. Lathram***
***Director, Legislative Services Agency***
*olathram@lsa.state.al.us*

*For more information,*
*visit* www.lsa.alabama.gov.

***James L. Entrekin, Jr.***
***General Counsel,***
***Legislative Services Agency***
*jentrekin@lsa.state.al.us*

# The Redistricting Process: Forming the Foundations of Our Republic

## What Is Redistricting and Why Is It Important?

Every 10 years, as we receive and respond to the federal government's requests to count and identify the citizens and residents of each state and territory, we are reminded that a census is not just something we read about at Christmastime from the biblical account of Jesus's birth and the reason for Mary and Joseph's journey to Bethlehem. Rather, it is a very current and relevant part of our system of government. Out of the data collected from the census, as numerically dull as the details may be, comes vital information upon which the Alabama Legislature and the other states conduct the redistricting process. *Redistricting is the redrawing of the geographical boundary lines that make up federal, state, and local districts, in order to identify what parts of the population will be joined together in districts to elect representatives from those districts to the full government body*. It is required by both the federal and Alabama constitutions and takes place every 10 years after the completion of the federal decennial census. Although redistricting is required by the federal constitution and must meet federal constitutional standards, the process is conducted entirely at the state level.[1]

The technical purpose behind any changes that are made to districts during the redistricting process is to reflect population shifts that have occurred since the last federal decennial census. Described this way, redistricting could easily sound mundane. However, in reality, there is a lot more purpose etched into the fabric of redistricting. The redistricting process impacts the very core of our democratic republic because it affects the foundation upon which our government is placed: the election of representatives by its people to a government that is for its people.

While the technical purpose of redistricting is to balance districts based on population shifts, *the fundamental reason the populations of each district need to be balanced is to help ensure that everyone's vote is weighted as equally as possible*. For example, if District 1 has 10,000 voters while District 2 only has 10 voters, then the 10 voters in District 2 clearly have more individual power and influence over the outcome of their election as compared to the voters of District 1.

Prior to the 1960s, redistricting among the states lacked uniformity and occurred irregularly despite population shifts throughout the nation and within each state. This resulted in some congressional and state districts with many more constituents than others, all from within the same state. Subsequently, in a series of U.S. Supreme Court cases in the 1960s, the principle of "one person, one vote" was established along with the requirement for congressional house districts to be equal based on Article I, Section 2 of the U.S. Constitution and for state legislative districts to be substantially equal based on the Equal Protection Clause, all of which are to be done every 10 years after the federal census. *See, e.g.*, *Baker v. Carr*, 369 U.S. 186 (1962); *Gray v. Sanders*, 372 U.S. 368 (1963); *Wesberry v. Sanders*, 376 U.S. 1 (1964); and *Reynolds v. Sims*, 377 U.S. 533 (1964), or just Google it!

Now that equally-populated districts have been established as a non-negotiable requirement, the most important consideration then becomes "how" those population groups are to be divided up into various districts. Which communities, constituencies, or groups of people should be grouped together in a district? Which factors should weigh into such decisions? Are these decisions being made to unite voters of similar needs and circumstances or to disenfranchise particular voting groups?[2] These are important questions for anyone interested in their government and how it impacts their families and businesses, and this is where the redistricting process of each state comes into play. As a state-level activity, the process varies from state to state, and each state has established its own laws, processes, and approach to redistricting, as long as it does not stray from federal constitutional limitations or requirements.

Thus, the redistricting process is an incredibly important part of the foundations of our form of government. The remainder of this article is dedicated to providing an overview of Alabama's redistricting process.

## The Redistricting Process in Alabama

Our state has relatively few constitutional or statutory requirements for how the districts are divided up in redistricting, such as equal populations, single-member districts, and contiguity (i.e., the entire district must be connected geographically). Rather, the process is almost entirely left up to the Alabama Legislature, which redistricts congressional seats, state legislative districts, and state school board districts.[3] In doing so, the legislature utilizes certain traditional criteria and historical principles that the institution has generally applied to redistricting. These traditional guidelines include such things as reasonably compact districts, preserving communities of interest, and keeping the cores of existing districts intact. Additionally, the legislature has adopted rules that apply specifically to redistricting and has

*(Continued from page 437)*

also established a permanent committee dedicated solely to the redistricting process. This committee, the Permanent Legislative Committee on Reapportionment, as well as the Legislative Rules, in large part govern the entirety of the redistricting process in Alabama.

The Permanent Legislative Committee on Reapportionment is established by statute and governed by both the Code of Alabama 1975 and the Joint Rules of the Legislature. The committee is made up of state legislators, as well as permanent staff who are there to assist the members and carry out the work of the committee. During redistricting seasons, the committee is made up of 22 legislators (11 senators and 11 representatives). During non-redistricting seasons, the committee shrinks to six legislators (three senators and three representatives). The committee acts as the central hub of all the legislative redistricting activity in order to promote efficiency, consistency, accuracy, and uniformity of all redistricting plans that the legislature considers. Although certain functions of the committee are described in more detail below, examples of the general functions of the committee include drawing redistricting maps, organizing and administering public hearings around the state, adopting guidelines and criteria for redistricting plans, and otherwise serving as a centralized resource of redistricting information for the legislature, other state and federal officials, and the general public.

After receiving the decennial census data from the Census Bureau (the information is also publicly available at *www.census.gov*), the committee analyzes the population shifts of the state as a whole and determines what the new median population of each district should be based on what the data shows as the new estimated population of the state. This year's census results showed that Alabama's population increased approximately 6.3 percent between 2010 and 2020, climbing from near 4.8 million in total population to over 5 million.[4] Based on these numbers, the new ideal/median population of each district was determined to be as follows:

- Congressional Districts: 717,754
- State Senate Districts: 143,551
- State Legislative House Districts: 47,850

Based on the updated census numbers and the new ideal district populations for the state, as well as any new constitutional or statutory laws that apply to redistricting, the committee then adopts guidelines that all redistricting plans must abide by before the plan would be able to be considered by the legislature and adopted into law. These guidelines usually include an allowable percentage of population deviation from the ideal number (caselaw has currently established that states may establish an allowable deviation of between 0 and10 percent from the median population), any applicable state and federal requirements, and any other traditional or alternative criteria that the committee wants to establish. This year the committee's discretionary guidelines, among other things, allowed for up to 5 percent deviation for the state legislative districts, prioritized keeping the cores of existing districts intact, and called for respecting existing communities of interest, neighborhoods, and political subdivisions wherever practical.

Armed with the census data and the guidelines, the committee then sets up public hearings around the state to receive public input from any interested individuals or special interest groups. This year the committee set up 28 public hearings around the state where residents or interested parties who gathered at those locations could communicate any concerns or priorities directly with the committee via a live Zoom feed.

After receiving input from the public and from legislators, the committee then officially adopts a redistricting plan for house districts, senate districts, congressional districts, and school board districts that must each meet the criteria established by the committee. This plan is then submitted to the legislature in the form of a bill.

## Redistricting Accomplished in Same Manner As Enactment of Any Other State Law

It follows the legislative process as established by law and legislative rules, and it must receive a favorable vote by both chambers of the legislature (that's right, the house redistricting plan must also pass the senate, and the senate's plan must also pass the house). Although the committee has its officially adopted plan that is filed as a bill, any other legislator can file a proposed redistricting plan for consideration. However, one major exception to the typical legislative process is that, by rule, *all redistricting bills and amendments must first be submitted to the Redistricting Committee before it can go before the legislature for consideration and a vote*. This rule is so that the committee's staff can ensure that the proposed plan ties all the pieces of each proposed district together correctly individually and as a whole, and that it fits within the parameters and guidelines established by the committee. Additionally, the rules also require that any

amendment or substitute offered to a current redistricting bill under consideration be drafted as an entire statewide plan, and cannot only address certain districts or parts of districts.

Redistricting plans, when filed, are sent to a standing committee for consideration, just like the typical process for any other bill, and upon approval by the standing committee, are then brought before the chamber for consideration and vote by that chamber. Upon a favorable vote of the first chamber, this process must then be repeated in the second legislative chamber. *Once approved by both chambers of the legislature, the redistricting plan is enacted into law and the new district boundaries are established for the next 10 years.*

… Or are they?

As with anything occurring in government that rises to this level of significance, there are often passionate objectors who challenge the new redistricting plans, or parts of the process, and seek court intervention to either redraw the districts more closely aligned with their positions, or to get the legislature to redraw the maps using their preferred guidelines or standards, either of which is purposed to achieve a more favorable outcome. Redistricting litigation has become part of the process.

Occasionally, these lawsuits provide additional guidance for Alabama and other states to follow for future redistricting. For example, after the last census and redistricting cycle of 2010, two notable opinions of the United States Supreme Court dealing with Alabama cases came down that affected not only the Alabama redistricting process, but the redistricting process for many other states as well.

In 2013, the U.S. Supreme Court held in *Shelby County v. Holder*, 570 U.S. 529 (2013), that the preclearance process of Section 5 of the Voting Rights Act no longer applied to Alabama or any other jurisdiction in the United States. Prior to this decision, Alabama and other states (mainly southern) who met certain criteria had to obtain "preclearance" from the U.S. Attorney General or the Washington D.C. Federal District Court before any of its redistricting plans could take effect. In light of this decision, Alabama's redistricting plans no longer need preclearance and become effective upon passage.

