

THE

# ALABAMA LAWYER

JANUARY 2022 | VOLUME 83, NUMBER 1



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Alabama's First Black Lawyers**

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### On The Cover

The spider lily is a beautiful harbinger of both spring and fall. As such, its appearance always warms the heart.

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## P R E S I D E N T ' S P A G E

*Tazewell T. Shepard, III*  
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*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!*

**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

As I write this article for the January issue of *The Alabama Lawyer*, we are halfway through my term as state bar president. I want to tell you about some of what we've accomplished so far and what we can look forward to during the next six months.

You may recall that in my first and second articles, I talked quite a lot about the Golden Circle of Simon Sinek and the importance of finding the "why" of your organization. The "why" could also be described as the core mission of an organization. Mr. Sinek emphasizes how important it is to define your "why" before you start looking at how and what you do.

We watched a portion of Mr. Sinek's TED talk and discussed the "why" of the Alabama State Bar during our Executive Council retreat and our leadership meetings with leadership of the sections, committees, and task forces.

There were some interesting responses, such as "to serve the attorneys of our state," "to serve and protect the public,"

and even "to champion the truth and to protect our legal system in the state and in this country."

Once we had examined the "why" of the state bar, we moved on to discuss what the bar should do and how the bar should do it. We considered the broad spectrum of duties and opportunities, including legal issue discussion groups, member discount benefits, CLE events, mentoring young lawyers, and cooperating with local bars on events around the state.

Then we hit a pothole in the road. Because of the loss of our executive director, assistant executive director, and director of programs within the last year and a half, we found that there were large lapses of institutional knowledge that would have been very useful. It is hard to call a meeting or plan an event when there is no list of necessary participants and no one to ask how it was done in previous years.

However, I am proud to report that our executive director, Terri Lovell, and



the bar staff have done an outstanding job in carrying out every event and meeting this fall and in organizing the records of the state bar to memorialize all the necessary institutional information for the future. We are in so much better shape now than we were in August, to make internal improvements or to start new projects.

So, in considering what the state bar should do and how it should do it, I want to tell you about another author and speaker, Jim Collins. Mr. Collins is a former member of the faculty of the business school at Stanford University and has written several excellent books, including *Built to Last* and *Good to Great*.

It was while reading one of Mr. Collins's books that I first encountered the idea of an organization as a bus. First, you need to get the right people on the bus. Second, you need to put those people in the right seats. And third, you all need to reach agreement as a group on where the bus should go.

I think that the state bar has accomplished these goals very well. I spent many, many hours interviewing every person that I appointed as a chair or vice chair of the numerous committees and task forces of the state bar. So far, the leaders who have been active have performed very well. At the same time, Terri Lovell has organized and focused the efforts of the staff in such a way that we can be confident in their hard work and support for the mission and the goals of the state bar.

However, Mr. Collins makes another great point that applies very well to our state bar. He has written that there is a significant difference between success of a for-profit company and success of a nonprofit entity. He rejects the notion that to be successful, a nonprofit should be "run more like a business." This is significant to our efforts because although the Alabama State Bar was established by an act of the Alabama Legislature, it operates pretty much like a nonprofit organization.

The for-profit companies on the stock exchange define success in various ways such as market share and customer product appeal, but ultimately

their goal is to make money and to add monetary value to their organization.

By contrast, the success of a nonprofit entity is not defined by how much money it makes, but whether it becomes a perpetual generator of exciting ideas, engaged volunteers, and new programs.

That is where we are now with the Alabama State Bar. We are moving beyond the basics of paying the light bill and managing the bar exam, to becoming

ing a perpetual resource of what we need for superior performance for our members and for the general public.

Some of the innovations that we have done and some of the things we have brought back since Covid-19 include live-streaming the meetings of the board of bar commissioners, bringing students from the law schools to these meetings, and inviting a special guest to open each BBC meeting with their greeting and remarks. The first such



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*(Continued from page 9)*

guest was Governor Kay Ivey, the second guest was Chief Justice Tom Parker, and the third guest will be Speaker of the House Mac McCutcheon.

We have also worked on improving the Leaders Forum for the chairs of the state bar's sections, committees, and task forces with leadership tips, new staff videos, and a live Q-and-A session with the executive director and the president. We are planning a Leaders Forum with the local bar presidents around the state in January.

Another innovation that has done well is my designation of a theme for each month of the year as president. The response and cooperation from state bar sections, committees, task forces, and local bars has been very good. I hope you are looking forward

with me to the themes in 2022, including January (human trafficking), February (diversity and inclusion) and March (women in the law).

Looking forward to the next six months, there are numerous projects in the works. One of my major goals has been to reestablish law practice management as a major department and function of the state bar. I am very pleased to say that, after an extensive search, the state bar has hired Chris Colee, who will be a terrific lecturer, writer, teacher, and coach for what we did not learn in law school – how to run your law firm as an efficient business.

Before I complete this article, I want to return to the theme I've mentioned in previous articles and speeches that treating everyone, including the other

lawyers in a court battle or in a tough negotiation, with kindness and courtesy will make you a better lawyer or a better judge.

Several people have told me that my friend, former state bar president Cole Portis, once said to them, "I know Taze will do the right thing." Cole's comments really struck a chord to me and still serve as one of the big motivators for everything I do, including my service as your state bar president.

It is appropriate, then, that I conclude with an excellent quote from Mark Twain: "Do the right thing. It will gratify some people and astonish the rest."

Isn't that great? Let it motivate us today to do the right thing so that we will gratify some people and astonish the rest! ▲

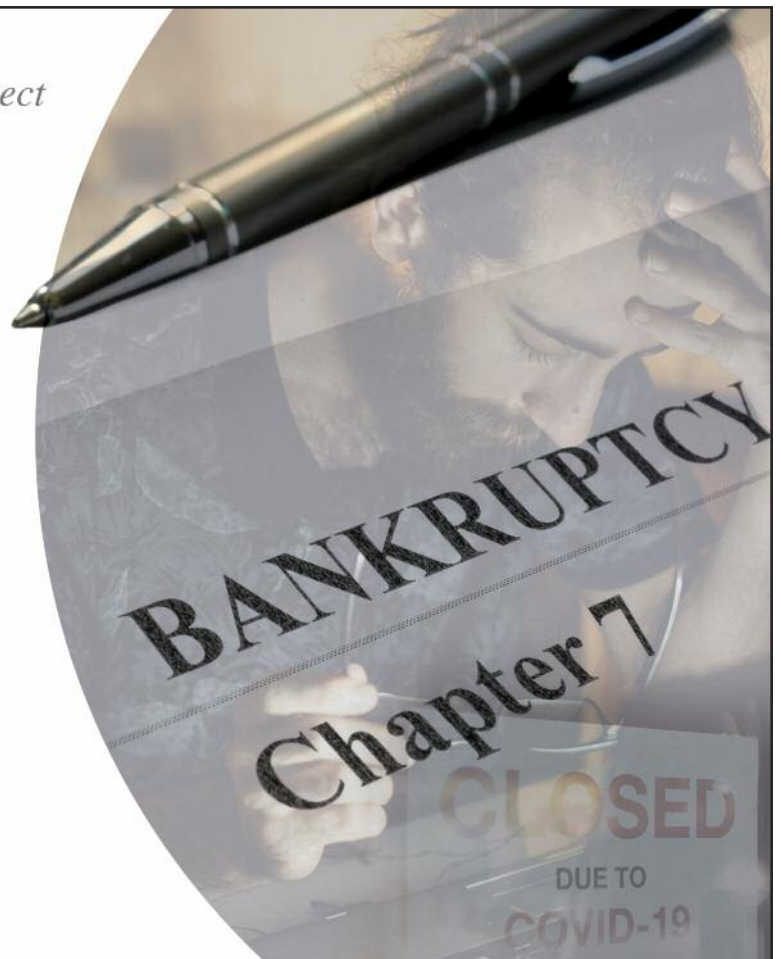
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## EXECUTIVE DIRECTOR'S REPORT

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



As we enter this year with a renewed sense of purpose, the goals of increased and improved collaboration with local bars, practice area associations, and organizations serving lawyers and providing access to justice to Alabama citizens moves to the forefront. Shared commitment among our members for continuous improvement is one of the greatest attributes of the Alabama State Bar. Now, more than ever, the people we serve on a daily basis need lawyers.

How we can best support our members for the challenges ahead is a constant motivator for me. Our membership is now over 19,000 and with that record number, we must be willing to listen, grow, and evolve to meet the needs of our changing world while continuing to honor the profession we all love.

Technology and communication have become critical to these changes as we learn new ways to support and serve our members and the public. Much time and energy are being devoted to providing opportunities for education and development of all lawyers, young and old. Above all, we have lawyer-volunteers with a shared commitment to enrich your practice and personal growth. Our membership is more diverse and engaged, a united group of changemakers and vision-casters. Every day, every conversation, every meeting is driving us to be better.

The continued discovery of what makes us stronger as a legal profession is stemming from the ongoing collaboration of lawyers all over this state. With the challenges we have faced and conquered, we forge ahead into 2022 with renewed optimism. ▲



## EDITOR'S CORNER

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

# Welcome to the January 2022 Edition of *The Alabama Lawyer*

I was stopped by a friend while we were in a courthouse this week – I get stopped in courthouses, on sidewalks, lots of places – to talk about our magazine. He wanted to comment on my column. He said that it seems that I'm having a good time, and said he detected joy in my writing.

That may be the biggest compliment I've gotten. He is right; I love this job, and I still pinch myself that I get to do it.

Thanks for the opportunity. And thanks for all of the help, comments, suggestions, that I get. I even got an email this week asking me to change someone's delivery address. I did, too.

Now on to this edition.

Have you ever wondered who was the first black lawyer in Alabama? John Browning is a visiting professor at Jones Law School and a former justice on the Texas Fifth Circuit Court of Appeals. In "Blazing the Trail: Alabama's First Black Lawyers," he not only tells us who holds that position, but he also gives us quite the tour of early black Alabama lawyers (page 20). I found it fascinating, and I was pleasantly surprised on a lot of levels.

Tim Lewis is our Alabama State Law librarian, and a great fellow, a better researcher, and he gets credited for helping with that article. Did I ever mention that Tim and I were law school classmates? He lived in the same university-owned complex I lived in during law school, and I had to pay my rent to him every month. Alabama could not be

served by a better state law librarian. He gets far too little credit for all he does.

I thought the last annual meeting of the state bar was flush with good speakers. Heather Meadows may have been the best. Heather works in the field of internet technology, and when she's talking about her topic, she's a skilled raconteur. In "Keeping Your Firm Cyber-Safe: Solutions Born of Experience" (page 28), her inside scoop on how cyber criminals attack and then blackmail some of the biggest companies in the world is filled with lessons for us all. And all along the way she spoons up some help so these bad things won't happen to us.

Cooper Shattuck and Harold Stephens joined forces to give us a well-written, interesting article about how to handle mediations – hearings of any kind, really – on Zoom or other similar media. Their article title "We're Not in Kansas Anymore – Mediating Tips for Mediators and Lawyers in the Land of Zoom" implies a catchy *Wizard of Oz* theme. They keep that promise, and it is chock full of practical suggestions. Read it, if only for the pleasure of seeing how an instructional piece can be written in an entertaining way (page 34).

So, enjoy the articles. Email me at [wgward@mindspring.com](mailto:wgward@mindspring.com) if you have questions or comments or want to write. Come join the fun. We are always looking for our next group of excellent writers.

And just wait till you see what we have for you in March. ▲



## MEMORIALS

▲ Suzanne D. Paulson

▲ James C. Stivender

# Suzanne D. Paulson

Words generally fail us as we try to convey the essence of this life lost on September 9, 2021. Born December 17, 1950 in Detroit, Michigan, Suzanne Paulson was the epitome of grace and compassion in all aspects of her life and was always the consummate professional in her practice of law.

After graduating from Michigan State University in 1973, Suzanne moved to Birmingham to attend Cumberland School of Law, where, in 1974, she was recruited as a law clerk by the Estate and Gift Tax Division of the Internal Revenue Service. After graduating Cumberland, Suzanne was admitted to the Alabama bar in 1976. She then served as Estate Tax Attorney in the Birmingham office of the IRS until 1980, when she was promoted to Senior Estate Tax Attorney. Suzanne would remain in that position at the IRS for the next 20 years until 2000, when she left for private practice and joined the law firm of Leitman, Siegal & Payne, P.C. where she practiced in estate planning and administration for the remainder of her life. During her long and accomplished career, Suzanne was a well-known member of the estate-planning and administration bar and became the go-to professional for many accountants whose clients needed her help planning and administering their estates and the estates of their loved ones.

The law was Suzanne's constant as she worked long and diligent hours for her clients and cared deeply about providing the best outcomes for them. As her relationships grew, more often than not, clients would refer to Suzanne not only as their lawyer, but also as their friend. She was an empathetic listener, and lawyers, accountants, and financial planners from all around Alabama also sought her advice and counsel. Suzanne had a warm heart and inviting spirit, and it was the blending of her technical knowledge with these "down-to-earth" qualities that made Suzanne invaluable to many of her clients, colleagues, and friends.

Suzanne's contributions to the bar and community were also extensive, including leadership in some of the most effective May Day celebrations of the Birmingham Bar Association and important roles on the Alabama Planned Giving Council and Samford University Professional Advisors Council. She was also a dedicated member of Birmingham's Estate Planning Council and the Women's Section of the Birmingham Bar.



*(Continued from page 13)*

When Suzanne wasn't practicing law, it was a safe bet that she was either reading a good book, enjoying one of her favorite television series, or socializing with her friends and colleagues at one of her favored haunts, where one could often find her stationed at her usual seat at the bar, waiting for her take-out while toiling over a client's file. Never shy about her political views, Suzanne was a keen student of current events and, until the end, was passionate about the future of this country. Suzanne often mourned the loss of civility in political discourse and was always willing to engage in a congenial debate. Even during these deliberations, however, Suzanne's quick wit, good humor, and infectious laugh charmed even her most ardent opponents.

Suzanne truly cared for others, and her compassion was reflected in the way she treated her clients, friends, and colleagues. Suzanne was kind to everyone, and her humanity was blind to gender, race, orientation, and all the other diverse individualities that she felt made this world a more interesting place.

To all who knew her, we lost a dear friend, confidant, and valuable collaborator. She will be greatly missed, and we are all fortunate and very thankful that our lives crossed paths with Suzanne's life, because it was a blessing to know her.