Subsequently, in *Alabama Legislative Black Caucus, et al., v. Alabama*, 575 U.S. 254 (2015), in a racial gerrymandering and minority dilution case, the court provided the following clarifications and principles regarding minority protections in the redistricting process: 1) Redistricting plans can be analyzed district by district for compliance with the Constitution and Voting Rights Act, not just by looking at statewide plans as a whole; 2) the foundational equal population requirement is not a factor to be weighed against minority voting strength or other factors (whether traditional or historical, etc.), but rather these factors are to be weighed against each other to determine how to reach the equal population goal; and 3) the Voting Rights Act does not require rigid adherence to a particular percentage of minority population in a given district, as long as there is still the ability to elect the minority's candidate of choice.[5]

One additional case with significant impact on redistricting was the U.S. Supreme Court's recent opinion in *Rucho v. Common Cause*, 139 S. Ct. 2484 (2019), wherein the Court determined that political-partisan gerrymandering in the redistricting process was not a question fit for the federal courts to answer, thus foreclosing federal constitutional claims against political gerrymandering, and resulting in such suits being brought at the state level in accordance with that state's applicable laws and constitutional provisions.

These cases certainly had an impact and played a role in the legislature's most recent redistricting process, but only time will tell what additional suits will be brought dealing with the redistricting process and what additional guidance will be provided by the courts, both state and federal.

## Conclusion

The redistricting process is a vital part of our representative democracy, and there are plenty of ways for Alabama's residents to stay up to date or involved in the process, either through the Reapportionment Committee's activities or the legislative process. For more information about the redistricting process, please contact our office. Additionally, information and details regarding the activities of the Redistricting Committee can be found on the legislature's website, *http://www.legislature.state.al.us/aliswww/ISD/AL Reapportionment.aspx*. ▲

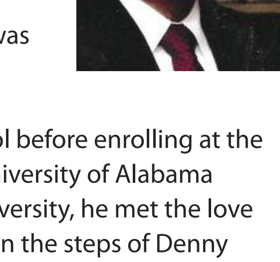
## Endnotes

1. At this point it is important to note that redistricting should be distinguished from "reapportionment," which refers to the federal congressional process of redividing the 435 seats of the U.S. House of Representatives based upon each state's population proportionate to the national population. The 2020 Census report showed that Alabama gained population and was able to keep all of its current congressional house seats, while certain other states lost or gained congressional seats. Of note, New York lost a congressional house seat over a difference of 89 people (give or take a few other factors).
2. The Supreme Court has held that the 14th Amendment and the Civil Rights Act of 1965 apply to a state's redistricting process such that the unjustifiable disenfranchisement of minorities is prohibited. However, it has also held that partisan redistricting that favors one political party over another is not a question for the federal courts to address and is rather left to the laws of each state. *See*, *e.g.*, *Alabama Legislative Black Caucus, et al., v. Alabama*, 575 U.S. 254 (2015); *Rucho v. Common Cause*, 139 S.Ct. 2484 (2019).
3. Counties and municipalities each determine the districting for their own operations, such as county commissions, city councils, and local school board districts. This article focuses only on redistricting at the state level.
4. This increase was just enough to allow Alabama to keep all of its current congressional seats despite the fear it might lose a seat due to higher gains in other states.
5. The decision in this case, which combined suits brought by, among others, the Alabama Legislative Black Caucus and the Alabama Democratic Party, required the Alabama Legislature to redraw the boundaries for some of its minority districts under the updated criteria identified by the court. However, the changes did not result in any new or additional minority districts.

# MEMORIALS

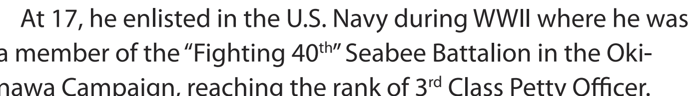
▲ J. Fletcher Jones

## J. Fletcher Jones



Fletcher Jones, 94, attorney, former legislator, and beloved family man, passed away peacefully on February 20 at his home in Andalusia, surrounded by his family. He was born in Miami, Florida to the late CJ and Willie Maude Jones.

At 17, he enlisted in the U.S. Navy during WWII where he was a member of the "Fighting 40th" Seabee Battalion in the Okinawa Campaign, reaching the rank of 3rd Class Petty Officer.



Following his honorable discharge, he finished high school before enrolling at the University of Alabama. Fletcher was later accepted to the University of Alabama School of Law, where he graduated in 1953. While at the university, he met the love of his life, Sara Jean Bradley. He would later propose to her on the steps of Denny Chimes, on the university campus. They were married on June 1, 1952. After graduating from law school, Fletcher and Jean moved to Andalusia where he began practicing law.

Fletcher was a member of the First Presbyterian Church, where he taught the adult men's Sunday school class and served as a deacon and elder.

In 1955, he was selected as the first president of the Andalusia Civitan Club. In 1958, Fletcher was elected to the Alabama House of Representatives, serving two four-year terms. During that time, he initiated and drafted several bills and resolutions, including a bill allowing women to serve as jurors and sponsoring the bill enabling Covington County to have its own circuit judge (Covington County had previously shared a circuit with Geneva County).

Fletcher was a member of the American Bar Association, the Alabama State Bar, and the Covington County Bar Association for over 67 years. He was also a longtime member of the Alabama Trial Lawyers Association.

Fletcher loved the people of Covington County and poured his heart and soul into the county. He loved the law and was proud to be a lawyer. Throughout Fletcher's 60-plus years of practicing law, he devoted countless hours of pro bono services to

those less fortunate. He will long be remembered as an aggressive and determined advocate for the rights of his clients. A mentor to many lawyers, Fletcher was a tremendous source of wisdom, humor, and insight for others by exemplifying what it means to be a good person, not just a good lawyer.

In the words of former District Judge Frank "Trippy" McGuire, Fletcher was among a group of extraordinarily accomplished "post-war attorneys [who] added much in the way of legends and lore to the history of the Covington County Bar Association." "A master storyteller [who] could keep one entertained for hours on end with his tales from the past." "Fletcher was a proud veteran, whom everyone admired and appreciated. He was a true treasure. I will always have fond memories of this great man. His passing is a loss to us all."

Fletcher is survived by his devoted wife of 68 years, Jean; two daughters, Lydia Karen Jones and Susan Ellen Short (Lex); a son, John Fletcher Jones, Jr. (Amy); four grandchildren, Sara Catherine Patrick (Wilson); John Fletcher Jones, III (Lori); Charles Alex Short (Katy); and Ada Elizabeth Short; and four great-grandchildren, Emma Catherine Patrick, Louisa Ruth Patrick, Ella Claire Jones, and Charles Tanner Short.

The love and devotion he had to the Lord, his family, and his clients were the driving forces behind everything Fletcher accomplished.

*–Amy W. Jones, Covington County Circuit Clerk*

**Bradley, Bernice Cecilia**
Tallahassee, FL
Admitted: April 24, 1984
Died: May 24, 2021

**Brown, Douglas Lee**
Mobile
Admitted: September 26, 1975
Died: July 2, 2021

**Bryant, Charles Daniel**
Brundidge
Admitted: September 30, 1994
Died: July 10, 2021

**Craven, Col. Larry Eugene (retired)**
Montgomery
Admitted: September 29, 1977
Died: August 15, 2021

**Diamond, Ross Martin, III**
Mobile
Admitted: April 10, 1969
Died: August 1, 2021

**Druhan, Joseph Michael, Jr.**
Mobile
Admitted: April 4, 1967
Died: August 7, 2021

**Fawwal, Audeh Edward**
Birmingham
Admitted: April 27, 1979
Died: July 12, 2021

**Fay, Hon. Edward Dwight, Jr.**
Huntsville
Admitted: April 10, 1969
Died: July 25, 2021

**Hughes, Lola Deanne**
Daleville
Admitted: May 1, 1998
Died: May 27, 2021

**Jared, Debbie Lindsey**
Elba
Admitted: April 29, 1983
Died: May 31, 2021

**Morgan, James Perry**
Birmingham
Admitted: September 26, 1975
Died: July 11, 2021

**Pate, Lenora Walker**
Birmingham
Admitted: September 27, 1985
Died: June 23, 2021

**Pierce, Wendy Atkins**
Fairhope
Admitted: September 28, 1990
Died: June 30, 2021

**VanDall, Edwin Marshall, Jr.**
Pell City
Admitted: September 28, 1989
Died: August 10, 2021

**White, David Thurston, III**
Orlando, FL
Admitted: September 27, 1996
Died: December 31, 2020

# OPINIONS OF THE GENERAL COUNSEL

***Roman A. Shaul***
*roman.shaul@alabar.org*

# Lawyers Cannot Use "Daily Deal" Specials to Advertise Legal Services

## QUESTION:

May attorneys use "daily deal" apps or websites to market discounted legal services in the form of redeemable coupons?

## ANSWER:

No. The use of daily deal websites or apps, such as Groupon, violates or potentially violates a number of professional conduct rules.