—Charles H. Moses, III and James H. Wilson, Birmingham

## James C. Stivender

Ninety-seven years of exemplary professional and personal service ended on October 4, 2021, when James Stivender answered the summons to heavenly service. Preceded in death by his parents, Dr. James Stivender and Nancy Victoria McEachern Stivender, and his first wife, Rebecca McCarley Stivender, he is survived by his wife, Stella Stivender; children John Stivender (Landon), Paul Stivender (Martha), Debbie Burt (Hunter), and ASB member Wally Walker (Molly); grandchildren Rebecca Stivender, Madeline Stivender Herndon (Stewart), Walton Stivender, Walker Woodall, Anna Claire Woodall, Sara Walker Spruiell (Harrison), and Caroline Walker.



I had the privilege of working closely for, and with, this remarkable man for more than 20 years. Long after his retirement, I continued to rely on his advice and counsel. Although he and I had a very close personal and professional relationship, as a member of my parents' generation, he was, and always will be, Mr. Stivender to me.

After being graduated from Howard College (now Samford University) and the University of Alabama School of Law, he began his legal career in Etowah County in 1951 as an assistant district attorney. He served as a municipal judge and became a consummate civil litigator. Among his many activities he served as local bar president and was recognized as "Lawyer of the Year" and as a "Pillar of the Bar."

As a young lawyer and associate, I quickly learned when he asked if I would help him in a "little" case, that meant it might involve a question of whether a railroad was correctly located, claims of bank fraud, or medical malpractice.

He was a model of respect and civility, both of which were manifest in his advocacy style. On one occasion when he had prevailed for the defendant, the plaintiff's wife approached him after the trial and thanked him for being so kind to the plaintiff. He was renowned for handling evidentiary objections in such a manner that opposing counsel wanted to apologize. Never failing to tell a jury that he was "proud to represent his client," he personalized every trial. He never gloated in victory, but viewed the infrequent adverse jury verdict as a personal rebuke. Long before mediation became stylish, Mr. Stivender was sought out for his seamless handling in resolving property and church disputes.

He was an exceptional mentor, not only allowing me to "carry his books," but giving me an opportunity to make opening statements, examine witnesses and participate in closing arguments.

Mr. Stivender was much more than a great lawyer. He took tremendous pride in the fact that he served his country during World War II in the Army Air Corps with 35 combat missions over Germany as a B-17 bomber crew member. From his arrival in Gadsden in 1951, he was a dedicated member of the First Baptist Church of Gadsden where he served as a deacon, chaired various committees, and taught Sunday school for 64 years to a class that bears his name. He proudly served for 62 years and became a life trustee of Samford University. Meanwhile, he was president and a life member of the Gadsden Kiwanis Club, captain of the Gadsden Quarterback Club, president of the Gadsden Country Club, and officer of the YMCA and the Boys Club. He served on the board of directors for Compass Bank for 32 years. As a sports enthusiast, he occasionally found time for a round of golf. Early in his career he refereed high school football, which he described as "one of the hardest tasks he had ever undertaken."

Perhaps the best epitaph came from a fellow attorney when she learned of Mr. Stivender's passing: "Jim Stivender represented everything a good lawyer should be." ▲

—F. Michael Haney, Gadsden

**Anderson, Mary Amelia**  
Montgomery  
Admitted: September 26, 1988  
Died: October 13, 2021

**Bell, Vicki Ann**  
Huntsville  
Admitted: April 29, 1991  
Died: October 4, 2021

**Hamilton, Palmer Clarkson**  
Mobile  
Admitted: May 3, 1974  
Died: October 15, 2021

**Hasser, James Eugene, Jr.**  
Mobile  
Admitted: September 24, 1982  
Died: September 24, 2021

**Jones, Keith Samuel**  
Taft, TN  
Admitted: September 29, 1980  
Died: September 5, 2021

**McMullan, James Michael**  
Birmingham  
Admitted: September 27, 1996  
Died: September 26, 2021

**Potter, Ernest Luther, Jr.**  
Huntsville  
Admitted: January 1, 1963  
Died: August 27, 2021

**Rainey, Lloyd Bratton, III**  
Mobile  
Admitted: May 1, 1989  
Died: September 4, 2021

**Roberts, James Edward**  
Birmingham  
Admitted: September 4, 1969  
Died: September 4, 2021

**Ross, Mary Makima**  
Huntsville  
Admitted: September 29, 2006  
Died: February 15, 2021

**Smith, Rufus Randolph, Jr.**  
Dothan  
Admitted: November 19, 1974  
Died: September 12, 2021

**Street, Phillip Hamilton**  
Atlanta  
Admitted: September 26, 1986  
Died: October 4, 2021

**Turner, Robert Lee**  
Montgomery  
Admitted: May 1, 1989  
Died: August 8, 2021

**Walker, Robert William**  
Union Grove  
Admitted: January 10, 2013  
Died: May 15, 2021

**Williams, Craig Lamar**  
Tuscaloosa  
Admitted: September 26, 1978  
Died: October 13, 2021

**Winters, Raymond Howard**  
Myrtle Beach  
Admitted: September 19, 1998  
Died: August 16, 2021



## IMPORTANT NOTICES

- ▲ **Alabama Lawyers Hall of Fame**
- ▲ **Judicial Award of Merit**
- ▲ **J. Anthony “Tony” McLain Professionalism Award**
- ▲ **William D. “Bill” Scruggs, Jr. Service to the Bar Award**
- ▲ **ASB Women’s Section Awards**
- ▲ **Notice of Election and Electronic Balloting**

# Alabama Lawyers Hall of Fame

May is traditionally the month when new members are inducted into the Alabama Lawyers Hall of Fame, which is located at the state Judicial Building. The idea for a hall of fame first appeared in 2000 when Montgomery attorney Terry Brown wrote state bar President Sam Rumore with a proposal that the former supreme court building, adjacent to the state bar building and vacant at that time, should be turned into a museum memorializing the many great lawyers in the history of Alabama.

The implementation of the idea of an Alabama Lawyers Hall of Fame originated during the term of state bar President Fred Gray. He appointed a task force to study the concept, set up guidelines, and then provide a recommendation to the Board of Bar Commissioners. The committee report was approved in 2003 and the first induction took place for the year 2004.

A 12-member selection committee consisting of the immediate past-president of the Alabama State Bar, a member appointed by the chief justice, one member appointed by each of the three presiding federal district court judges of Alabama, four members appointed by the Board of Bar Commissioners, the director of the Alabama Department of Archives and History, the chair of the Alabama Bench and Bar Historical Society, and the executive secretary of the Alabama State Bar meets annually to consider the nominees and to make selections for induction.

Inductees to the Alabama Lawyers Hall of Fame must have had a distinguished career in the law. This could be demonstrated through many different forms of achievement – leadership, service, mentorship, political courage, or professional success. Each inductee must have been deceased at least two years at the time of their selection. Also, for each year, at least one of the inductees must have been deceased a minimum of 100 years to give due recognition to historic figures as well as the more recent lawyers of the state.



The selection committee actively solicits suggestions from members of the bar and the general public for the nomination of inductees. We need nominations of historic figures as well as present-day lawyers for consideration. Great lawyers cannot be chosen if they have not been nominated. Nominations can be made throughout the year by downloading the nomination form from the bar's website and submitting the requested information. Plaques commemorating the inductees are located in the lower rotunda of the Judicial Building and profiles of all inductees are found at [www.alabar.org](http://www.alabar.org).

Download an application form at <https://www.alabar.org/assets/uploads/2019/01/Lawyers-Hall-of-Fame-Nomination-Form-Fillable.pdf> and mail the completed form to:

Sam Rumore  
Alabama Lawyers Hall of Fame  
P.O. Box 671  
Montgomery, AL 36101-0671

**The deadline for submission is March 1.**

## Judicial Award of Merit

The Alabama State Bar Board of Bar Commissioners will receive nominations for the state bar's Judicial Award of Merit through **March 15**. Nominations should be mailed to:

Terri B. Lovell  
Secretary  
P.O. Box 671  
Montgomery, AL 36101-0671

The Judicial Award of Merit was established in 1987. The award is not necessarily an annual award. It must be presented to a judge who is not retired, whether state or federal court, trial or appellate, who is determined to have contributed significantly to the administration of justice in Alabama. The recipient is presented with a crystal gavel bearing the state bar seal and the year of presentation. The award will be presented during the Alabama State Bar's Annual Meeting.

Nominations are considered by a three-member committee appointed by the president of the state bar, which then makes a recommendation to the board of bar commissioners with respect to a nominee or whether the award should be presented in any given year.

Nominations should include a detailed biographical profile of the nominee and a narrative outlining the significant contribution(s) the nominee has made to the administration of justice. Nominations may be supported with letters of endorsement.

## J. Anthony "Tony" McLain Professionalism Award

The Board of Bar Commissioners of the Alabama State Bar will receive nominations for the J. Anthony "Tony" McLain Professionalism Award through **March 15**. Nominations should be prepared on the appropriate nomination form available at [www.alabar.org](http://www.alabar.org) and mailed to:

Terri B. Lovell  
Secretary  
P.O. Box 671  
Montgomery, AL 36101-0671

The purpose of the J. Anthony "Tony" McLain Professionalism Award is to honor the leadership of Tony McLain and to encourage the emulation of his deep devotion to professionalism and service to the Alabama State Bar by recognizing outstanding, long-term, and distinguished service in the advancement of professionalism by living members of the Alabama State Bar.

Nominations are considered by a five-member committee which makes a recommendation to the board of bar commissioners with respect to a nominee or whether the award should be presented in any given year.

## William D. "Bill" Scruggs, Jr. Service To the Bar Award

The Board of Bar Commissioners of the Alabama State Bar will receive nominations for the William D. "Bill" Scruggs, Jr. Service to the Bar Award through **March 15**. Nominations should be prepared on the appropriate nomination form available at [www.alabar.org](http://www.alabar.org) and mailed to:

Terri B. Lovell  
Secretary  
P.O. Box 671  
Montgomery, AL 36101-0671

The Bill Scruggs Service to the Bar Award was established in 2002 to honor the memory of and accomplishments on behalf of the bar of former state bar President Bill Scruggs. The award is not necessarily an annual award. It must be

(Continued from page 17)

presented in recognition of outstanding and long-term service by living members of the bar of this state to the Alabama State Bar as an organization.

Nominations are considered by a five-member committee which makes a recommendation to the board of bar commissioners with respect to a nominee or whether the award should be presented in any given year.

## ASB Women's Section Awards

The Women's Section of the Alabama State Bar is accepting nominations for the following awards:

### Maud McLure Kelly Award

This award is named for the first woman admitted to practice law in Alabama and is presented each year to a female attorney who has made a lasting impact on the legal profession and who has been a great pioneer and leader in Alabama. The Women's Section is honored to present an award named after a woman whose commitment to women's rights was and continues to be an inspiration for all women in the state. The award will be presented at the Maud McLure Kelly Luncheon at the Alabama State Bar Annual Meeting.

### Susan Bevell Livingston Leadership Award

This Women's Section award is in memory of Susan Bevell Livingston, who practiced at Balch & Bingham. The recipient of this award must demonstrate a continual commitment to those around her as a mentor, a sustained level of leadership throughout her career, and a commitment to her community in which she practices, such as, but not limited to, bar-related activities, community service and/or activities which benefit women in the legal field and/or in her community. The candidate must be or have been in good standing with the Alabama State Bar and have at least 10 years of cumulative practice in the field of law. This award may be given posthumously. This award will be presented at a special reception.

Submission deadline is **March 15**.

Please submit your nominations to Sherri Phillips at [sherriep@sasserlawfirm.com](mailto:sherriep@sasserlawfirm.com). Your submission should include the candidate's name and contact information, the candidate's current CV, and any letters of recommendations. If a nomination intends to use letters of recommendation previously submitted, please note your intentions.

## Notice of Election and Electronic Balloting

Notice is given here pursuant to the Alabama State Bar Rules Governing Election and Selection of President-elect and Board of Bar Commissioners that the election of these officers will be held beginning Monday, May 16, 2022, and ending Friday, May 20, 2022.

On the third Monday in May (May 16, 2022), members will be notified by email with instructions for accessing an electronic ballot. Members who wish to vote by paper ballot should notify the secretary in writing on or before the first Friday in May (May 6, 2022) requesting a paper ballot. A single written request will be sufficient for all elections, including run-offs and contested president-elect races during this election cycle. All ballots (paper and electronic) must be voted and received by the Alabama State Bar by 5:00 p.m. on the Friday (May 20, 2022) immediately following the opening of the election.

### Nomination and Election of President-Elect

Candidates for the office of president-elect shall be members in good standing of the Alabama State Bar as of February 1, 2022 and shall possess a current privilege license or special membership. Candidates must be nominated by petition of at least 25 Alabama State Bar members in good standing. Such petitions must be filed with the secretary of the Alabama State Bar no later than 5:00 p.m. on February 1, 2022.

### Nomination and Election of Board of Bar Commissioners

Bar commissioners will be elected by those lawyers with their principal offices in the following circuits:

- 1<sup>st</sup> Judicial Circuit
- 3<sup>rd</sup> Judicial Circuit
- 5<sup>th</sup> Judicial Circuit
- 6<sup>th</sup> Judicial Circuit, Place 1
- 7<sup>th</sup> Judicial Circuit
- 10<sup>th</sup> Judicial Circuit, Place 3
- 10<sup>th</sup> Judicial Circuit, Place 6
- 13<sup>th</sup> Judicial Circuit, Place 3
- 13<sup>th</sup> Judicial Circuit, Place 4
- 14<sup>th</sup> Judicial Circuit
- 15<sup>th</sup> Judicial Circuit, Place 1

15<sup>th</sup> Judicial Circuit, Place 3  
 23<sup>rd</sup> Judicial Circuit, Place 3  
 25<sup>th</sup> Judicial Circuit  
 26<sup>th</sup> Judicial Circuit  
 28<sup>th</sup> Judicial Circuit, Place 1  
 32<sup>nd</sup> Judicial Circuit  
 37<sup>th</sup> Judicial Circuit

Additional commissioners will be elected for each 300 members of the state bar with principal offices therein. New commissioner positions for these and the remaining circuits will be determined by a census on March 1, 2022 and vacancies certified by the secretary no later than March 15, 2022. All terms will be for three years.

A candidate for commissioner may be nominated by petition bearing the signatures of five members in good standing with principal offices in the circuit in which the election will be held or by the candidate's written declaration of candidacy. Nomination forms and/or declarations of candidacy must be received by the secretary no later than 5:00 p.m. on the last Friday in April (April 29, 2022).

### Election of At-Large Commissioners

At-large commissioners will be elected for the following place numbers: 2, 5, and 8. Petitions for these positions, which are elected by the board of bar commissioners, are due by April 1, 2022.

### Submission of Nominations

Nomination forms, declaration of candidacy forms, and applications for at-large commissioner positions must be submitted by the appropriate deadline and addressed to:

Terri B. Lovell  
 Secretary  
 P.O. Box 671  
 Montgomery, AL 36101-0671

These forms may also be sent by email to [elections@alabar.org](mailto:elections@alabar.org) or by fax to (334) 261-6310.

It is the candidate's responsibility to ensure the secretary receives the nomination form by the deadline.

Election rules and petitions for all positions are available at <https://www.alabar.org/about/board-of-bar-commissioners/election-information/>. ▲

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 (334) 567-2545

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

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

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

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

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

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

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

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

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

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

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

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

**Hon. Ron Storey**  
[ron@wiregrasselderlaw.com](mailto:ron@wiregrasselderlaw.com)  
 (334) 793-7635

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

**Hon. J. Scott Vowell**  
[jsv@scottvowell.com](mailto:jsv@scottvowell.com)  
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# *Blazing the Trail:* Alabama's First Black Lawyers

*By John G. Browning*

The history of black attorneys in Alabama is a rich one,

particularly their contributions during the civil rights struggle. But those attorneys, just like the black legal pioneers in recent decades who rose to seats on the Alabama Supreme Court, the federal bench, and at the helm of the Alabama Bar, stood on the shoulders of giants. Yet, despite their historical significance, the stories of this state's trailblazing black lawyers have gone largely untold. Even purportedly comprehensive histories of the legal profession in Alabama have overlooked these attorneys, who overcame incredible adversity just to become lawyers

and whose lives were endangered simply by their choice of occupation. This article hopes to fill this void in scholarship by shining a light on this chapter in history.

Black attorney candidates encountered difficulties entering the legal profession, even though standards were notoriously low. With formal legal education a rarity through much of the 19<sup>th</sup> century, most aspiring lawyers (white or black) "read the law" in the offices of an established member of the bar. Beginning in 1819, lawyers wishing to practice before the state supreme court were required to stand for an unspecified examination, and just two years later, the legislature enacted a law that "any two" circuit judges could license a candidate to practice in the circuit

or county courts.<sup>1</sup> By 1852, the Alabama Code allowed any circuit or chancery judge to issue licenses to practice in trial courts.<sup>2</sup> This code also specified that attorney candidates must be white men, aged 21 years or older, who would adhere to certain ethical obligations to be honest in court, be courteous to opponents, and be friendly to the “cause of the defenseless or oppressed.”<sup>3</sup> Practically speaking, admission requirements remained what one scholar has described as “indulgent,” yet as late as 1867, the Alabama Code still limited eligibility to “[a]ny white male.”<sup>4</sup> In 1879, a report given to the fledgling Alabama State Bar by its Standing Committee on Legal Education and Admission to the Bar expressed concern that the state’s trial judges historically licensed a number of “persons so little prepared for the discharge of professional duties.”<sup>5</sup>

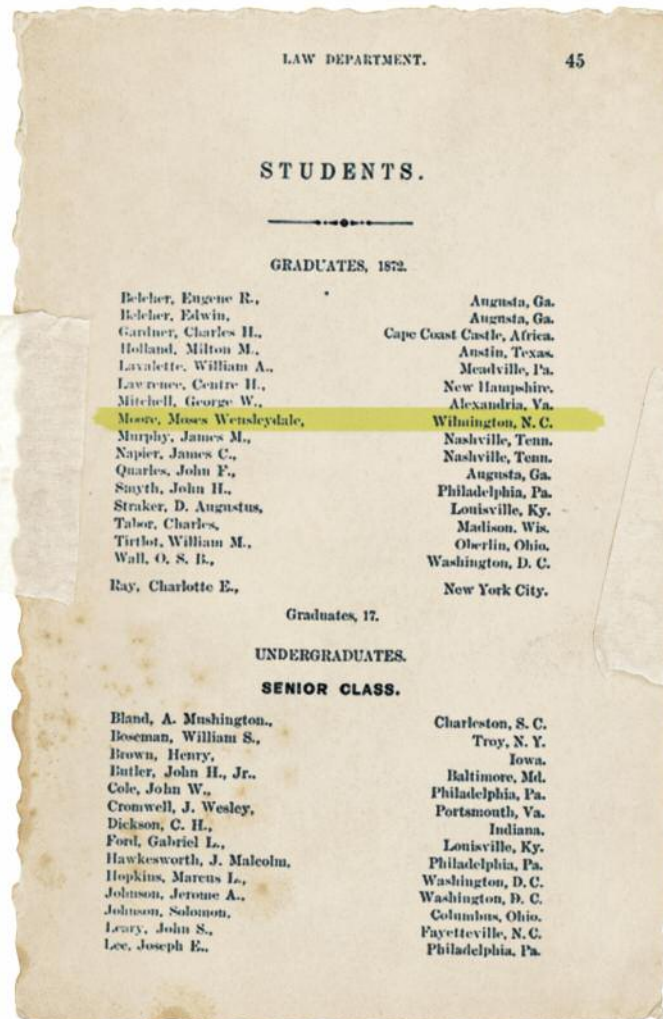
Answering the question of who the state’s first black lawyer was requires untangling some of history’s mysterious threads. One possible candidate is John Carraway, whose life story seems fashioned by a Hollywood screenwriter. Born enslaved in New Bern, North Carolina to white planter Charles Carraway and an unidentified slave mother, Carraway was purportedly freed under the terms of his father’s will, but freed himself in the early 1850s in fear of the manumission being challenged by white relatives.<sup>6</sup> Escaping to Brooklyn, New York, Carraway worked as a tailor, then

as a seaman, and ultimately as an equal rights activist. After the Civil War broke out, Carraway volunteered for the Fifty-Fourth Massachusetts Regiment (later immortalized in the movie “Glory”). While his service was brief due to health issues, Carraway was credited with writing a popular song

*tionalist*. He also became active in politics, serving as a delegate to the Alabama Constitutional Convention in 1867,<sup>8</sup> as a Mobile alderman in 1868, and as a member of the Alabama House during the 1868 and 1869–1870 sessions.<sup>9</sup> But early in 1870, word had begun to spread that Carraway had added a new title—attorney. As an article in the *Chicago Legal News* described it, Carraway was admitted before Judge James Q. Smith in the Circuit Court of Montgomery County, on the motion of county solicitor John G. Stokes.<sup>10</sup> The paper called it “the first instance of the admission of a person of color to the Bar of Alabama,” noting that while the attorney admission statute still excluded anyone who wasn’t a white male, Judge Smith had declared that provision to be in conflict with federal law and expressed “astonishment that such a law should be permitted to remain unrepealed until the present time.”<sup>11</sup> Calling Carraway “one of the most intelligent colored men in Alabama,” the journal predicted for him “a career of usefulness as a member of the legal profession.”<sup>12</sup>

But others cast doubt on Carraway’s admission. A

Montgomery attorney named Hamilton McIntyre published a letter to the editor in the *Montgomery Advertiser* disputing Carraway’s admission, citing his “total ignorance of the law and the English language.”<sup>13</sup> Carraway himself didn’t help matters in a rambling, defensive letter of his own to the *Advertiser*, claiming to have been



A page from the graduation program for Howard University Law School's inaugural graduating classes (1871 and 1872 combined), reflecting Moses Moore's name

inspired by his service, “Colored Volunteers,” which told black soldiers to “never mind the past, we’ve had a hard road to travel but our time is come at last.”<sup>7</sup>

With the war’s end, Carraway moved to Mobile to live with his mother, and he became the assistant editor of a newspaper for the black community, the *Mobile Na-*

ill when the original examination was scheduled and that the entire examining committee was not present. Nevertheless, Carraway maintained that Judge Smith “was satisfied in regards to my qualifications and character,” and that he intended, upon beginning the practice of law, “to let my clients, and the public, judge whether I am totally incompetent or not.”<sup>14</sup>

Unfortunately, just as nothing is known about Carraway’s legal education, nothing is known about whether his prediction for his practice came true, since Carraway did not live much longer. On April 20, 1871, the *Montgomery Advertiser* reprinted an announcement in the *Mobile Register* of Carraway’s death. So, was Carraway Alabama’s first black lawyer? It seems doubtful. But a far more compelling case can be made for Moses Wensleydale Moore, who was admitted in Mobile in 1871.

Moore was born on February 15, 1841 in Demerara, British Guiana (today the nation of Guyana) and so was a free man and citizen of the United Kingdom.<sup>15</sup> He was evidently educated, since he listed his profession as schoolteacher when he sailed from London to the United States in 1867, arriving at the Port of New York on October 19. While his activities for the first 16 months in the United States are a mystery, we do know that Moore was among the first students at Howard University School of Law when it opened its doors in early 1869. The university itself was founded only two years earlier to provide educational opportunities for blacks. In 1868, Howard hired John Mercer Langston (one of the first black lawyers in the country) as its inaugural law dean.<sup>16</sup> Langston designed a two-year curriculum that was

rigorous as any other law school, with law students assigned treatises like Blackstone’s *Commentaries* and Kent’s *Commentaries*. All instructors used the lecture system, and students were also required to participate in moot court and complete

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## But a far more compelling case can be made for Moses Wensleydale Moore, who was admitted in Mobile in 1871.

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a series of forensic exercises and a dissertation prior to graduation. Because all six students in the first class worked full-time, classes were held during the evening at the home and offices of faculty (the school didn’t have classrooms right away at Howard).<sup>17</sup>

Moore and his fellow law students learned important lessons, not just about doctrine but also about the hostile environment they would face as pioneering black lawyers. One professor, Albert Gallatin Riddle, cautioned the students to avoid small towns, to be prepared to hang out their own shingles, and to anticipate hostile juries. Most importantly, he admonished Moore and his fellow students that they “must not only equal the average white competitor; [they] must surpass them . . . [for the] world has already decided that a colored man who is no better than a white man is nobody at all.”<sup>18</sup> It was a reminder echoed by the words of one black newspaper on the occasion of Howard

Law School’s first graduating class; young men like Moore would “go forth into the world . . . to give to the false and hate-inspired charge of the black man’s natural inferiority a living, forcible, and effective denial.”<sup>19</sup>

Like the rest of his classmates, Moore was first admitted to the District of Columbia bar after graduating in early 1871. He then made his way to Mobile, where he presented himself for examination for admission to the Alabama bar. Circuit Judge John Elliott asked Lyman Gibbons, a retired justice of the Alabama Supreme Court, to test the young Howard graduate. As the *Mobile Daily Register* reported:

. . . [the] examination was conducted in open court. A great deal of interest was manifested on the part of the bar . . . from the fact of the applicant’s color. He passed a very satisfactory examination, and an order was made by the Court admitting him to the bar. This is the first negro admitted to the bar in Mobile.<sup>20</sup>

Four months later, Moses Moore was living in Selma. He sought admission to practice before the Alabama Supreme Court, and as the minutes of the supreme court reflect, Moore was admitted on January 4, 1872. Moore’s sponsor was Patrick Ragland, then serving as the court’s marshal and librarian. The court’s record noted that Moore was “of lawful age and of good moral character” and that he had been admitted to practice law in the Supreme Court of the District of Columbia and pronounced him fit to be “licensed as an attorney of law and solicitor in Chancery in all the courts of law and equity in this state . . .”<sup>21</sup> The *Montgomery Daily State Journal*

welcomed Moore's admission as initiating "an age of progress, [for] ten years ago who would have believed that a Negro was capable of learning the law sufficiently to practice in the Supreme Court."<sup>22</sup>

Little is known of Moore's practice in Alabama. What the historical record does reveal is that by June 12, 1879, Moses Moore was married and living in Lowndes County, Mississippi when government records indicate that he applied for a passport. And he evidently made use of that passport; according to the *New York Globe*, as of 1883, Moore was working in Paris, France as an English professor at the Academe Polytechnique. What could compel Moses Moore to leave his unique and hard-won status as Alabama's first (and, for a time, only) black lawyer? One can only speculate,

although racially-motivated hostility is a likely reason. As one historian has observed, "Assaults against black lawyers were prevalent in Alabama before 1895."<sup>23</sup> When A.A. Garner, a black lawyer in Montgomery, defended Jesse C. Duke – the editor of a black newspaper who had written an article suggesting that white women were attracted to black men – Garner was given 24 hours to leave town.<sup>24</sup> And when Thomas A. Harris, a black lawyer admitted in Montgomery in 1890, later tried to start a practice in Tuskegee, a white mob shot him in the leg and "chased . . . Harris out of the city for establishing a law practice."<sup>25</sup> Harris's assailants were never indicted, and Harris never again practiced in Tuskegee. Indeed, across the South, as federal troops withdrew with the end of Reconstruction and as violence against blacks escalated, many blacks (including lawyers) fled for jurisdictions that promised more tolerance and better opportunity, such as Kansas and the Oklahoma Territory.