## DISCUSSION:

The Office of General Counsel has been asked to opine on the ethical propriety of the use of "daily deal" websites and apps as marketing tools for law firms. To generate business, these "daily deal" vendors typically contact consumers via email and give them an opportunity to purchase a certificate or coupon for services or products that can be redeemed from a retailer for a discounted rate. The proceeds from each sale are typically divided on a 50-50 split between the website/app and the retailer. For example, a law firm would agree to sell a coupon entitling a purchaser to $500 worth of legal services for a discounted rate of $250. The prospective client would pay the website $250 and would receive a certificate for $500 to redeem for legal services with the law firm. The certificate may or may not have an expiration date. From the sale, the website would keep

50 percent of the revenue, $125 in this case, and remit the remaining $125 to the law firm.

Several bar associations have issued opinions concerning the ethical propriety of lawyers using these "daily deal" marketing schemes. New York, North Carolina, and South Carolina have issued ethics opinions approving the use of websites and apps in this manner, while Indiana has issued an opinion disapproving of such sites. Regardless of disposition, all these states acknowledge that marketing through these sites is fraught with ethical landmines. As an initial matter, the primary issue raised is whether this scheme constitutes the sharing of legal fees with a non-lawyer in violation of Rule 5.4(a), Ala. R. Prof. C.

In Formal Ethics Opinion 10, North Carolina found that the portion of the fee retained by the website is merely an advertising cost since "it is paid regardless of whether the purchaser actually claims the discounted service and the lawyer earns the fee . . ." In Ethics Advisory Opinion 11-05, South Carolina also determined that the website's share of the fee paid by the purchaser was an "advertising cost" and not the sharing of a legal fee with a non-lawyer. The Disciplinary Commission of the Alabama State Bar finds these arguments unconvincing. In *Alabama State Bar Association v. R.W. Lynch Company, Inc.*, the Alabama Supreme Court addressed whether a television advertisement touting the "Injury Helpline" was a for-profit referral service in violation of Rule 7.2(c), Ala. R. Prof. C. 655 So. 2d 982 (Ala. 1995). While there is no claim that sites like the ones at issue are for-profit referral services, *R.W. Lynch* is instructive on whether the fees charged by such sites and apps are truly "advertising fees."

The Alabama Supreme Court concluded that R.W. Lynch's "Injury Helpline" was not a "for-profit" referral system, but rather a permissible form of group advertising. In reaching its decision, the court noted that lawyers who participate in the helpline pay a flat-rate fee for the advertising, regardless of the number of calls forwarded to them. *Id*. Pursuant to Rule 7.2(c), a lawyer "may pay the reasonable cost of any advertisement." In this instance, the websites and apps do not charge a flat rate fee or even a fee based on the amount of traffic. Instead, as noted by the Indiana State Bar Association's Ethics Committee, the marketing sites take a percentage (usually 50 percent) of every purchase. The percentage taken by the site is not tied in any manner to the "reasonable cost" of the advertisement. As a result, the Disciplinary Commission finds that the use of such sites to sell legal services is a violation of Rule 5.4 since legal fees are being shared with non-lawyers.

The use of these sites and apps also violates a number of other ethics rules. For example, it is well-settled that pursuant to Rule 1.15(a), all unearned fees must be placed into a lawyer's trust account until earned. See Formal Opinion 2008-03. Under the described fee model, half of the legal fees paid by the purchaser are claimed by a non-lawyer making it impossible for the lawyer to place the entire unearned legal fee into trust as required by Rule 1.15(a). Further, if the purchaser were to demand a refund prior to any services being performed by the lawyer, the purchaser would be entitled to a complete refund regardless of the fact that half of the fees were claimed by the non-lawyer. Failure to make a full refund would be considered charging a clearly excessive fee in violation of Rule 1.5(a) [Fees] and/or failing to return the client's property as mandated by Rule 1.16(d) [Declining or Terminating Representation].

Another ethical dilemma created by the use of daily deal websites and apps is the inability of the lawyer to perform any conflict check prior to the payment of legal fees. Under the typical model, the lawyer is selling future legal services and receiving the fees for such services without ever having spoken with or having met with the client. Because the lawyer cannot perform a conflict check prior to being retained, the potential for conflicts among the lawyer's former and current clients is high.

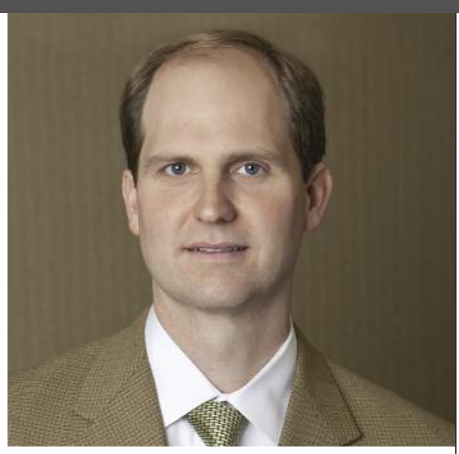
The Disciplinary Commission is further concerned that the use of such daily deal sites and apps could result in violations of Rule 1.1 [Competence] and/or Rule 1.3 [Diligence]. Because there is no meaningful consultation prior to the payment of legal fees, the purchaser may be retaining a lawyer who does not possess the requisite skill or knowledge necessary to competently represent the purchaser. There is no opportunity for the lawyer to determine his or her own competence or ability to represent the client prior to being hired.

Similarly, the lawyer is also unable to judge whether he or she will be able to diligently represent the client. Unless the lawyer places restrictions on the type of services offered and on the number of deals available for purchase, the lawyer may find that their caseload unmanageable. Rule 7.2(f), Ala. R. Prof. C., provides as follows:

> A lawyer who advertises concerning legal services shall comply with the following:
>
> > (f) If fees are stated in the advertisement, the lawyer or law firm advertising must perform the advertised services at the advertised fee, and the failure of the lawyer and/or law firm advertising to perform an advertised service at the advertised fee shall be prima facie evidence of misleading advertising and deceptive practices. The lawyer or law firm advertising shall be bound to perform the advertised services for the advertised fee and expenses for a period of not less than sixty (60) days following the date of the last publication or broadcast.

Pursuant to Rule 7.2(f), a lawyer will be bound to honor all purchases made through any app or website. If a large number of purchases are made through one of these promotions, the lawyer may not have the time or resources to diligently represent each new client resulting in violations of Rules 1.1 [Competence], 1.3 [Diligence], and 1.4 [Communication], Ala. R. Prof. C.

If you have any questions about this article or other ethics issues, please contact us at *ethics@alabar.org.* ▲



*Wilson F. Green*

***Wilson F. Green*** *is a partner with Fleenor & Green LLP and practices in Tuscaloosa and Birmingham. He is a summa cum laude graduate of the University of Alabama School of Law and a former law clerk to the Hon. Robert B. Propst, United States District Court for the Northern District of Alabama. From 2000-09, Green served as adjunct professor at his alma mater, where he taught courses in class actions and complex litigation. He represents consumers and businesses in consumer and commercial litigation.*

*Marc A. Starrett*

***Marc A. Starrett*** *is an assistant attorney general for the State of Alabama and represents the state in criminal appeals and habeas corpus in all state and federal courts. He is a graduate of the University of Alabama School of Law. Starrett served as staff attorney to Justice Kenneth Ingram and Justice Mark Kennedy on the Alabama Supreme Court, and was engaged in civil and criminal practice in Montgomery before appointment to the Office of the Attorney General. Among other cases for the office, Starrett successfully prosecuted Bobby Frank Cherry on appeal from his murder convictions for the 1963 bombing of Birmingham's Sixteenth Street Baptist Church.*

**RECENT CIVIL DECISIONS**

# From the Alabama Supreme Court

## Appellate Jurisdiction

***Dellinger v. Bryant Bank*, No. 1190430 (Ala. Aug. 13, 2021)**

Trial court's order of dismissal evidenced an intent to adjudicate all claims before it, triggering the time for appeal. A timely-filed Rule 59 motion was filed and denied, after which plaintiffs did not take immediate appeal, but instead sought to amend their complaint. The court dismissed the eventual appeal as untimely.

## Compulsory Counterclaims

***Harris v. Dubai Truck Lines, Inc.*, No. 1200426 (Ala. Aug. 19, 2021)**

Plurality panel decision; "[c]ompulsory counterclaims for money damages are not subject to statutes of limitations [defenses]."

## Summary Judgment: Evidence

***James v. Assurance America Ins. Co.*, No, 1200462 (Ala. Aug. 19, 2021)**

Plurality panel decision; insurer did not produce substantial admissible evidence (to support summary judgment) to establish that driver lacked a valid driver license at the time of the accident; supporting affidavit relied on an unofficial accident report which was inadmissible.

## Preliminary Injunction Procedure

***JT Construction LLC v. MW Industrial Services, Inc.*, No. 1200066 (Ala. Aug. 19, 2021)**

Circuit court erred by consolidating trial on merits with preliminary injunction hearing for lack of sufficient advanced notice and preservation of right to jury trial, as required by Rule 65(a)(2).

## Evidence

***Cannon v, Lucas*, No. 1190505 (Ala. Aug. 19, 2021)**

Plurality per curiam decision; ruling granting absolute motion in limine (rather than preliminary motion in limine) was properly preserved for appeal despite lack of an offer of proof at trial. Trial court erred by excluding from evidence party's post-accident conviction for presenting forged drug prescription, which is a crime involving "dishonesty or false statement" and thus automatically admissible for impeachment under Rule 609(a)(2).

## Will Contests: Circuit Court Jurisdiction

***Branch v. Branch*, No. 1200007 (Ala. Aug. 19, 2021)**

Circuit court lacked jurisdiction over will contest filed in the Circuit Court, where the contestants originally filed their contest in Probate Court before admission of the will to probate, then filed a contest in Circuit Court before the Probate Court took any action upon the petition for admission of the will to probate or on their filed petition to remove the proceeding to the Circuit Court. The Circuit Court's order directing the "transfer" of the probate case to the Circuit Court was without statutory authority; contestants did not follow the procedures in either Ala. Code § 43-88-198 or -199.

## Finality of Judgments

***Ex parte Utilities Board of City of Roanoke*, No. 1200307 (Ala. Sept. 3, 2021)**

Circuit court lacked jurisdiction to reinstate action on motion of plaintiff, filed 43 days after entry of judgment, against whom Circuit Court had granted summary judgment, but where final order had provided that Plaintiff had 45 days to seek reinstatement of the case.

## State Immunity

***Ex parte Jefferson County Bd. of Educ.*, No. 1200230 (Ala. Sept. 3, 2021)**

Section 14 immunity barred claim against Board by school-locker vendor for breach of contract. The Court refused to overrule the line of cases holding County Boards are entitled to Section 14 immunity, and there is no conflict between Sections 14 and 95 of the Constitution (impairment of contracts).

## Contract; Preservation of Error; Corporate Veil

***Childs v. Pommer*, No. 1190525 (Ala. Sept. 3, 2021)**

(1) Non-party to contract could not be liable for breach of contract; (2) insufficiency of evidence regarding breach of contract and other issues was not properly preserved for failure of appellant's JML motion at close of all evidence to raise the issues; (3) trial court's refusal to pierce the corporate veil of GC was not clearly erroneous for lack of evidence of what would be adequate capitalization for a single-member LLC.

## Structured Settlements; Transfers; Jurisdiction

***Ex parte Scoggins*, No. 1200102 (Ala. Sept. 3, 2021)**

Among other holdings: (1) Circuit Court lacked jurisdiction in 2011 to "reopen" a 2002 dismissal of a wrongful death action in order to alter structured settlement terms which were not even before the Circuit Court at the time of the dismissal; (2) Probate Court's authority to appoint a legal conservator under the Alabama Uniform Guardianship and Protective Proceedings Act ("the AUGPPA"), Ala. Code § 26-2A-1, did not empower the circuit court to revive an action that had so long ago

*(Continued from page 445)*

ceased to exist; (3) appointment of special conservator by Probate Court did not empower the special conservator to effect a removal of the conservatorship proceedings to Circuit Court; (4) Circuit Court's 2011 orders purportedly authorizing the sale of certain structured-settlement-payment rights clearly implicated the brothers' estates, yet the circuit court did not have jurisdiction over the brothers' estates when it entered those orders; (5) Circuit Court had jurisdiction to determine in 2012, in action brought under the Alabama Structured Settlement Protection Act ("the ASSPA"), Ala. Code § 6-11-50, whether sale of structured settlement payment rights was in best interest of brothers' estates, because action was properly filed under Ala. Code §§ 6-11-53 and 6-11-55(a) in the County where the payee resides; (5) although the Brothers were not served and given notice of the 2012 ASSPA action, the ASSPA suggests that failures to fulfill its "procedural requirements" are remedied by creating transferee liability, not be avoiding the transfer itself, under Ala. Code § 6-11-54(a)(2)b, and the Brothers are pursuing the transferee in their own 2019 action against the transferee, and thus the orders approving the ASSPA transfers were not void on that basis.

## Domestic Relations; Ancillary Jurisdiction

***Ex parte Hillard*, No. 1200452 (Ala. Sept. 3, 2021)**

Claim preclusion did not bar counterclaim for fraud by ex-husband against ex-wife and ex-mother-in-law for fraud relating to breach of a promissory note entered into during the marriage. The counterclaim was neither asserted nor fully litigated in the DR case. Although the claim could possibly have brought in the DR proceeding, the right to trial by jury on claims at law, and its unavailability in a DR proceeding, might preclude the aggressive use of preclusion doctrines.

## State Agent Immunity

***Ex parte Williamson*, No. 1200347 (Ala. Sept. 3, 2021)**

Teacher was entitled to *Cranman* immunity on claim brought by student who was inappropriately touched by another student while in a school van, where the students were left unattended while accompanied two other students on school-related matter. Teacher was performing a discretionary function; there were no checklists or specific procedures at play on the supervision of students in this situation.

## Fraudulent Conveyance; Mootness

***623 Partners, LLC v. Bowers*, No. 1191084 (Ala. Sept. 10, 2021)**

Fraudulent conveyance action may not be maintained for non-payment of a 10+-year-old judgment presumed satisfied under Ala. Code § 6-9-191.

## AMLA; Statute of Limitations

***Ex parte Mobile Infirmary Assn.*, No. 1200200 (Ala. Sept. 10, 2021)**

Complaint's medical liability claims were facially barred by the AMLA two-year statute of limitations in Ala. Code § 6-5-482(a). Events alleging substandard care as well as resulting pressure ulcers in the leg arose more than two years before action was filed, but resulting and eventual leg amputation occurred within the two-year period before filing. However, because amputation was causally related to not only the substandard care but to the initial ulcers, cause of action therefore accrued more than two years before filing.

## Service of Process; Quiet Title; Constructive Notice

***City of Birmingham v. Metropolitan Management of Alabama, LLC*, No. 1200080 (Ala. Sept. 17, 2021)**

Quiet-title plaintiff had constructive notice that city had interest in property due to recorded instrument reflecting that interest. Thus, service by publication on the city was improper under ARCP 4.3(b).

## Charter Schools

***Sumter County Bd. of Educ. v. Univ. of West Ala.*, No. 1190343 (Ala. Sept. 17, 2021)**

Restrictive covenant prohibiting operation of any charter school on the deeded property not by county board violated Alabama public policy as expressed in the Charter Schools Act, which exists "to foster competition in public education by encouraging the establishment and proliferation of charter schools[.]"

## DNA Evidence

***Wheeler v. Marvin*, No. 1200282 (Ala. Sept. 17, 2021)**

Plurality panel decision; under Ala. Code § 36-18-30, expert testimony relating to DNA evidence is admissible provided it meets the *Daubert* standard (explicitly cited in the statute). Attack on the evidence in this case concerned not the *Daubert* standard, but instead on the credibility of the witnesses who gathered the samples, and thus evidence was properly admitted.

## Landlord-Tenant; Abandonment

***Paradigm Investment Group, LLC v. Brazelton*, No. 1200137 (Ala. Sept. 17, 2021)**

Tenant could not invoke common-law principle of abandonment to justify breach of commercial lease agreement in not paying rent. Abandonment by tenant further excused

any right to cure period for tenant to cure event of default (non-payment of rent). Sellers for unanimous panel.

### Open Records Act

***Something Extra Publishing, Inc. v. Mack*, No. 1190106 (Ala. Sept. 24, 2021)**

Under Ala. Code § 12-21-3.1(b), law enforcement investigative reports, records, field notes, witness statements, and other investigative writings or recordings are privileged communications protected from disclosure, and thus not the proper subject of an open records request by press or the public.

### Attorneys

***Sirote & Permutt, P.C. v. Caldwell*, No. 1200092 (Ala. Sept. 24, 2021)**

"[E]ven though there is a "virtually absolute" right to terminate the attorney-client relationship in Alabama, that right does not allow the client to escape its obligation to pay an attorney for services rendered" – and in a referral situation, services are rendered at the time of the referral and thus client could not properly switch referring attorney after the referral and preclude payment of a referral fee to the original referring lawyer.

### Deeds

***Peinhardt v. Peinhardt*, No. 1200383 (Ala. Sept. 24, 2021)**

Under a joint tenancy, the right of survivorship is destructible; it is not with a tenancy in common. The granting language in this case created a joint tenancy.

## From the Court of Civil Appeals

### Workers' Compensation

***Patrick v. Mako Lawn Care, Inc.*, No. 2200239 (Ala. Civ. App. July 30, 2021)**

Trial court properly concluded that injuries to employee resulting from co-employee altercation did not arise out of employment, but instead were simply the result of petty resentment and arose from the altercation instigated by the injured employee.

### Workers' Compensation

***United-Johnson Bros. of Alabama, LLC v. Billups*, No. 2200122 (Ala. Civ. App. Sept. 17, 2021)**

Worker's February 2019 back injury was an aggravation of a 2016 injury suffered while working for UJB and not a recurrence of the injury. The legal determination of whether an injury is a recurrence or aggravation is for the trial court, not a physician. Generally, there must be some evidence indicating that a subsequent accident caused some new damage to the physical structure of the employee's body in order for the injury to be deemed an aggravation and not an occurrence.

## From the United States Supreme Court

The Court is in recess.

## From the Eleventh Circuit Court of Appeals

### Trademark; Cybersquatting

***Boigris v. EWC P&T LLC*, No. 20-11929 (11th Cir. Aug. 6, 2021)**

District court properly granted summary judgment to the proprietor of Euqopen Wax Center; defendant's domain names "europawaxcenter" and "euwaxcenter" were confusingly similar to "European Wax Center" – they are nearly identical to the mark in sight, sound, and meaning.