In determining who followed Moses Moore to become Alabama's second black lawyer, once again it's necessary to separate the elusive historical documentation from embellished biographies. Several eminent historians credit one of Alabama's first black Congressmen, James T. Rapier, with admission to the Alabama bar in 1872, just before his Congressional term began. For example, J. Clay Smith's groundbreaking history of black lawyers fleetingly states, without documentation, that "James Thomas Rapier, who had read law, followed Moses W. Moore to the Alabama bar around 1872."<sup>26</sup> And in his biographical entry on Rapier in the *Encyclopedia of Alabama*, Brett Derbes of

Auburn University claims that in 1857, Rapier "attended the University of Glasgow in Scotland and Montreal College, where he studied law and was admitted to the bar."<sup>27</sup>

Yet there is no record in Alabama of Rapier's having been admitted to practice – not at the trial court level or before the Alabama Supreme Court. As seen with Moses Moore and John Carraway, such an admission would have been a novelty worthy of news coverage. Even more tellingly, Rapier's biographer makes no mention of Rapier's gaining either a legal education or admission to the bar.<sup>28</sup> In addition, historians have erred before about Rapier; one scholar claimed the future Congressman was born to a white planter father and an enslaved mother, when in fact Rapier's father, John, was a freedman and prosperous barber while his mother, Susan, had been born free.<sup>29</sup>

If Rapier was indeed a lawyer, then there is no evidence of his practice in Alabama courts. What we do know about James T. Rapier is that he led an extraordinary life. Born on November 13, 1837, in Florence, Alabama, James and his older brother, John, were sent in 1842 to live with their paternal grandmother in Nashville, Tennessee. There he attended school, and in 1853, James accompanied his uncle to Buxton, Ontario – a community founded by former slaves who had escaped to Canada. James attended the Buxton Mission School, studying classical subjects like Latin and Greek. In 1856, Rapier earned a teaching degree in Toronto before purportedly traveling to Scotland and later to Montreal to study law. By 1861, he was back teaching in Buxton (incidentally, the Buxton Museum's

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biography of Rapier simply omits any reference to the law).<sup>30</sup>

After moving back to the United States in 1864, Rapier settled in Nashville. Following brief stints as a journalist and cotton planter, he returned home to Alabama in 1867 and embarked upon a life as a

planter, labor organizer of black sharecroppers, and politician. Rapier was a delegate to the Alabama Constitutional Convention in 1867, ran unsuccessfully for Alabama Secretary of State in 1870, and was elected to the 43<sup>rd</sup> U.S. Congress in 1872.<sup>31</sup> He lost his re-election bid in 1874, but received a patronage appointment as a collector for the Internal Revenue Service. Rapier died in Montgomery of tuberculosis on May 31, 1883.

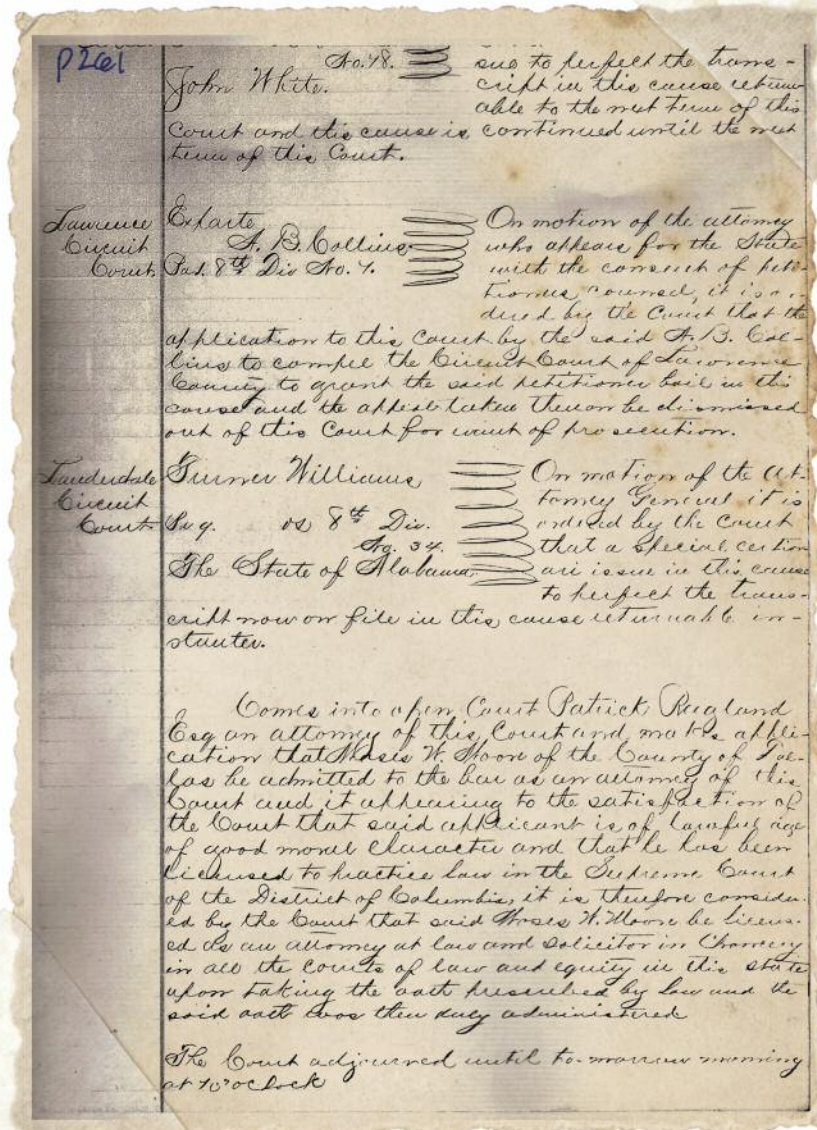
While evidence is lacking about James Rapier's legal career within an otherwise well-documented life, in the case of another contender for "the second black lawyer in Alabama" we have concrete evidence of his admission but nothing else.

Local newspaper reports around Alabama revealed that in January 1874, Charles E. Harris of Selma applied to the Supreme Court of Alabama for a license to practice law. An examining committee of local lawyers – "Messrs. Gardner, Jones, and Watts" – was appointed to test Harris's

knowledge. This committee "reported favorable," and Harris was admitted to the bar.<sup>32</sup> The Alabama Supreme Court minute books and attorney rolls further reflect that, upon the sponsorship of lawyer Benjamin Gardner, on January 10, 1874, Charles E. Harris was duly

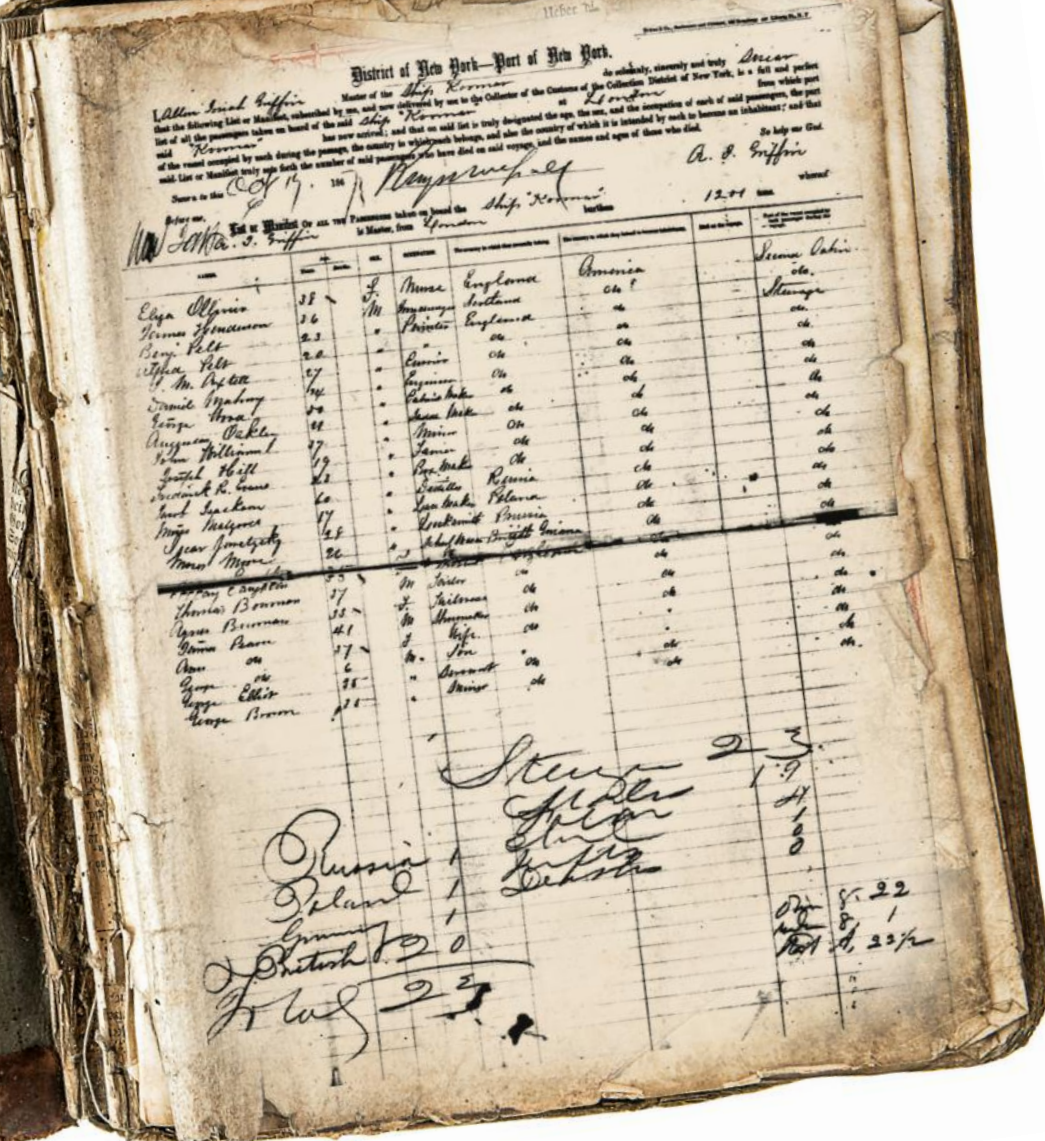
After Harris, the next of Alabama's early black lawyers was Samuel R. Lowery. Lowery was born in Tennessee December 8, 1830, to a free Cherokee mother named Ruth, and an enslaved black father, Peter Lowery. After his wife died, Peter purchased his and

Samuel's freedom in 1849, and both father and son became preachers with Nashville's Church of Disciples. Concerned for their safety after Nashville's December 1856 race riot, the Lowerys moved to Cincinnati, Ohio. There, in 1858, Samuel met and married his wife Adora. The couple moved to Chatham, Ontario to help organize churches. With the Union occupation of Nashville in 1862, Lowery returned like many free blacks. After the war, Lowery and his father helped found Tennessee Manual Labor University, a school designed to educate freed men in agriculture and mechanical arts. But faced with threats from the Ku Klux Klan and allegations of financial improprieties, the school closed in 1872. Lowery, who had previously begun to read the law under the tutelage of a white lawyer in Rutherford County, was admitted to the Davidson County bar in 1870, and to the Tennessee Court of Appeals two months later.<sup>34</sup>



January 4, 1872 page from the Alabama Supreme Court rolls, reflecting Moses Moore's admission to practice on motion of Patrick Ragland (Photo courtesy Tim Lewis)

"licensed to practice as an attorney at law and solicitor in chancery in all the courts at law and equity of this state."<sup>33</sup> Unfortunately, the historical trail grows cold after that; nothing is known of Harris's life leading up to his admission, or of his life and law practice afterwards.



October 1867 ship's manifest documenting Moses Moore's arrival in the U.S. (Photo courtesy Tim Lewis)

In 1875, Lowery and his family moved to Huntsville, Alabama. There, the transplanted lawyer was admitted to the bar, but his energies were focused more on business – specifically the cultivation of silk-worms. He started the Lowery Industrial Academy and became a leader in the silk manufacturing field (at the 1884 World's Fair, his silk won first prize).<sup>35</sup> In 1879, Lowery also served as editor of the *National Freeman* newspaper in Huntsville. His biggest claim to fame, however, came on February 2, 1880, when he became one of the first black lawyers admitted to practice before the U.S. Supreme Court –and certainly the first Southern black lawyer to do so.<sup>36</sup> Lowery

died in 1900 in Loweryvale, a cooperative community he founded in Jefferson County, near Birmingham. Finally, the fourth black lawyer admitted to practice in Alabama was also its first black judge – Roderick B. Thomas. Born free in Knoxville, Tennessee on December 26, 1847, Thomas eventually moved to Mobile. On April 16, 1867, Thomas was involved in a “near-riot” when he attempted to board a “white only” streetcar. The incident brought Thomas to the attention of the city’s Radical Republican mayor, Gustavus Horton, who appointed him to the police force.<sup>37</sup> Thomas later moved to Selma, where he remained active in Republican Party politics. On

March 22, 1870, he was elected clerk of Dallas County’s newly-created criminal court, and in April 1873, Thomas won election to the Selma City Council.<sup>38</sup>

Owing in part to his high political profile, Thomas (who was admitted to the Alabama bar on December 12, 1876) actually became a judge before he became a lawyer. In late 1874, Judge George Craig, under whom Thomas was serving as clerk of the Dallas County Criminal Court, was appointed to a vacant circuit court bench. Roderick Thomas was nominated to succeed him, and both won by wide margins. Dallas County Democrats were enraged and vowed to petition the legislature to abolish the court entirely if Thomas did not step down. Thomas refused, and the Democrats made good on their threat. On February 4, 1875, the legislature did indeed abolish the court. Alabama’s first black judge was out of a job, after three months and one day.<sup>39</sup>

Adding insult to injury, just over a year later, the Legislature established the city court of Selma—a court with identical jurisdiction to the recently-abolished court, but with a judge to be appointed by the Democratic governor instead of chosen by the Republican-majority voters of Dallas County. The vendetta against Thomas continued when, in early 1877, he found himself as a defendant in his former court facing charges of professional misconduct. He lost and was suspended from the practice of law but prevailed on appeal to the Alabama Supreme Court. On February 21, 1879, Thomas and other prominent black leaders were indicted by a Democratic grand jury on charges of voter intimidation in a recent election. Thomas decided to leave the state, and relocated to Little Rock, Arkansas.<sup>40</sup>

In Arkansas, Thomas enjoyed the success and professional respect that had eluded him in Alabama. For years, he had a successful partnership with Mifflin Gibbs, who had served as Arkansas's first black judge.<sup>41</sup> After his death of a heart attack on November 16, 1887, Thomas was honored by testimonials of the Arkansas and Little Rock bars. Even the Arkansas Supreme Court adjourned in honor of his funeral, and attorneys – white and black – attended en masse.

Moses Moore and the handful of other black lawyers who followed overcame daunting odds and even physical violence to forge a path into the previously closed legal profession. But with the end of Reconstruction and the advent of Jim Crow, the trail they blazed became harder to follow. By 1930, there were only four black attorneys in Alabama. And while the generation of black lawyers who came of age just before the civil rights struggle of the 1950s and 1960s rightly deserve credit for the adversity they overcame and the legacy they left for today's black attorneys,<sup>42</sup> all too often the title of “first” is bestowed upon someone inaccurately.<sup>43</sup> Alabama's first black lawyers deserve to be remembered, and recognized. ▲

*The author gratefully acknowledges the extensive research assistance and inspiration of Alabama State Law Librarian Tim Lewis, who has not only explored this topic but first brought it to the attention of Alabama lawyers through his work as founder of the Alabama Bench and Bar Historical Society.*

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## John G. Browning



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# CYBER SECURITY





# Keeping Your Firm Cyber-Safe: Solutions Born of Experience

*By Heather L. Meadows*

**It is a common misconception that cyberattacks are instant,**

that if you have been attacked, it happened in that moment. It is violating enough to imagine someone breaking into your home, but I want you to imagine it. This time the criminal is not in your home for seconds, minutes, or hours. This time the criminal is in your home for days, weeks, or months, stealing what is yours, stealing what is your family's, stealing what your friends and neighbors left behind and trusted you with, items for which you feel responsible. These

criminals are in your home accumulating all the belongings they can, and the only way you find out they have been in your home is because they have now locked you out. They have not only locked you out, but they are forcing you to pay to get back in. This is the reality of many cybercrimes today.

Cybercrime is on the rise. The FBI Cyber Division has seen a 400 percent increase in complaints since Covid-19 began. There are numerous reasons leading to an increase, but most of them involve these cyber criminals capitalizing on our human nature and the additional stress factors Covid-19 has forced upon us. We want things

fast. We want things easy. Good grief, we just want to remember what our password is! Colonial Pipeline's attack this past summer is an excellent example of cyber criminals capitalizing on just that – our human nature and the pain points of cyber security this pandemic has put additional pressure on. The world has been forced even more so into the digital age, and it requires organizations to reflect on whether they have taken the actions needed to protect themselves.

## Cybercrime: Colonial Pipeline

It was 5:00 a.m. on May 7, 2021 when a ransom note demanding cryptocurrency appeared on a control room computer at Colonial Pipeline. It was immediately reported to the operations supervisor, and the company prepared for the next critical steps. By 6:10 a.m. that morning, just one hour and 10 minutes after this discovery, the entire pipeline was shut down. In its nearly 60-year history, Colonial Pipeline had never shut down the entirety of its gasoline pipeline. While steps to mitigate risk of the attack were happening retroactively, what that supervisor and Colonial Pipeline did not know at the time was that the criminals had been in the system for more than a month. The criminals got access to Colonial Pipeline's network on April 29, 2021, and they had done so with just one single compromised password on an inactive remote employee's account. That's right – the largest fuel pipeline in America, the one that caused fuel shortages throughout the East Coast, was shut down due to one compromised password.

The Colonial Pipeline account that was accessed by these cyber-attackers using a single compromised password was done through a remote network account – a remote network account that should have been disabled prior to the attack because the employee was no longer with the company. Consider what policies



That's right – the largest fuel pipeline in America, the one that caused fuel shortages throughout the East Coast, was shut down due to one compromised password.

and procedures you have in place for when an employee is no longer with the company, especially those for deactivating and monitoring their accounts within your network. Overlooking such simple security policies cost Colonial Pipeline millions of dollars.

cyberattacked. The goal should be to be as proactive as possible in planning for an attack.

## Security Solutions Should Be Proactive

Luckily, there are steps companies can take to be more proactive in their security posture, steps that even small companies can employ now to close gaps in their current networks. As most sports fans know: a good defense can be the best offense. Taking proactive measures now can save your company significantly in risk, frequency, and severity. Fighting the battle retroactively can have a critical impact on your company's finances and reputation. While nothing is foolproof; we now live in an age of not if but when you are

## Two-Factor Authentication

One of the biggest errors in Colonial Pipeline's internet technology security, beyond not deactivating the unused employee account, was the lack of two-factor authentication on their accounts. Two-factor authentication works by adding an additional layer of security to your accounts, whether that is your email, financial, vendor, or social media accounts. Two-factor authentication requires additional login credentials beyond just the username and password to gain account access. Getting that second credential requires access to another device (most commonly a cell phone) or another account (such as a different email account). If two-factor authentication had been em-

ployed at Colonial Pipeline, it would have made it almost impossible for the cyber criminals to gain access that day because they would have needed access to the additional device or account. It is also important to note that most cyber security insurance policies are requiring two-factor authentication be implemented on your network.

## Dark Web Monitoring

Another preventative measure Colonial Pipeline should have taken is using dark web monitoring. Dark web monitoring is the process of searching for and keeping track of personal information found and leaked for sale on the online illegal marketplace. In the wake of the Colonial Pipeline attack, it was discovered that the former employee whose account was attacked had their information exposed on the dark web. This is something that is all too common; it is estimated that compromised passwords are responsible for 81 percent of hacking-related breaches, with 48 percent of workers using the same passwords for dozens of their personal and work accounts.

The dark web is how Colonial's Pipeline's former employee's credential information was most likely obtained. While no one company can 100 percent guarantee the ability to monitor the dark web, this is a great tool to strengthen your company's security posture and receive notifications if you or someone at your company has had their credentials shared on the dark web. Think of this invaluable service as your canary in a coal mine, letting you know there is trouble ahead and to take proper steps to protect your company.

## Password Best Practices

Password complexity, policy, and education are also vitally important.

Employees often use the same passwords for multiple accounts. It is important to be aware of the dangers in doing so. Enforcing password standards within your network through an active directory can also save you in the long run. Active directory, commonly referred to as AD, is a database and set of services that connect users with the network resources that are needed to do their job. The directory contains critical information about the work environment. This includes what users and computers there are and who is allowed to do what. This also allows network administrators to set rules about complexity, length, and expirations for user passwords. While no one likes having to remember a new password, it is important that simple policies like these are utilized across the entire company. As evidenced by Colonial Pipeline, a single unprotected password was all that was needed to shut down the whole company.

**In the wake of the Colonial Pipeline attack, it was discovered that the former employee whose account was attacked had their information exposed on the dark web.**



## Social Media Vigilance

An additional vulnerability we create for ourselves is that of social media presence. We must be better guardians of our information, and there is no better place to start than your company and employees' web and social media presence. While these are incredible tools for branding, promotion, marketing, and connection, they are also unfortunately excellent resources for cyber criminals to "scrape" information from and create more targeted phishing attacks, allowing them to acquire useful knowledge they can use to gain access to your network. Data scraping is an approach that criminals use to cull information. In this case it was publicly posted information on websites and social media platforms. Data scraping is most commonly used for this purpose of web scraping and gathering valuable information from websites, but there are other malicious ways it can

be utilized. In its most basic state, it refers to a technique in which a computer program extracts data from output generated from another program. LinkedIn has been a prime source for these criminals to obtain information, though it should be noted that such acts are against the “Terms of Use Agreement.”

## Security Awareness Training

It is also important to note that these phishing attacks can occur over various mediums (email, text, social media, etc.) and that these criminals do not hesitate to impersonate people or brands in doing so. The most impersonated brands today are Microsoft, Netflix, Facebook, FedEx, and Google, brands everyone uses. Therefore, proactive training is another requirement being added to cyber security insurance policies. It is directly related to the fact that 91 percent of the breaches today are facilitated via well-meaning employees just trying to do their jobs. Knowledge and education are the foremost tools in the frontline defense, and we need to be more cognizant of the information we are giving away freely.

I have seen firsthand how proactive training has saved companies and employees from falling victim to phishing campaigns. Phishing attacks are the most common method that cybercriminals use to gain access to an organization’s network. Phishing is the fraudulent practice of sending emails purporting to be from reputable companies to induce individuals to reveal personal information, such as passwords and credit card numbers. Scammers take advantage of human nature to trick their target into falling for the scam by offering some incentive (free stuff, a business opportunity,



**Knowledge and education are the foremost tools in the frontline defense, and we need to be more cognizant of the information we are giving away freely.**

threats, etc.) or creating a sense of urgency or fear. Some key steps in avoiding becoming prey are:

- Do not trust unsolicited emails.
- Do not send any funds to people who request them by email, especially not before checking with leadership.
- Do not click on unknown links in email messages – If the email has a link, stop and think!
- Configure your email client properly.
- Install firewalls, and keep them up to date.
- Beware of email attachments. Verify any unsolicited attachments with the alleged sender (via phone or other medium) before opening it.

Prior to being ransomed for \$4.4 Million, Colonial Pipeline had been looking to assess their risk. This is an excellent resource for verifying your security posture and one if they had made it sooner would have cost them significantly less than their ransom. Risk assessments should be done regularly and proactively. Most risk assessments will give you prioritized steps and outlines to better protect your company and remediate risk. A good risk assessment should include the following:

- Assets – Data Type, Critical Components, and Impact
- Vulnerabilities – Third-Party Access, Likelihood of Exploit, Attack Vectors
- Remediation – In-Place Controls and Governance
- Risk Levels – Calculated Exposure, Current State, and Future State



# IT Governance Policies

While it has become unavoidable, working from home can prove to be a risk to the company network. Keeping good policies and governances for such work is critical. Here are some things to keep in mind when considering guidelines:

- Remote workers must have up-to-date company-mandated security solutions on cell phones, tablets, and laptops.
- Work devices are only for the authorized user and for authorized uses. This means family use and unrelated work cannot be done on company-provided devices.
- Strong home security on their networks and/or the use of VPNs (Virtual Private Networks)
- If using video-teleconferencing, you should use a platform that ensures meetings are private, either with passwords or controlling access from a waiting room. The platform should also provide end-to-end encryption.
- Consider having the ability to remotely wipe devices in case they are lost or stolen. Mobile device management platforms can perform most or all of these services, allowing remote workers to continue to use their own devices while ensuring the safety of company data.

Additional measures to take to layer your defense against attacks include:

- Anti-virus – Designed to detect and destroy computer viruses
- Anti-malware – A type of software program created to protect information technology systems and individual computers from malicious software, known as malware. Anti-malware programs scan a computer system to prevent, detect, and remove malware.
- SPAM Filtering – Detects unsolicited, unwanted, and virus-infected email, and stops it from getting into email inboxes
- DNS Filtering – Blocking access to certain sites for a specific purpose, often content-based filtering

- Backing Up Data – Making a copy of computer data taken and stored elsewhere so that it may be used to restore the original

## Summary

We now live in a world where the threat of cyber war is ever-present and a world that contains overseas businesses dedicated to perpetrating cybercrimes. These businesses have developed Ransomware as a Service, which is now a viable option to criminals that do not even have the technical savvy to infiltrate a company's network on their own. Ransomware as a Service is a subscription-based model that enables affiliates to use already-developed ransomware tools to execute ransomware attacks. Hackers develop these products and then split the profits of the ransom with the laymen executing these attacks. These laymen do not need to know how to write a single line of code in these pre-packaged solutions and can encrypt some networks in as little as five minutes.

Ransomware as a Service is an adaptation of the Software as a Service (SaaS) business model. Cybercrime has become a very profitable business. This development of Ransomware as a Service has created an explosion in exploiting personal and business networks, as well as overseas countries creating safe havens for cybercrime. These crimes have become so pervasive and underhanded that even if you back up your data and have a good recovery plan in place, these criminals are threatening to leak it without payment. This gives you very little option but to be complicit when attacked. Taking even the smallest steps of two-factor authentication or proactively training your staff on the dangers of cybercrime can save you from financial and reputational ruin. ▲

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### Heather L. Meadows



Heather Meadows has 14 years' experience working for Dynamic Quest, an internet technology company. She was a speaker at the 144<sup>th</sup> Alabama State Bar meeting in Point Clear.



# We're Not in Kansas Anymore — Mediating Tips for Mediators and Lawyers in the Land of Zoom

*By R. Cooper Shattuck and H. Harold Stephens*

The Covid-19 pandemic has had a profound impact on virtually everyone,

and lawyers are no different. Mediation is just one of the areas in which our practices have been significantly affected. While some of the Covid-19 consequences were temporary, the ability to gather virtually or remotely is here to stay. Dorothy was right: “We’re not in Kansas anymore!”

We can debate whether it should be, but the reality is Zoom and the like are now a part of our lives. If you have not already done so, you or your client are likely going to participate in a virtual mediation soon.

This article is written by mediators for mediators and for lawyers

to offer guidance in conducting and participating in an online mediation. The authors recognize that not every case nor every participant is suitable for virtual mediation; some mediations need to be done in person and sometimes you just have to be there. But, if you are planning or participating in a mediation online, we hope you will find the following tips and information helpful.

## The Setting And the Technology

The amount of time and energy that lawyers spend on their offices (décor, furniture, art, etc.) varies

widely. While we have the luxury of devoting substantial resources and attention to our physical setting, the same may not be true of our virtual presence. If we are to be effective virtually, then we must devote time, energy, and attention to our virtual setting and its technology demands.

## Camera

The camera on your laptop or built in to your monitor should be fine if it was manufactured in the last few years. If it is any older, you may not be well-presented on any virtual platform. Adding a new camera with greater capabilities and, thus, a higher quality picture is easy and inexpensive. It does not take an advanced engineering degree to install a new camera. Most are “plug and play” – you simply plug them into a USB port and your computer does the rest. Test your camera well in advance of the mediation.

## Microphone

Your microphone will have a large impact on how you sound and whether there are noticeable gaps between when you start talking and when everyone else hears you. Be sure to check your volume prior to the mediation; you don't want to be so soft as to sound like the Cowardly Lion. If you are using a built-in microphone, you may need to prep your surroundings to enhance its capabilities. A cavernous setting or one with lots of hard surfaces creates an echo effect which quickly grows tiresome to listeners. Adding (off camera) pillows, rugs, blankets, and other soft goods will help absorb those echoes and greatly improve your sound.

A separate microphone is helpful as well. Like cameras and lights, they are widely available and relatively inexpensive. Make sure that you know your microphone's sweet spot and position yourself accordingly. It also may be helpful to wear ear buds or headphones when participating in virtual mediations. Not only do you hear better, but your microphone does not pick up extraneous noises from the virtual meeting, which adds to frustrating delays and disjointed conversations. Worse, a bad microphone in a cavernous and echo-prone setting using a computer's external speakers can result in feedback – the virtual equivalent of nails dragged down a chalkboard. Some headsets have built-in microphones which may be a good alternative as well. Test your microphone well in advance of the mediation.

## Lighting

Regardless of the quality of your camera, if your lighting is inadequate, your image will suffer. You must be well-lit. Your background need not be. There are many supplemental lights that can be purchased rather inexpensively for just this purpose. You can also use a lamp without a shade but be careful of throwing distracting shadows or unwanted glare. You do not want to appear as the Tin Man. A light filter or a piece of wax paper may soften an exposed bulb enough to work. Make sure that your supplemental light source hits you straight on or a little higher than your face from relatively the same angle as your camera. You should be lighter than your background.