### Federal Employment

***Hakki v. Secretary of Veterans Affairs*, No. 19-14645 (11th Cir. Aug. 3, 2021)**

Veterans' Benefits Act ("VBA"), 38 U.S.C. § 7461 et seq., is a comprehensive statutory scheme governing the discipline of VA employees and is the exclusive remedy for review of discharge.

### Social Security

***Buckwalter v. Commissioner*, No. 19-14420 (11th Cir. Aug. 3, 2021) (rehearing)**

On appeal to the district court from a denial of ALJ-level relief, claimant alleged that there was a conflict between her limitation to following only "simple" instructions and the jobs identified for her that involved following "detailed but uninvolved" instructions. She argued that the ALJ failed to reconcile that conflict in violation of *Washington v. CSS*, 906 F. 3d 1353 (11th Cir. 2018). The Court held that there is no apparent conflict and that the denial decision is otherwise supported by substantial evidence.

### First Amendment Retaliation

***Bell v. Sheriff of Broward County*, No. 20-11958 (11th Cir. Aug. 2, 2021)**

Five-day suspension with pay, done in accordance with a CBA, does not constitute adverse action for purposes of a First Amendment retaliation claim.

*(Continued from page 447)*

## Defamation

***Coral Ridge Ministries Media, Inc. v. Amazon.com*, No. 19-14125 (11th Cir. July 28, 2021)**

Amazon removed Coral Ridge from its AmazonSmile program after Southern Poverty Law Center labeled Coral Ridge a "hate group." Coral Ridge brought defamation and Title II CRA claims. The district court dismissed and the Eleventh Circuit affirmed. The Court reasoned that the Coral Ridge failed to plead actual malice (required due to public figure status) with sufficient particularity on the defamation claim. The Title II Civil Rights Act claim (religious discrimination) against Amazon was barred because application of Title II would create a First Amendment violation.

## Subject Matter Jurisdiction

***McIntosh v. Royal Caribbean Cruises, LTD*, No. 19-10562 (11th Cir. July 27, 2021)**

District court erred by *sua sponte* dismissing for lack of diversity jurisdiction without providing opportunity to address issue.

## Labor

***Ridgewood Health Care Center v. NLRB*, No. 19-11615 (11th Cir. Aug. 13, 2021)**

(1) Board's coercive interrogation finding (regarding union membership during job interviews) was made without sufficient reference to the factors in *NLRB v. Gaylord Chem. Co.*, 824 F. 3d 1318, 1333 (11th Cir. 2016) and thus was not the product of "reasoned decision-making;" (2) under the evidence, the *Gaylord* factors supported no conclusion other than that the employer had not coercively interrogated employees; and (3) there was insufficient evidence of any discriminatory hiring scheme.

## Social Security

***Simon v. Commissioner*, No. 19-14682 (11th Cir. Aug. 12, 2021)**

In rejecting disability claim, ALJ improperly did not articulate adequate reasons for rejecting three categories of record evidence concerning Applicant's mental illness: (1) the opinions of a treating psychiatrist, (2) the opinions of a consulting psychologist who examined applicant at the request of the SSA, and (3) applicant's own testimony as to the severity of his symptoms.

## *Rooker-Feldman*

***Behr v. Campbell*, No. 18-12842 (11th Cir. Aug. 12, 2021)**

The district court dismissed, on *Rooker-Feldman* grounds, a 30-count pro se complaint arising from a complex series of child custody litigation in state court, without analysis of how each specific claim challenged the validity of the underlying state court judgment. The Eleventh Circuit reversed in part, in an opinion casting a broad-stroked portrait of caution against any unwarranted expansion of the *Rooker-Feldman* doctrine. The Court held three distinct claims of the 30 counts were not barred by the doctrine.

## Rule 41 Dismissals

***Estate of West v. Smith*, No. 20-10071 (11th Cir. Aug. 19, 2021)**

All parties' filing of a stipulation of dismissal left the district court without jurisdiction under Rule 41(a)(1)(A)(ii). District court was therefore without authority to reopen the case under Rule 60(a) to allow a post-dismissal amendment substituting new defendants for previously designated fictitious parties.

## Takings

***Beunding v. Town of Redington Beach*, No. 20-11354 (11th Cir. Aug. 19, 2021)**

Property owners of beachfront sued town, claiming that ordinance making certain beaches public constituted an unlawful taking. The district court granted summary judgment to the owners. The Eleventh Circuit vacated, holding that a "customary use" defense available under state law concerning enforcement of the ordinance was supported by substantial evidence, and thus the district court's conclusion that a taking had occurred based on a lack of evidence of customary use was improper.

## Forum Selection Clauses

***Turner v. Costa Crociere SPA*, No. 20-133666 (11th Cir. Aug. 19, 2021)**

Forum selection clause requiring litigation in a court in Genoa, Italy was enforceable. Plaintiff who relies on inconveniences that were "foreseeable at the time of contracting" in order to meet this burden can prevail only by showing that trial in the contractual forum will be so gravely difficult and inconvenient that he will for all practical purposes be deprived of his day in court.

## Voting Rights

***Black Voters Matter Fund v. Georgia Secretary of State*, No. 20-13414 (11th Cir. Aug. 27, 2021)**

Neither the 24th Amendment nor the Equal Protection Clause requires Georgia to pay for postage for voters who choose to return their absentee ballots by mail. The requirement to affix postage to the absentee ballot is not an impermissible poll tax.

## Qualified Immunity

***Bradley v. Benton*, No. 20-11509 (11th Cir. Aug. 27, 2021)**

Law enforcement officer was not entitled to qualified immunity for tasing fleeing misdemeant, where tasing occurred as party was scaling a high wall and fell after being tased, resulting in his death. Tasing a person who is at an elevated height may come with a substantial risk of serious bodily harm or death. Even without a materially similar case from the Supreme Court or this Court, the use of force here was obviously unconstitutional.

## First Amendment Retaliation

***Mitchell v. Duvall County Jail*, No. 19-14505 (11th Cir. Aug. 26, 2021)**

Allegation by inmate that his legal mail was being repeatedly opened and reviewed, and after he complained he was threatened, were sufficient to allege a First Amendment retaliation claim.

## Transgender Rights

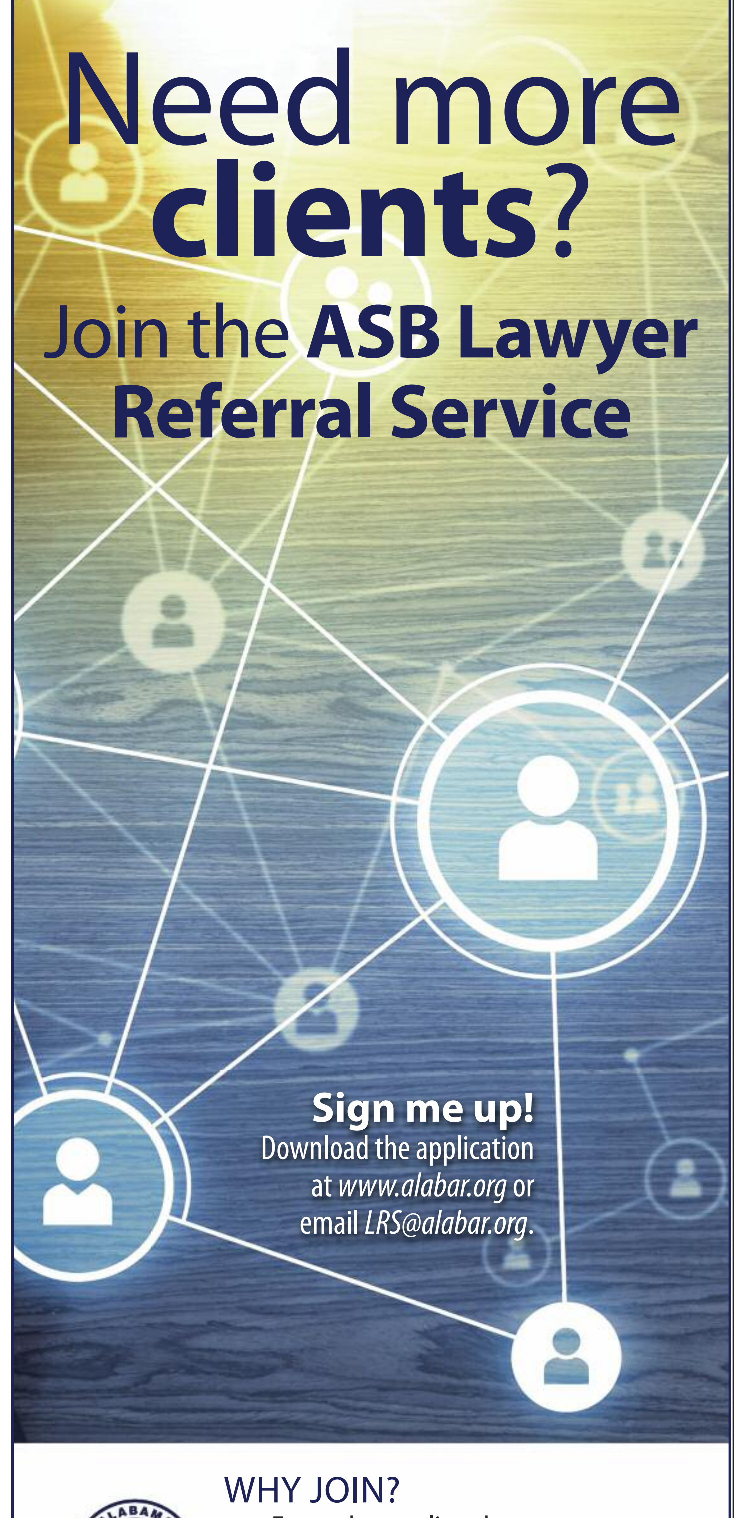
***Adams v. School Board of St. John County, FL*, No. 18-13592 (11th Cir. Aug. 23, 2021)**

After two separate panel opinions, the Court has voted to take this case en banc, and thus the Court vacated the latest panel opinion, under which the Court had held that the board violated the equal protection rights of a transgender high school student by requiring that the student not use the group bathroom for the gender with which they identified, but did allow the student to use gender-neutral bathrooms.