## View

Once you have the right equipment and the proper setting, you must next consider what people will see when you appear. Optimally, your camera should be straight in front of you and at eye level or a little higher. That is the most flattering and least distracting viewing angle. But they are not just seeing you. Think about your background. Virtual backgrounds are an option with most video conference platforms, but they grow tedious after a little while. Your background should be pleasant, not too busy, and certainly not distracting. Anything in motion around you can be a distraction. You should be in the center of the screen taking up about half of it, and the other one-quarter should be divided to either side of you. If you have books or art behind you, make sure that the titles or subject matter do not convey any unwanted themes or notions or cause distractions. You should not have a window which allows light to enter making your background lighter than you. Obviously, unmade beds, dirty dishes, laundry, and other messes should be avoided. Likewise, there are lots of law firms with beautiful conference rooms with video capabilities installed. Unfortunately, these rarely provide a close enough view of the participants to be helpful in a mediation. If you are not able to easily tell exactly who is speaking, then that person needs to sit closer to the camera.

## Internet Connections

Your internet connection and speed are critical. Hard wires are generally better than blue tooth or wireless connections, but they are

not required. Generally, all participants – mediators, lawyers, and parties – should be sure in advance of the mediation that they have a stable and secure internet connection. Be aware that the hotel wi-fi or your local Starbucks are not secure connections. You are not the Scarecrow; use your brain to ensure you have a good connection in advance of the mediation.

### Potential Distractions and Interruptions

Invariably, your neighbor will crank up his leaf blower or chainsaw in the middle of your mediation. Though you cannot control everything that could impact your mediation, manage those potential interruptions that you can prevent. Interruptions by pets (such as Toto), children, spouses, the dishwasher, or the Roomba vacuum cleaner are more likely controllable or preventable than your neighbor. While most certainly understand that you cannot prevent every potential distraction, what is cute during your Zoom Happy Hour communicates the wrong tone during a mediation. An ounce of prevention saves a pound of embarrassment.

### The Platform


While there are many different virtual video conferences out there, Zoom seems to be the most commonly used right now. Apps are available for using Zoom on desktops, laptops, tablets, or smartphones at <https://zoom.us/download>. For mediators, you will want to choose the Pro version of Zoom. This version is well worth the nominal cost and, unlike the free version, will not automatically end in 40 minutes. Whether you are a party or the mediator,

becoming familiar with Zoom’s functions, options, and limitations before the mediation session (or refamiliarizing yourself with them) is critical to conveying a professional image. There are some useful video tutorials and how-to guides available on Zoom’s website.

If you are representing a party to a mediation, review Zoom with your client representatives ahead of time. Do not just ask if they are familiar – make sure that they are. You might consider having a preparation meeting with them virtually via Zoom to practice.




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# Tips for the Mediator

Hosting a Zoom mediation is much different than simply participating in one. As with the other elements of the mediation, you are in charge of the process, including the virtual parts. As the mediator, you should be the host. You are the Wizard (and not just in appearance only). That means you control the participants, whether they can speak, whether they can share a screen, where they are located, and who is with them.

## Prior to the Mediation

Get everyone's name and cell phone number in advance. If there is some technical issue or someone gets disconnected during the mediation, the easiest and quickest way to get in touch with them is to call them directly or text them. Everyone should have their cell phones readily available should that occur.

## The Zoom Invitation

Send the invitation to all participants as soon as the mediation has been scheduled. Also consider sending a reminder two or three days prior to the mediation.

## Pre-mediation Conference With the Attorneys

As part of your standard operating procedure, you should have a pre-mediation conference with the attorneys. This is a great time to learn the facts and issues at play in the mediation, and it also helps ensure that the attorneys and their clients are prepared to negotiate at the outset.

In the Land of Zoom, a pre-mediation conference several days in

advance of the mediation can be quite useful. You can accomplish a number of helpful items, such as determining whether the attorney is well-versed in using Zoom and whether you are comfortable doing so. You can also discuss who is going to be present at the virtual mediation. Will you have everyone you need present by Zoom? Will some participate only by telephone?

Remember, Rule 10 of the Alabama Civil Court Mediation Rules ensures that mediations are private. An alleged victim of domestic or family violence may have in attendance at mediation a supportive person of their choice. In all other cases, persons other than the parties and their representative may attend mediation sessions *only with the permission of the parties and with the consent of the mediator*. The Zoom pre-mediation conference is a great opportunity to be sure that you and the attorneys are comfortable with the participants and the process. Finally, this is an ideal time to discuss with counsel whether any prior settlement negotiations have occurred and if there are any obstacles along the Yellow Brick Road.

## The Waiting Room

Under your account Settings, enable Waiting Room. This means that everyone who attempts to join the meeting will have to be admitted by you as the host. This keeps everyone from popping in at once. Think of it as having a receptionist who shows them to their individual caucus conference room after they arrive at your office. But remember, they are not yet in their Zoom caucus rooms (that is explained in the

next section). By using the Waiting Room, you will have to grant permission for each individual to enter the mediation. Persons can enter one party at a time and then be moved to their respective caucus room. If you want to have a joint session with everyone at the beginning of the mediation, you can do so while everyone is initially in the Waiting Room or later by moving each participant back to the Waiting Room in a controlled fashion.

## Breakout Rooms

You also need to enable Breakout Rooms. That feature is located in your Settings under In Meeting (Advanced). Think of these Breakout Rooms as your individual caucus/conference rooms. You can and should create these ahead of time and name them (so there is no confusion as to who is where). Do not get cute with the room names, as participants can see them when they are invited to join them. Simple and straightforward names ("Plaintiff Smith's Room" or "Defendant Jones's Room") are fine. It is a good idea to create an extra caucus room in case you need to meet with some other combination of folks (such as just the attorneys). The participants cannot see all the different Breakout Rooms nor can they move from one to another. You control who is where and when. If someone disconnects, they will have to call again and you will have to go through the process of admitting them into the Waiting Room and allowing them to re-join their Breakout Room. As the host, you will be able to freely and easily move between each of the breakout rooms just as you would between conference rooms.

## No Recording

While you are in your Settings in Zoom, you should also disable the ability to record the meeting. Go to the recording tab under your Settings. Disable Local Recording and Cloud Recording and Automatic Recording. Under Rule 12 of the Alabama Civil Court Mediation Rules, recordings of mediation sessions are not allowed.

## Screen Sharing

In Settings under Meetings, you can enable or disable Screen Sharing. You should know if you need this after your initial phone conference with the attorneys. Regardless, it is probably acceptable to enable Screen Sharing for All Participants. Even if it was not anticipated in advance, someone can share their screen without making them a host. You do not want to allow a party to be a host or co-host.

## Messaging

Zoom has a Chat feature which allows participants to send text messages to each other through the program while on a conference. Unless the lawyers and parties are frequent and sophisticated users, it is likely best to disable this function. While handy, it is also easy to chat with unintended recipients. Because you are in charge of the mediation process as the mediator (and responsible for ensuring confidentiality), it is a good idea to protect participants from making such a mistake.

## During the Mediation

During the actual mediation, there are a few things to keep in mind in managing the process. Be aware in a joint session that you have the power to mute a participant. Do not be afraid to do so if

someone is getting out of hand. Again, be sure that everyone (parties included) has your cell phone number as well so that they can reach you in the event that they become disconnected. And be sure that you have theirs so that you recognize their number if they call you. Explain to the parties that you cannot actually move them. They have to accept your invitation to move to a Breakout Room, for example. You cannot just move them there. You also should ask who is in the actual room where the participants are located (outside of camera range) because you are responsible for confidentiality and privacy.

# Tips for Lawyers and Parties

## Screen Sharing

If you are going to share your screen during a mediation, practice in advance. Know exactly what you are going to share, have it ready, and know what it is going to look like. You can share your entire screen or simply one particular window (one program).

## Controlling the View

It is best generally to use Gallery View. This enables you to see everyone in the room regardless of whether they are speaking. Make eye contact with your camera just as you would make eye contact with individuals when you are speaking to them.

## Sounds/Feedback

Keep your microphone muted when you are not speaking, as this

helps the sound performance for everyone participating. If two participants are located in the same room, if one fails to mute when the other is talking, feedback can be a problem. Try not to speak when someone else is speaking. Doing so creates awkward moments of interruption and/or silence.

## Breakout Rooms

Realize and appreciate that the mediator may “pop” in at any time. Be mindful and on the lookout. You do not have the benefit of a knock warning. Think about what is on your screen and what is being said. Try to stay engaged and keep your client engaged in the process. Think about your negotiation strategy, changes to your negotiation strategy, your next moves, options for settlement, your client’s interests, and all of this from the other side’s perspective as well.

## Lawyer in Person/Client by Zoom

If you the attorney are going to be physically present at the mediation, consider whether you wish to have your client connected to the mediator’s computer or simply through your own laptop. The more practical approach where the lawyer is personally present for a mediation is to use Zoom on the lawyer’s laptop to communicate with his or her client.

## Join the Mediation Five Minutes in Advance

Technical glitches occur for a variety of reasons and at the worst of times. It is always a good idea to join the mediation session around five minutes in advance. This gives you and the mediator

an opportunity to address and hopefully resolve any technical difficulties prior to the start of the mediation.

### When Technical Problems Occur

When technical problems occur (and they will), the first corrective action to take is to simply sign out (leave the meeting) and then sign back in. You should advise your client(s) of this approach as well. For reasons which the authors cannot begin to understand or explain, signing off and then re-joining the meeting will resolve many technical problems. If this does not correct the problem, simply call the mediator on his or her cell phone.

### A Practice Session with the Client

In advance of the mediation, arrange to do a Zoom practice session with your client. If the client is very technology savvy and regularly participates in Zoom meetings, this may not be necessary. However, those clients who are unfamiliar with Zoom will find such a practice session helpful and reassuring.

### Dress for Success

During the Covid-19 pandemic, casual Friday has spread to casual Monday through Friday. For the parties involved in a mediation, especially for individual plaintiffs, this is their opportunity to have their “day in court.” Attorneys who are participating in a Zoom mediation should, out of respect for the parties and the process, dress as if they were attending a live mediation.

have to participate remotely. For claims or corporate representatives or for parties who are a long distance away, travel can be avoided, and significant time and expense saved through a Zoom mediation. A scheduled flight late in the afternoon or a long drive home are no longer obstacles to cause a mediation’s premature conclusion.

The technology is now readily available to enable lawyers and mediators to conduct effective virtual mediations saving time and money for everyone. Dorothy was right: We’re not in Kansas anymore! ▲

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Training (teaching the 20-hour Civil Mediation Training and 40-hour Domestic Mediation Training required for listing on the state court mediator rosters), and founding principal of Cartography Consulting LLC, a full-service marketing and business consulting firm specializing in lawyers and law firms.

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### H. Harold Stephens



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Neutrals and the Panel of Neutrals for the United States District Court for the Northern District of Alabama. Harold has mediated numerous disputes as well as handled a variety of litigation. He served as chair of the Alabama Supreme Court Commission on Alternative Dispute Resolution and as a member of the board of bar commissioners.

## Conclusion

Many in the legal profession will always prefer to have mediations live and in-person for all participants. Indeed, the advantages of spending time together in face-to-face dialogue during a mediation cannot be overstated. Many mediators and many attorneys prefer a mediation which allows for personal and direct interaction. Watching someone on video is not the same as watching them in person. The ability to meet and talk with people to help them solve their legal dispute is a wonderful opportunity for all involved. But, one of the lessons learned through our most unfortunate experience with Covid-19 is that mediations can be successfully and effectively carried out online or that at least some participants may



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# Using Breakout Rooms

## Overview

BREAKOUT ROOMS allow you to seamlessly split your ZOOM mediation into separate virtual rooms for private discussion among the parties. You can also bring the parties back to the MAIN ROOM if needed.

For Example, the MAIN ROOM can be considered a CONFERENCE ROOM where all parties are together before a mediation and where the Mediator can speak to all parties at the same time. When it's time to split up the parties for private discussion, the Mediator can

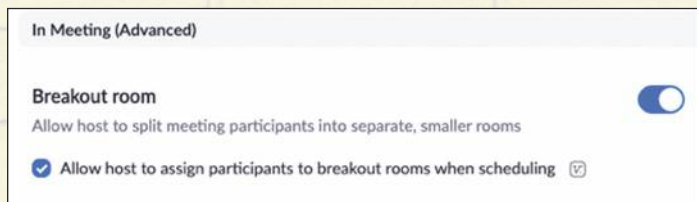
start BREAKOUT ROOMS where the parties can talk privately, much like sending the parties to individual conference rooms for in-person mediations. The Mediator can join (and leave) any of the BREAKOUT ROOMS as needed.

- ✓ There can be up to 50 Breakout Rooms per meeting, with up to 200 participants per breakout room.
- ✓ Breakout Room participants have full audio, video and screen share capabilities within their room.
- ✓ Participants can request help from the Mediator while in a Breakout Room.

## Enabling Breakout Rooms in Your Meeting Settings (First Time Only)

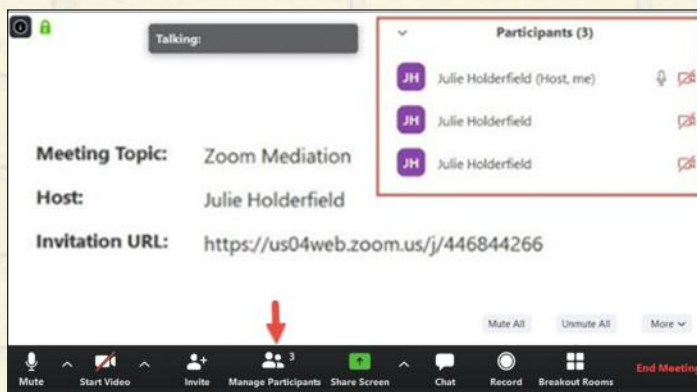
The first time you schedule a mediation where you will utilize breakout rooms, you will need to access your Zoom account and enable a setting.

From a web browser, go to **ZOOM.COM** and **SIGN IN** to your account. Click **SETTINGS** on the left side, and scroll down to **BREAKOUT ROOM**. Enable this setting, and check the box next to **ALLOW HOST TO ASSIGN**:



## Launch Breakout Rooms from the Host Controls During a Meeting

Once the meeting starts, the meeting options are presented on the main screen. Click **MANAGE PARTICIPANTS** to view the attendees who have joined the meeting.

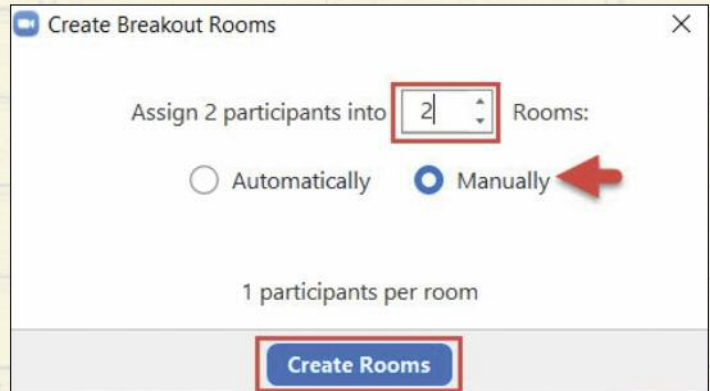


Click **BREAKOUT ROOMS** to assign attendees to breakout rooms and to utilize the breakout room options:



## Creating and Assigning Attendees to Breakout Rooms During a Meeting

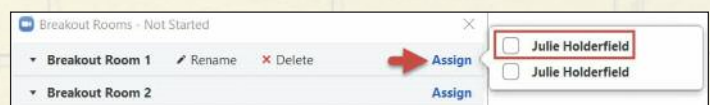
Indicate the **NUMBER** of breakout rooms to create, select to **MANUALLY** assign participants, then click **CREATE ROOMS**:



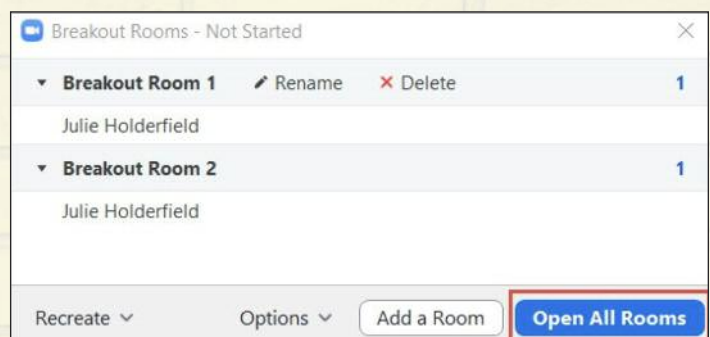
Click **RENAME** to name the breakout rooms to something meaningful (e.g. party name):



Select **PARTICIPANT(S)' NAME(S)**, and click **ASSIGN** to assign each attendee to a breakout room:



Once all attendees have been assigned to a breakout room, click **OPEN ALL ROOMS**:



As the Mediator/Host, you can use the breakout rooms options to **JOIN** a room, to **BROADCAST** a message to all rooms, or to **CLOSE ALL ROOMS** and bring all participants back to the main room:

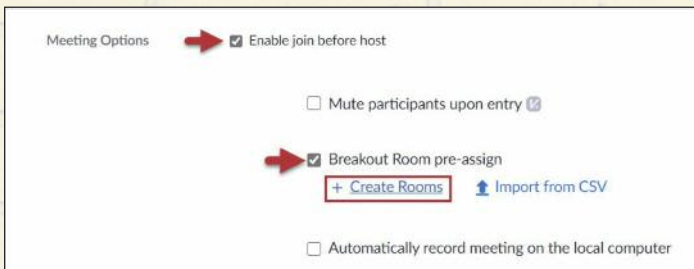


If the mediation is complete, you can click **END MEETING** to end the meeting and avoid bringing all participants back to the main room.

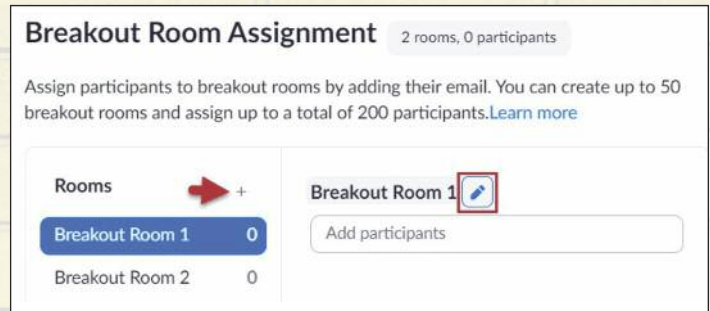
## Pre-Assigning Attendees to Breakout Rooms Before a Meeting

You can create and assign attendees to breakout rooms when scheduling the meeting in the Zoom **WEBSITE** or at any time before the meeting. If the meeting is already scheduled, simply access the meeting in your Zoom account in the **MEETINGS** section and select **EDIT**.

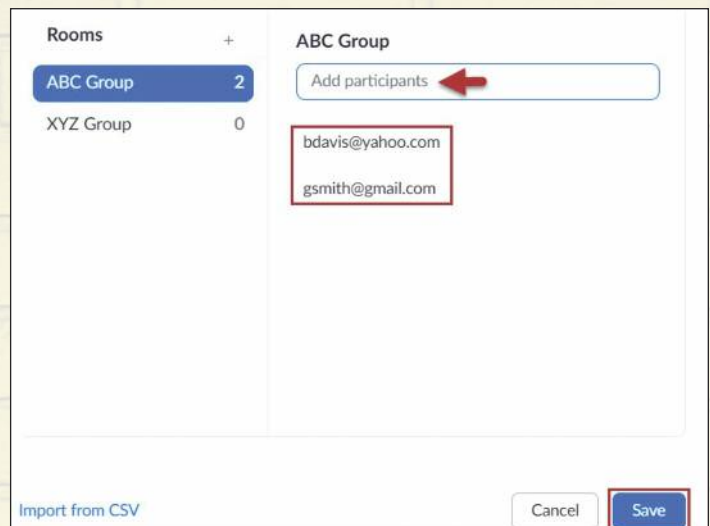
Under **MEETING OPTIONS**, select **ENABLE JOIN BEFORE HOST** and **BREAKOUT ROOM PRE-ASSIGN**. Then click **+CREATE ROOMS**:



Click the **PLUS** sign to create the number of Breakout Rooms that are needed. To **RENAME** a room, select the **ROOM**, then **HOVER** over the name, and click the **PENCIL** icon:



Select a Breakout Room, and click in the **ADD PARTICIPANTS** box to enter the **EMAIL ADDRESS** of each person to assign to **THAT** room. Hit the **ENTER** key after keying each email address. When all email addresses have been entered for each room, click **SAVE**:





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 Sylvia Ethel Hall Davenport  
 William delaRonde David  
 Rhys Nicholas Davies  
 April Horton Davis  
 James Thomas Davis  
 Rylee Davis  
 Scott Hayes Davis  
 Andrea Michelle Davison  
 Lindsay Summer Dawson  
 Mark Ryan Day  
 Aiden Chandler DeAbreu-Reese  
 Amy Harper Deems  
 Darko Drage Dejanovski  
 Janet Shawn Dumawal  
 Dela Merced  
 William Delahay  
 Tiffany Laura Dell  
 Charles Delorey  
 Luke Christopher Dendis  
 Jacob Wolfe Denney

Anna Elizabeth Dennis  
 Atticus William DeProspro  
 David L. Diab  
 Mary Elizabeth Dial  
 Malloray Morgan Diamond  
 Jaclyn Combs Diard  
 Caleb Michael Dick  
 Dylan Michael Diehl  
 Robert John Diliberto  
 Michelle Diverio  
 Joley Nicole Dixon  
 Lydia Caroleene Hardee Dobson  
 Katelyn Dodd  
 Jordan Doggett  
 Ivannoel Gonzalez Dollar  
 Brian Wesley Donald  
 James Russell Douglass  
 David Houston Drake  
 Daron Michelle Drew  
 Mitchell Stephen Duckworth  
 Chandler Blythe Duncan  
 Kevin Bradley Durick  
 Thomas Andrew Durrett  
 Kent Asbury Eadler  
 Jimmy Ray Earley, Jr.  
 Andrew Edge  
 Alison Edgeworth  
 Benjamin Chase Edwards  
 Sarah Elizabeth Eford  
 Cameron Wayne Elkins  
 Kenneth Paul Ellison  
 Benjamin Nelson Elrod  
 Bethaney LaVera Paige Embry  
 Shawn Matthew Engen  
 Rachel England  
 Danielle Esposito  
 Katarina Anderson Essenmacher  
 Megan Esperanza Everrett  
 Sara Jessica Farmer  
 LaTisha Gotell Faulks  
 Kamairi S. Fayall  
 Phillip Brenten Felts  
 Tamunotonte Battle-Ax Fenny  
 Dennis Virgil Ferguson  
 Justin Matthew Ferris  
 William David Fields  
 Phillip Earl Fikes  
 Kaelyn Ashley Fillingim  
 Darby Taylor Rappuhn Findley  
 John Earl Finklea  
 Katherine Grace Finnucan  
 Alexandria Scarbrough Fisher  
 Truman Tracy Fitzgerald  
 Maia Fleischman  
 Tollie Suzanne Folmar

Foster Ford  
 Joshua Caleb Ford  
 Lacey Ann Ford  
 Steven Lee Ford  
 Raymond Christopher Foushee  
 Ayanna Denee Freeman  
 Brooke-Anne Freeman  
 Lindsey Ryan Fries  
 Nicholas David Frisella  
 Autumn Lynn Fritsch  
 Michael Fritz  
 Blake Fromang  
 Hugh Samuel Gainer, Jr.  
 Karmen Elise Gaines  
 Nikisha Bharat Gala  
 Stacey Lawrence Gantt  
 Nicole Diane Garai  
 Jeffrey Bevan Garber  
 Emily Catherine Garner  
 Grace Ann Garner  
 Carami Autumn Garrett  
 Michael Christopher Gatling  
 Erin Verdell Gattis  
 Grayson Patrick Gause  
 Paul Gaylord, III  
 Natalie Rose Gaynier  
 Thomas Seldon Peter Geeker  
 Michael Joseph George, III  
 Mia Gettenberg  
 Alexis Chermaine Gibson  
 Alicia Renee Traylor Gilbert  
 Mollie Elizabeth Gillis  
 Jackson Graham Gilmore  
 William Parsons Gilmore  
 Matthew George Giordano  
 John Alexander Gitta  
 Luvell Leigh Glanton, Jr.  
 Leverius Devon Glass  
 David Lyon Glenn  
 James Lloyd Golden, III  
 Ryan Stanley Golden  
 Anne Miles Wilkerson Golson  
 Amy Lorena Gonzalez  
 Marc Austin Gonzalez  
 Richard Blaine Goodwin  
 Kristin Jean Goulart  
 Peter Louis Graceffa  
 Kathryn Marie Grafton  
 Jillian Lewis Graham  
 Joseph E. Graham, II  
 Landon Marcus Graham  
 Christian H. Gramm  
 LaRhonda Kaychelle Grant  
 Christopher Michael Graves  
 Neal Scott Gray

Grace Nicole Greco  
 Sarah Ellan Green  
 Trisha Marie Green  
 Gregory Scott Greenberg  
 Hannah Claire Greenhouse  
 Stephania Greenwood  
 Megan Elizabeth Gremmels  
 Christopher Michael Griffin  
 Odis Hayden Griffin, III  
 Tylynn Griffin  
 Alexa Griggs  
 Rashad Jamil Grimes  
 Kimberly Joanne Gubert  
 Peyton Michael Guest  
 Ryan Hendon Gunn  
 Karli Brianna Guyther  
 George Stephen Haburey, IV  
 Lejla Hadzic  
 Ellen Katherine Hague  
 Jude Halawi  
 Adrienne Wimberly Hale  
 Emily Elizabeth Hall  
 Hirshel Michael Hall  
 Jarrod Braddin Hall  
 Mallory Sample Hall  
 Rebecca Kay Hall  
 Thomas Bradley Hall  
 Victor Malone Hamby, Jr.  
 Hannah Jordan Hammitte  
 Allison Nicole Hanby  
 Haley Hancock  
 James Theodore Hankins, III  
 Tayler Glen Hansford  
 Sarah Amanda Harden  
 Thomas Hunter Hardin  
 Seth Vincent Harding  
 Kristyn Lorenza Mae Hardy  
 Evan Michael Hargett  
 Blake Wilfred Harper, IV  
 Christopher Harper  
 Dustin Taylor Harper  
 Theresa Lorraine Harper  
 Gaines Robert Harrell  
 Devin Caleb Harrison  
 Mary Elizabeth Harrison  
 Jeremy Paul Harville  
 Emily Ann Haskew  
 Tierany B. Hatcher  
 George Hayek  
 Steven Douglas Hazelwood  
 Malcolm Allen Head, IV  
 Alexandria Celeste Heard  
 David Adam Hearne  
 Elizabeth Grace Hembree  
 Sophia Ruth Henager

Catherine Lee Henderson  
Laura Ann Henderson-Courtney  
Davis Brock Hendon  
Bradford Hendrickson  
Stone Hendrickson  
Kemal Erkam Hepsen  
Connor Wilson Herfurth  
Andrew Michael Herren  
Joseph Drew Hertel  
Tiffany C. Hice  
Marilyn Higdon  
Sarah Rebecca Hildebrand  
Hope T'Shay Hill  
Olivia Hope Hill  
Earl Hilliard, Jr.  
Madeline St. Clair Hillsmith  
Joseph Hayden Hillyer, Jr.  
James Barnes Hilyer  
Edward Thomas Hines, Jr.  
Alea Victoria Hipes  
Steven Chauncey Hippolyte  
Elizabeth Ramey Hobbs  
Samuel Francis Hobbs  
Lillie Amilea Hobson  
Trayce Alexa Hockstad  
Savannah Kay Holaday  
Jacob William Holliday  
Daniel Whitfield Holmes  
William Jeffrey Honea, Sr.  
John Joseph Hopkins, III  
Sophia Leigh Hoppock  
Stewart West Hornor  
Charles Francis Horton, III  
Courtney Lynn Lovelace Horton  
David Carl Horton  
Courtney LaShawn Howard  
Desmond Douglas Howard, III  
Evan Matthew Howard  
Maya Christian Hoyt  
Patrick Glenn Hubauer  
Roselyn Jean Hudson  
Zachary Schriener Huey  
Jesse Glen Hardin Hufstedler  
Benton Connell Hughes  
Darian Jamal Hughes  
Sarah Ann Hughes  
Cole Robert Huizinga  
Delaney Lynn Humphrey  
Robert Lawrence Humphrey, III  
Katie Ashlen Humphries  
Jaimee Elizabeth Hunter  
Jessica Ann Hunter  
Kim-Quyen Thi Huynh  
Ariane Michele Ice  
Tamara Yousef Imam