## *Batson*

***Vinson v. Koch Foods of Alabama, LLC*, No. 19-11999 (11th Cir. Sept. 3, 2021)**

In Title VII National Origin case, the district court did not abuse its discretion or commit legal error in denying plaintiff's *Batson* challenges to defendant's striking of two venirepersons. As to the first, defendant disclosed its strike was based on defendant's pre-trial research of the juror's extensive litigation and debt collection history (as to which there was no voir dire); that explanation was not pretextual

WHY JOIN?

- Expand your client base
- Benefit from our marketing efforts
- Improve your bottom line

OVERVIEW OF THE PROGRAM

- Referrals in all 67 counties
- Annual fee of $100
- Maximum percentage fee of $250 on fees between $1,000 and $5,000
- Professional liability insurance required for participation

*(Continued from page 449)*

even though defendant chose not to strike a juror with a DUI. On the second, defendant individually questioned the venireperson and discovered that she was both a current union member and a previous worker's compensation claimant with concerns about the fairness of her treatment – the individually tailored reason was sufficient and was undisputedly race-neutral.

## Insurance; Declaratory Judgments

***National Trust Ins. Co. v. Southern Heating and Cooling, Inc.*, No. 20-11292 (11th Cir. Sept. 3, 2021)**

While wrongful death action was pending against insured in state court, insurer (not a party in the state court action) brought DJ action in federal district court on coverage. District court declined jurisdiction under *Ameritas Variable Life Ins. Co. v. Roach*, 411 F. 3d 1328, 1331 (11th Cir. 2005). The Eleventh Circuit affirmed, reasoning that the degree of similarity between concurrent state and federal proceedings is a significant consideration under the Declaratory Judgment Act. The Declaratory Judgment Act itself confers discretionary jurisdiction (and thus references to "absention" in this context are inaccurate).

## Qualified Immunity

***Underwood v. City of Bessemer*, No. 19-13992 (11th Cir. Sept. 2, 2021)**

District court properly granted summary judgment to officers based on qualified immunity on excessive force claims arising from shooting incident. There was no violation of clearly established law – even though the vehicle was inching toward the officers and thus arguably did not pose a threat of deadly force, the officers' actions were not so obviously excessive, but rather within "the hazy border between excessive and acceptable force."

## First Amendment

***Dean v. Warren*, No. 19-14674 (11th Cir. Sept. 2, 2021)**

An unusual case in that there are two majority opinions – one a unanimous panel decision written by Judge Jill Pryor, and a second opinion by Chief Judge Pryor joined by Judge Ed Carnes. In the wake of Colin Kapernick's protestations in 2016, Dean (college cheerleader) kneeled during the pregame national anthem. Dean alleged that a public and private conspiracy – orchestrated by the university's leadership, the county sheriff, and a Georgia legislator – sought to deprive Dean of First Amendment rights, so Dean claimed violations of 42 U.S.C. § 1983 and § 1985(3). The issue on appeal was whether the district court erred by dismissing Dean's § 1985(3) claim against the sheriff, Warren. Held: Dean's three section 1985 theories were inadequate. First, the "direct race-based theory" of animus did not apply because the allegations were insufficient to demonstrate that Warren's action was motivated by Dean's race. Second, the "indirect" theory – that Warren undertook the conspiracy because the content of her protest concerned police brutality against African Americans, which is a political issue implicating race – was not cognizable. Third, a "political" class-based theory of animus was also not actionable. In the separate majority opinion, Chief Judge Pryor explained that the Free Speech Clause does not restrict government speech at all.

## *Rooker-Feldman;* Equitable Mootness

***In re: Hazan*, No. 19-14049 (11th Cir. Sept. 1, 2021)**

*Rooker-Feldman* did not bar consideration by bankruptcy court of rights of various parties concerning mortgaged property, where parties in bankruptcy proceedings simply sought determination by the bankruptcy court of various parties' rights in light of the state court judgment, and thus did not seek to overturn the state court judgment, and because there was not an identity of parties between the state and federal actions. District court properly applied equitable mootness based on unreasonable delay in seeking a stay and because the plan had been substantially consummated.

## First Amendment

***Fort Lauderdale Food Not Bombs v. City of Fort Lauderdale*, No. 19-13604 (11th Cir. Aug. 31, 2021)**

City Rule, requiring city permission for social service food-sharing events in all parks, cannot withstand First Amendment scrutiny. Rule contained no standards explaining when, how, or why the city will provide that permission. It is therefore not narrowly drawn to further a substantial governmental interest unrelated to the suppression of free speech nor does it amount to a reasonable time, place, and manner restriction for regulating a public forum.

## Privilege; Government Filter Proceedings; Subpoenas (Criminal Law)

***In re Sealed Search Warrant (USA v. Korf)*, No. 20-14223 (11th Cir. Aug. 30, 2021)**

Government's use of a filter team to address a privilege claim regarding a criminal investigation subpoena did not work a per se violation of the privilege holder's rights in a motion under Fed. R. Crim. P. 41(g).

## Idea; Disability Education

***J.N. v. Jefferson County Bd. of Educ.*, No. 19-14847 (11th Cir. Sept. 10, 2021)**

Claimant asserting a "child find" violation of IDEA (where the school fails to identify a child in need of special education services) must prove substantive educational harm, and thus it was within the district court's equitable discretion to deny compensatory educational relief.

## Qualified Immunity

***Tillis v. Brown*, No. 19-15098 (11th Cir. Sept. 7, 2021)**

Redwine led officers from the Columbus Police Department on a high-speed chase across state lines before crashing into bushes on the side of a road [in Alabama]. Officer Brown stopped behind and to the right of Redwine's car. Seconds after Officer Brown stepped out to make an arrest, the car's reverse lights turned on, and the car started backing up. Officer Brown fired 11 shots through the back windshield and side windows as the car passed near him. Then he changed magazines and fired another 10 shots. Redwine was killed, and his two passengers were injured. Held: there was no Fourth Amendment violation committed at all, because Officer Brown reasonably perceived the use of the car as a deadly weapon when the car began travelling in reverse toward his car and position and that he was entitled to use deadly force and to continue applying it until the deadly threat had been eradicated.

## Arbitration; Post-Arbitral Procedure

***McLaurin v. The Terminix International Co. LP*, No. 20-12904 (11th Cir. Sept. 17, 2021)**

After prevailing in arbitration, M. immediately filed a motion to confirm in the district court. T. responded to the district court's order to respond (within a time-certain) non-substantively, by simply stating that it intended to file a motion to vacate within the 90-day time prescribed by 9 U.S.C. § 10. At the end of the 90-day period, T. filed its motion to vacate. The district court granted the motion to confirm as being unopposed and struck the motion to vacate as being untimely. The Eleventh Circuit affirmed, holding that there was no abuse of discretion in striking the motion to vacate as untimely. The Court "recommend[ed] that, when faced with a motion to confirm filed within three months of an arbitration award, district courts enter a briefing schedule that sets simultaneous deadlines for the losing party to file an opposition to the motion to confirm, if any, and to file a motion to vacate, modify, or correct, if any. This practice will prevent similar disputes from arising in the future."

## Qualified Immunity

***Wade v. Lewis*, No. 20-11962 (11th Cir. Sept. 17, 2021)**

Jailer was entitled to qualified immunity on deliberate indifference claim arising from injury sustained by prisoner in fight with another inmate, where officer delayed several hours in sending inmate to hospital for treatment of broken bone and severed tendon while questioning occurred concerning the incident.

## FLSA; Tipped Employees

***Rafferty v. Denny's, Inc.*, No. 20-13715 (11th Cir. Sept. 15, 2021)**

Complex case concerning the "dual jobs" regulation regarding tipped employees under FLSA, found at 29 C.F.R. § 531.56. Under the regulation, when a tipped employee is actually employed in two different capacities by the employer, one occupation being tipped and the other not, the employer can use the tipped employee status only with respect to the hours employed in the tipped occupation. Material issues of fact existed concerning whether Rafferty was performing work related to her tipped job in the scope of her work, and whether she spent more than 20 percent of her time doing non-tipped functions (to which the regulations speak).

## Bankruptcy; Extension of Time for Service

***In re Cutuli*, No. 20-14515 (11th Cir. Sept. 23, 2021)**

Bankruptcy court did not abuse its discretion in extending the time under Rule 4(m) and Bankr. R. 7001 and 7004 to effect service of process of nondischargeability action on debtor and debtor's lawyer. Debtor was served within the 90-day period, but debtor's counsel was not timely served as required by Bankr. R. 7004(g) – even so, debtor had notice of the action and was not prejudiced by any delay. Expiration of the applicable statute of limitations is a permissible reason to extend the service deadline.

## Social Security

***Vivarette v CSS*, No. 20-11862 (11th Cir. Sept. 21, 2021)**

There is an apparent conflict between a limitation to simple, routine, and repetitive tasks and level 3 reasoning [under the Dictionary of Occupational Titles]. The ALJ did not address that apparent conflict, necessitating remand.

## Fourth Amendment; Over-Detention Claim

***Sosa v. Martin County*, No. 20-12781 (11th Cir. Sept. 20, 2021)**

Detainee who was detained on two separate occasions based on warrant issued for a different person stated a section 1983 Fourth Amendment claim based on the second, three-plus day detention, where the same sheriff's department had detained him previously on the warrant and had discovered the error within hours the first time.

(Continued from page 451)

**RECENT CRIMINAL DECISIONS**

# From the Alabama Supreme Court

## Rule 32

***Ex parte Self*, No. 1200431 (Ala. Sept. 10, 2021)**

Construing *Barnes v. State*, 708 So. 2d 217 (Ala. Crim. App. 1997), petitioner's claim that his sentence was rendered illegal by the circuit court's failure to sentence him as a habitual offender under Ala. Code § 13-5-9 was jurisdictional and thus not subject to preclusion under Ala. R. Crim. P. 32.2. Chief Justice Parker specially concurred, noting that the court had simply determined that a conflict existed between the opinion below and *Barnes*, and that the court of criminal appeals "remains free to reconsider *Barnes* in a future case."

# From the Alabama Court of Criminal Appeals

## Probation Revocation

***Tombs v. State*, CR-19-1013 (Ala. Crim. App. Sept. 17, 2021)**

Evidence was sufficient to support revocation. State showed defendant had access to a residence, was its sole occupant, and appeared to be selling narcotics, and the execution of a search warrant for the residence revealed cocaine and drug paraphernalia in plain view near its kitchen.

## Probation Revocation; Hearsay

***Williams v. State*, CR-20-0249 (Ala. Crim. App. Sept. 3, 2021)**

State did not produce sufficient non-hearsay evidence to support probation revocation concerning new offense; the decision to revoke probation cannot be based solely on hearsay.

## Sexual Abuse; Forcible Compulsion

***S.M.B. v. State*, CR-18-1129 (Ala. Crim. App. Sept. 3, 2021)**

State's evidence supported a YO adjudication on charge of sexual misconduct, but circuit court's adjudication regarding the charge of sexual abuse related to a different victim was improper for lack proof of forcible compulsion.

## Speedy Trial

***Moreno v. State*, CR-19-0985 (Ala. Crim. App. Sept. 3, 2021)**

Remand was necessary for evidentiary hearing regarding speedy trial violation claim under *Barker v. Wingo*, 407 U.S. 514 (1972). Circuit court had previously conducted a hearing, but it did not address the speedy trial claim or make findings regarding the *Barker* factors.

## Probable Cause; Exigent Circumstances

***Hall v. State*, CR-20-0394 (Ala. Crim. App. Sept. 3, 2021)**

Probable cause and exigent circumstances existed to support law enforcement officers' warrantless entry into the defendant's house and the subsequent seizure of the drugs discovered there. The officers verified that the defendant had been selling drugs from the house, and they smelled marijuana when they approached its front door. The defendant refused to open the door after they knocked, identified themselves, and asked him to step outside, and they heard running and movement in the back of the house.

## Mistrial; Jury Instructions

***Lewis v. State*, CR-19-0567 (Ala. Crim. App. Sept. 3, 2021)**

Circuit court's use of a hypothetical when explaining a principle of law related to personal gain in public corruption case did not warrant the drastic remedy of mistrial.

## Split Sentence

***Camp v. State*, CR-20-0326 (Ala. Crim. App. Sept. 3, 2021)**

Circuit court's original sentence (serving three on a 15-year sentence for a Class C felony conviction) was not authorized by Ala. Code § 15-18-8(b), rendering its subsequent revocation of his probation on that sentence void.

## Stalking

***Church v. City of Huntsville*, CR-20-0258 (Ala. Crim. App. Sept. 3, 2021)**

While protesting outside a women's health clinic for several months, defendant's actions toward the owner, employees, and customers of a nearby real estate business, which included screaming at them and driving her automobile onto a sidewalk to nearly hit the owner, constituted second-degree stalking under Ala. Code § 13A-6-90.1(a).

## Impersonation of Law Enforcement

***Ex parte Land*, CR-19-0947 (Ala. Crim. App. Aug. 6, 2021)**

Impersonating a peace officer under Ala. Code § 13A-10-11 is committed when one "falsely pretends to be a peace

officer and does any act in that capacity." Indictment alleged that defendant committed offense by impersonating FBI agent; statute's language does not display a legislative intent to punish the impersonation of an FBI agent or other federal peace officer.

## Closing Argument

***Jones v. State*, CR-19-0485 (Ala. Crim. App. Aug. 6, 2021)**

Among other issues in this juvenile capital murder/life without parole case, the court found no error in the prosecutor's closing argument regarding defendant's demeanor during trial. Defendant's demeanor before the jury is a legitimate subject of comment by the prosecutor, and references to that issue during closing arguments do not violate the defendant's Fifth Amendment rights.

## Capital Murder; Jury Override

***State v. Mitchell*, CR-18-0739 (Ala. Crim. App. Aug. 6, 2021)**

Circuit court erred in vacating the capital murder defendant's death sentence and ordering a new sentencing hearing. Sentencing court's comments regarding its decision to override the 10-2 jury recommendation of life-without-parole sentence merely showed that it was attempting to give appropriate weight to jury's recommendation.

## Capital Murder; Mitigating Evidence

***Peraita v. State*, CR-17-1025 (Ala. Crim. App. Aug. 6, 2021)**

Defendant, convicted of capital murder and sentenced to death, was not entitled to postconviction relief on his claim that he did not knowingly and voluntarily waive his right to present mitigation evidence to the jury at his sentencing hearing. The circuit court engaged the defendant in an extensive colloquy regarding his decision, and he was competent and fully informed regarding evidence to be presented to jury.

## Rule 404(b); Gang Affiliation

***Young v. State*, CR-17-0595 (Ala. Crim. App. Aug. 6, 2021)**

Evidence of the defendant's gang affiliation was admissible under Ala. R. Evid. 404(b) to show his motive for killing the victim. Evidence suggested defendant acted in his capacity as a gang member to handle another gang member's dispute. Fact that the public generally associates street gangs with criminal activity does not render gang evidence inadmissible. ▲

---

**PS Form 3526**

**Statement of Ownership, Management, and Circulation**
**(All Periodicals Publications Except Requester Publications)**

| 1. Publication Title | 2. Publication Number | ISSN | 3. Filing Date |
|---|---|---|---|
| ALABAMA STATE BAR/ALABAMA LAWYER (THE) | 743090 | 6096 | 10/15/2021 |

| 4. Issue Frequency | 5. Number of Issues Published Annually | 6. Annual Subscription Price |
|---|---|---|
| BI-MONTHLY IN JAN,MAR,MAY,JUL,SEP, NOV | 6 | $ 15.00 |

**7. Complete Mailing Address of Known Office of Publication**
PO BOX 671
MONTGOMERY, MONTGOMERY, AL 36101-0671

**Contact Person** MARGARET MURPHY
**Telephone** (334) 269-1515

**8. Complete Mailing Address of Headquarters or General Business Office of Publisher**
PO BOX 671
MONTGOMERY, AL 36101-0671

**9. Full Names and Complete Mailing Addresses of Publisher, Editor, and Managing Editor**

**Publisher** *(Name and complete mailing address)*
ALABAMA STATE BAR
PO BOX 671
MONTGOMERY, AL 36101-0671

**Editor** *(Name and complete mailing address)*
W GREGORY WARD
301 N LANIER AVE STE A
LANETT, AL 36863-2096

**Managing Editor** *(Name and complete mailing address)*
MARGARET MURPHY
PO BOX 671
MONTGOMERY, AL 36101-0671

**10. Owner** *(Do not leave blank. If the publication is owned by a corporation, give the name and address of the corporation immediately followed by the names and addresses of all stockholders owning or holding 1 percent or more of the total amount of stock. If not owned by a corporation, give names and addresses of the individual owners. If owned by a partnership or other unincorporated firm, give its name and address as well as those of each individual owner. If the publication is published by a nonprofit organization, give its name and address.)*

| Full Name | Complete Mailing Address |
|---|---|
| ALABAMA STATE BAR | PO BOX 671, MONTGOMERY, AL 36101-0671 |

**11. Known Bondholders, Mortgagees, and Other Security Holders Owning or Hoding 1 Percent or More of Total Amount of Bonds. Mortgages, or Other Securities. If none, check box** [X] None

| Full Name | Complete Mailing Address |
|---|---|
| | |

PS Form **3526**, September 2007 *(Page 1)* **PRIVACY NOTICE:** See our privacy policy on *www.usps.com*

| 13. Publication Title | 14. Issue Date for Circulation Data Below | |
|---|---|---|
| ALABAMA STATE BAR/ALABAMA LAWYER (THE) | 09/01/2021 | |
| **15. Extend and Nature of Circulation** | **Average No. Copies Each Issue During Preceding 12 Months** | **No. Copies of Single Issue Published Nearest to Filing Date** |
| **a. Total Numbers of Copies** *(Net press run)* | 19063 | 19260 |
| b. Paid Circulation *(By Mail and Outside the Mail)* (1) Mailed Outside County Paid Subscriptions Stated on PS Form 3541 *(include paid distribution above nominal rate, advertiser's proof copies, and exchange copies)* | 18602 | 18845 |
| (2) Mailed In-County Paid Subscriptions Stated on PS Form 3541 *(include paid distribution above nominal rate, advertiser's proof copies, and exchange copies)* | 0 | 0 |
| (3) Paid Distribution Outside the Mails Including Sales Through Dealers and Carriers, Street Vendors, Counter Sales, and Other Paid Distribution Outside USPS | 0 | 0 |
| (4) Paid Distribution by Other Classes of Mail Through the USPS *(e.g. First-Class Mail)* | 0 | 0 |
| **c. Total Paid Distribution** *(Sum of 15b (1), (2), (3), (4))* | 18602 | 18845 |
| d. Free or Nominal Rate Distribution *(By Mail and Outside the Mail)* (1) Free or Nominal Rate Outside County Copies included on PS Form 3541 | 0 | 0 |
| (2) Free or Nominal Rate In-County Copies included on PS Form 3541 | 0 | 0 |
| (3) Free or Nominal Rate Copies Mailed at Other Classes Through the USPS *(e.g. First-Class Mail)* | 0 | 0 |
| (4) Free or Nominal Rate Distribution Outside the Mail *(Carriers or other means)* | 201 | 158 |
| **e. Total Free or Nominal Rate Distribution** *(Sum of 15d (1), (2), (3), (4))* | 201 | 158 |
| **f. Total Distribution** *(Sum of 15c and 15e)* | 18803 | 19003 |
| **g. Copies not Distributed** | 260 | 257 |
| **h. Total** *(Sum of 15f and 15g)* | 19063 | 19260 |
| **i. Percent Paid** *((15c / 15f) times 100)* | 98.93 % | 99.17 % |
| **16. If total circulation includes electronic copies, report that circulation on lines below.** | | |
| **a. Paid Electronic Copies** | 0 | 0 |
| **b. Total Paid Print Copies***(Line 15C)* + **Paid Electronic Copies** | 0 | 0 |
| **c. Total Print Distribution***(Line 15F)* + **Paid Electronic Copies** | 0 | 0 |
| **d. Percent Paid***(Both Print and Electronic Copies)* | 0.00 % | 0.00 % |

[ ] **I Certify that 50% of all my distributed copies (Electronic and Print) are paid above a nominal price.**

**17. Publication of Statement of Ownership**

[X] If the publication is a general publication, publication of this statement is required. Will be printed in the 11/30/2021 issue of this publication. [ ] Publication not required.

| 18. Signature and Title of Editor, Publisher, Business Manager, or Owner | Title | Date |
|---|---|---|
| Margaret Murphy | Managing Editor | 10/15/2021 10:33:59 AM |

I certify that all information furnished on this form is true and complete. I understand that anyone who furnishes false or misleading information on this form or who omits material or information requested on the form may be subject to criminal sanctions (including fines and imprisonment) and/or civil sanctions (including civil penalties).

PS Form **3526**, September 2007 *(Page 2)* **PRIVACY NOTICE:** See our privacy policy on *www.usps.com*

# ABOUT MEMBERS, AMONG FIRMS

**Please email announcements to**
*margaret.murphy@alabar.org.*

## About Members

**Eddie Talley** announces the opening of **The Talley Law Firm LLC**, P.O. Box 6, Birmingham 35201. Phone (205) 538-3054.

## Among Firms

**Balch & Bingham** announces that **Lauren T. Jameson** rejoined the Birmingham office.

**Capell & Howard PC** of Montgomery announces that **Caitlin E. Cobb** and **Joseph R. Latham** joined as associates.

**Christian & Small LLP** of Birmingham announces that **Connor W. Herfurth** joined as an associate.

**Dentons Sirote PC** announces that **Sarah S. Johnston** joined as of counsel in the Birmingham office.

**Dominick Feld Hyde PC** of Birmingham announces that **Robert S. Vance, III** joined as an associate.

**Dothan Law Group LLC** announces that **Jacob K. Payne** joined as an associate.

**Harmon Dennis Bradshaw Inc.** announces that **David A. Bright** joined as claims advocate director and in-house counsel in the Birmingham office.

**Hill Hill Carter Franco Cole & Black PC** of Montgomery announces that **Daniel T. Seawell** joined the Fairhope office.

**J. Hardy Family Law LLC** announces that **Auna M. Bilbo** is an associate at the Birmingham office.

**Legal Services Alabama, Inc.** announces that **Timothy Kingston** is the lead attorney in the Mobile office.

**Lightfoot, Franklin & White LLC** of Birmingham announces that **Henry B. Brown, III; Meghan S. Cole; Mary E. Harrison;** and **Tatum L. Jackson** joined as associates.

**Maynard Cooper & Gale** of Birmingham announces that **Megan M. Kelly** joined as an associate.

**McGlinchey Stafford PLLC** announces that **James R. Sturdivant** joined as a partner in the Birmingham office.

The **Law Office of Jim Trey Norman, III LLC** of Prattville announces that **Cassandra N. Rhodes** joined as an associate.

**The Rose Law Firm LLC** of Birmingham announces that **Lindsay Ronilo** is a senior associate.

**Sasser, Sefton & Brown PC** of Montgomery announces that **Jack W. Pitts** joined as an associate.

**Simpson, McMahan, Glick & Burford** of Hoover announces that **Daniel S. Weber** is a partner.

**Smith, Spires, Peddy, Hamilton & Coleman PC** of Birmingham announces that **Leslie M. Hand** and **Alexander V. Makarenko** joined as associates.

**Starnes Davis Florie LLP** of Birmingham announces that **Ann P. Chapman** joined as an associate in the Mobile office.

**Stone Crosby PC** announces that **Tyler W. Thull** joined as an associate in the Daphne office.

**Thompson Coe LLP** of Austin announces that **Mary-Ellen King** joined as a partner.

**Wallace Jordan Ratliff & Brandt LLC** of Birmingham announces that **Lauren C. Brasher** and **Caroline D. McLeroy** joined as associates, and **Sean C. Pierce** joined as a member.

**Windom, Galliher & Associates** of Montgomery announces that **J. Cooper Trent, II** joined the firm. ▲

# WORKING REMOTELY?

NEED TO DEPOSE WITNESSES, EXPERTS, OR CONNECT REMOTELY FROM THE SAFETY OF YOUR HOME OFFICE? **TRY VERITEXT VIRTUAL!**

REGISTER FOR OUR COMPLIMENTARY REMOTE PROCEEDING CLE
**VERITEXT.COM/CLE**

## Proceed Safely.

Veritext's virtual technology provides a convenient solution for deposing remote witnesses domestically or internationally. Easily connect with just your web-cam-equipped laptop, computer or mobile device.

### NO TRAVEL NECESSARY
Avoid the cost and health risks of travel by remote connection.

### ACCOMMODATES UP TO 100 PARTICIPANTS
Streaming realtime video lets you view witness demeanor and body language for up to 100 participants.

### EXHIBIT SHARING
Securely view, share, annotate and digitally stamp exhibits. Easily delegate control to other participants.

### STREAMING REALTIME TEXT
Scrolling text of the deposition can be highlighted, annotated and saved, without the need for additional software.

### WORLD-CLASS SECURE PLATFORM
Built on a user-friendly platform. Our team follows secure protocols to ensure your proceeding is private.

### ON-CALL TECHNICAL SUPPORT
24/7 technical support available to assist you in participating from wherever there is an internet connection.

SCHEDULE YOUR REMOTE PROCEEDING: **calendar-al@veritext.com | (877) 373-3660**

BIRMINGHAM | DOTHAN | HUNTSVILLE | MOBILE | MONTGOMERY | TUSCALOOSA

Periodical Postage
**PAID**
Montgomery, AL


# Competitive rates on life and disability insurance thanks to you. All of you.

## Alabama State Bar members are eligible to apply for life and disability insurance at a group rate.

## Make the most of your Alabama State Bar membership.

For More Information and to Apply go to **www.isi1959.com/ASB**

© 2021 MetLife Services and Solutions, LLC
Metropolitan Life Insurance Company | 200 Park Avenue | New York, NY 10166
L0221011152[exp0223][All States][DC,GU,MP,PR,VI]

Like most insurance policies, insurance policies offered by MetLife and its affiliates contain certain exclusions, exceptions, reductions, limitations, waiting periods and terms for keeping them in force. Please contact ISI Insurance Specialists at 888-474-1959 for costs and complete details.