Hiroyuki Inagaki  
Ivan Ellis Ingram  
Jaquon Edmar Irby  
Kierra Rumph Irby  
Courtney Leigh Irelan  
Cheryl May Ivery  
Ashley Nicole Ivey  
Jacob Daniel Jackson  
Nathan Nickolas Jackson  
Tatum Leigh Jackson  
QuiAndria Jacquelynne' James  
Raymond A. James  
Marissa H. Jamieson  
William Wilde January, VI  
Ralston Darnell Jarrett, Jr.  
Joseph Daniel Jasper  
Gabriell M. Jeffreys  
Dayoon Jeong  
Aaron Albert John  
Brandon Fontenot Johnson  
Brennan Bownes Johnson  
Nelson Craig Johnson  
Stephanie Anne Johnson  
Taylor Austin Johnson  
William Charles Johnson  
James Daniel Johnstone  
Chenelle Marie Jones  
Henry Ryan Jones  
Joanna Leigh Jones  
Kreg Michael Jones  
Nickolas James Jones  
William Jacob Jones  
Damond Jorney  
John Kwangho Jung  
Nathan Robert Jurgensen  
Morgan Catherine Kain  
James Robert Kamensky  
Demetra Annette Kampakis  
Daniel Justin Kator  
Rebecca Holden Keene  
John Gerrad Keir  
Joseph Whitaker Kelly  
Mary Claire Kelly  
Chelsea Kendrick  
Irisa Raquel Kennedy  
LaTracyenne Kennisha  
    Kennie-Miller  
Danielle Kerem  
Joseph Bernard Kerstiens  
Houston Willis Kessler  
Hany Asham Khalil  
Frederick William Killion, IV  
Marcus Nakjoon Kim  
Clarence Arthur King  
Gavin Floyd King

Jay Dustin King  
Jennifer Twyman King  
Johnny Lee King  
Nikia Monique King  
Taylor Nicole King-Buerk  
Yvette Charmaine Kirchoff  
Alexander Randall Kirkland  
Catherine Gail Kirkland  
Koby Jack Kirkland  
Jayme Paige Kiszla  
Kristin Michelle Kizziah  
Catherine Constance Kline  
Emily Michele Klopff  
Jonathan Brandes Knighton  
Mallory Claire Koger  
Gregory Anthony Koory  
James Benjamin Kovakas  
Haley Christine Kozuch  
Garrett Spencer Kral  
Lydia Jane Kucera  
Alex McKenzie LaGanke  
Lydia Marie Lake  
Kiran Lakha  
William Chadwick Lamar, Jr.  
Michael Ethan Lambert  
Wilson Murray Landers  
Meghan Alexandra Lang  
Stuart Hartley Lang  
Summer Raine Lange  
Charles Alan Langley, Jr.  
Jordan Anthony LaPorta  
Jill Cernok Larrabee  
Nicki Lawsen  
Brandon Michael Lawson  
Ryli Wallace Leader  
Robert Justin Leavell  
Seokwon Lee  
Tae-Seung Lee  
Mariah Peirce Leffingwell  
Rachel Jane Leigh  
Candace Nicole LeMier  
Jordan Richard Lenard  
John Campbell Lentine  
Kenneth Leonor  
Guy Edward Lescault  
Ikea Camilla Lewis  
Latoria Renise Lewis  
Tomiya Sada Lewis  
Emily Virginia Light  
Shayna Shalom Lightfoot  
Hannah Grace Lindsley  
Bret Leland Linley  
Amy Michal Little  
Blakely Lorraine Lloyd  
Kaylee Rebecca Logeston

Alaina Victoria Lomax  
John Mark Long  
Susan Knight Long  
Gabriel Thomas Lopez Low  
Whitney Paige Lott  
Michelle Louis  
Erika Diane Lowe  
Kayarda Kemiell Lowe  
Courtney Elizabeth Lowery  
Stephen Paul Lowman  
Connor Vail Lunney  
Jordan Tanner Lusk  
Carmen Cantrell MacKay  
Alexander Viktor Makarenko  
Darya Makarenko  
William Felze Malaver-Ruiz  
Jennifer Lynn Malec  
Princess Gabrielle Manasseh  
Allyson Rae Mancuso  
Aaron Matthew Mann  
Deborah Ann Mann  
Engha Markus  
Stephanie Ann Marrero  
Thomas Gregory Marshall  
Dylan Thomas Martin  
Gordon Tucker Martin  
Kristin Martin  
Ramon Martin  
John Vincent Martine, Jr.  
Frank Mascola  
Catherine Carlisle Masingill  
Brooks Mason  
Elizabeth Hosmer Mason  
Kimberly Brooke Massey  
Corey Mark Masuca  
Ashley Briana Matchett  
Charles Christopher Matranga  
La'Keshia Fowler Matthews  
Robert Irwin Mayeri  
Emily Victoria Mayers-Twist  
Bernard Rouzbeh Mazaheri  
John C. McAbee  
Sarah Crile McBrayer  
Robert Warren McCallum, III  
Kara Nicole McCord  
Christopher Michael McCrane  
Crawford James McCullers  
Sofia Veronica McDonald  
Martin Patrick McDowell  
Katie McEntyre  
John Lars McGivaren  
Charles Mitchell McGuffey  
Lillie Walker McIntyre  
Emily Katherine McKee  
Lolitha Keyanna McKinney

Melissa McKinney  
 Micah Jamal McKinney  
 Nicholas Rodman-Wayne McKinney  
 Shalyn Smith McKitt  
 Stephen Phillip McKitt  
 Anna Leigh McLemore  
 Collier Elizabeth McLeod  
 Caroline Durfeld McLeroy  
 Isaac Paul McMahan  
 Robert Burns McNeill, II  
 Lauren Pauline McNelley  
 Meredith Dyer McPhail  
 McKenzie Taylor Meade  
 Ian Campbell Meadows  
 Tiffany Gayle Means  
 Christopher Eddins Meigs  
 Anne Marsha Mellen  
 Charles Cooper Martin Melvin  
 Nehal Mendell  
 Hedda Blix Mercado  
 Blair McIntyre Mercer  
 Stephen Paul Mercer  
 Brandy Leigh Merrifield  
 Brooke Layton Messina  
 Justin Metheny  
 William Slade Methvin  
 Lori Branyan Metrock  
 Jeremy Meyers  
 Delphine Meylan  
 Nory Dianne Ronquillo Miano  
 Justin Wayne Michael  
 William Judson Miller  
 Catherine Elizabeth Milling  
 Elise Nicole Mimms  
 Allison Michelle Mims  
 Valerie Lenise Mims  
 LaTonya Sheree Mines  
 James Anthony Minter, IV  
 Catherine Ann Mitchell  
 Joe Wiley Lewis Mitchell  
 Theodore Fuller Mitchell  
 Devin Kelley Mock  
 Joanna Malgorzata Moczadlo  
 Eric Mogy  
 Sonia Marcela Molina  
 Christine Monaco  
 Charles William Montz, Jr.  
 Allison Moody  
 Malea McCall Moody  
 Albert Moore, IV  
 Dominique Jovan Moore  
 Elizabeth Moore  
 Sean Patrick Moran  
 Braden Travis Morell

Andrew A. Morey  
 Lauren Alexandra Morina  
 Shelby Lynn Morris  
 John Owen Morson  
 Angelina Christine Mort  
 Jacklyn Dyan Morton  
 Jesse Renee Moses  
 Daniel Christopher Moss  
 Marsh Denzell Moton  
 Jonathan Chuck-Bon Moy  
 Nasrin Akhter Moznu  
 Jon-Kaden Guthrie Mullen  
 Haley Elise Muncher  
 Alexander Edward Munderloh  
 James Adam Ray Muns  
 Heather Elizabeth Murphy  
 Michael Wendell Mutek  
 Jerad Daniel Myers  
 Georgia Lee Nackley  
 Emil Richard Nardone, II  
 Graham Randolph Neeley  
 Justice Quinshae Neloms  
 William Jacob Nelson  
 Xavier Terrell Nelson  
 Scott Marshall NeSmith  
 Beryl Newchurch  
 David Scott Newman  
 Michael LaMont Nichols  
 Catherine Marie Niolet  
 Reed Bailey Norris, Jr.  
 Jasmin Adrienne Nunez  
 Benjamin S. Nye  
 Thomas Carter O'Brien  
 Trenton James O'Malley  
 Benjamin Obomanu  
 Kayla Kendrick Odom  
 Joey Nana Ofori  
 Kerrie M. Ogden  
 Mark Ogren  
 Ifeanyichukwu Steven Ojabor  
 Jackson Olsen  
 Arthur Chikadibia Osueke  
 Victoria Elizabeth Othon  
 Brandi Mechelle Overstreet  
 Christopher Randall Owens  
 Leyla Campbell Padgett  
 Pantelis Spiros Paliura  
 David Kirkwood Palmer, Jr.  
 Joseph Anthony Palumbo, III  
 Samuel Dean Pannell  
 Dwayne Andrew Parham  
 Caroline Faith Parish  
 Emily Estelle Parish  
 Eun Joong Park  
 Iyeshia Chennell Parks

Shundra Carter Parks  
 Brian Hall Paterson, Jr.  
 Patrick Patnode  
 Tyler Patrick  
 Peyton Elizabeth Patterson  
 Nicholas Charles Patti  
 Jacob Knight Payne  
 Madison Victoria Peace  
 Nicolas Howard Peck  
 Terry Henderson Peden, Jr.  
 Michael James Pee, Jr.  
 Douglas Albert Peebles  
 Jillian Elizabeth Peek  
 Olivia Primrose Pence  
 Caroline Crowley Pennington  
 Hugo Pereira Serri de Castro  
 Zacheriah Tyer Permenter  
 Rasohn Matthew DeLaurean Perry  
 Ashley Lynne Peskoe  
 Tara Thomas Peterman  
 Hunter Phares  
 Fallyn Allandra Pharr  
 Carson Shepherd Phillips  
 John Francis Phillips  
 Lindsey Phillips  
 Donald Bradley Phipps  
 Dominique Nicole Photos  
 Anthony Daniel Pickett  
 Elizabeth Stapleton Pilcher  
 Taylor Anne Pilger  
 Blanca Marisol Pilgrim  
 Georgianna Marie Pisano Goetz  
 Scheherazade Pittman  
 Sarah Anne Plassenthal  
 Jonathan Hunter Plott  
 Anne Elisabeth Poe  
 Taylor Slate Poe  
 Emily Clarice Pollock  
 Caroline May Poor  
 Adetola Popoola  
 Kymberly Dawnique Porter  
 Michael Clifford Portner  
 Franklin Dawn Posey  
 Ann Campbell Potter Chapman  
 Lane Powell  
 Nancy Leigh Powell  
 Thomas John Prescott  
 Alexandra Olivia Priester  
 Jason Allen Proctor  
 Jonathan Bradford Prosch  
 Shelby Lynne Pruitt  
 Gillian Purser  
 Ellie Putman  
 Jaz Sarriera Pylant  
 Brooke Elizabeth Qualls

Gabriel Jonathan Quistorff  
 Elizabeth Ashley Raco  
 Emily Michele Raines  
 Maya Gyan Rajaratnam  
 Sarah Ray  
 Mary Cameron Raybon  
 Jackson Montgomery Reagan  
 Robert Benjamin Reardon  
 Grant Evans Reese  
 Ryan Patrick Regan  
 Christian Joshua Region  
 Katherine Fuller Register  
 Christy Dawn Reid  
 Alexander Dixon Revell  
 Thurston Howard Reynolds, III  
 James Francis Ribley, Jr.  
 Herbert Rice, III  
 Heather Lynn Richard  
 Hogan Crawford Ricks  
 Emily Marie Riddle  
 Garrett Temple Rigby  
 Timothy Kyle Roark  
 Philip Johnathan Roberson  
 Amy Lynette Robertson  
 James Alexander Robertson  
 Mark Wayne Robertson  
 Andrew Warren Rock  
 Joshua Rodriguez  
 Rita Concepcion Rodriguez  
 Sara Delene Rogan  
 Adrian Thomas Rogers  
 Jeffrey Griffin Rogers  
 Marilia Rosa de Oliveira Lara  
 Richard Rosario  
 Kirk Anthony Rose  
 Tara Lynn Rose  
 Sirena Marie Rowland  
 Matthew Aaron Rowley  
 Sabrina Bosarge Ruffin  
 Matthew William Russ  
 Manning Todd Russell, Jr.  
 Riva Noni Ryan  
 Sarah Saber  
 Somer Nicole Salameh  
 Alexandra Victoria Sallas  
 Anthony Paul Samuels  
 Winifred Alicia Samuels  
 Subuola Tayibat Sangodina  
 Geoffrey Sansom  
 Taylor Melissa Sapp  
 Steven James Sarkees  
 Sam Sartipi  
 Luke Willoby Satterfield  
 William Jacob Sauls  
 Richard Alvin Savage, II



Susan Michele Schaefer  
Philip Henry Scharper, Jr.  
Lucy Duncan Scherff  
Joshua Gordon Schiffer  
Michael Thomas Schmitz  
Catherine Germaine Schneider  
Holly Wallace Schumpert  
Dylan Patrick Scilabro  
Maurice Jefferson Scott, Sr.  
Teddy Shannon Scott  
Gregory Ian Seaborne  
Benjamin Matthew Seiss  
Wan Ji Seong  
Catherine Nicole Sergis  
Terry Leland Sexton, Jr.  
Corey Scott Shapiro  
Mitri Salman Shatara  
Jordan Shelton  
Claire Sherburne  
Reave Wilson Shewmake  
Emily Celia Shiever  
Sarah Katherine Shiver  
Victoria Body Shoots  
Christopher Randolph Simmons  
Jennifer Anne Simon  
Tyler Thomas Sims  
Thomas John Sisco  
Hayden Glass Sizemore  
Samantha Lynne Sizemore  
Arber Skendaj  
Raymond Pinckney Skinner, III  
Scott A. Sloss  
Allison Joy Slusher  
Maegan Ingram Smalley  
Ahmad L. Smith  
Ashley Smith  
Austin Jerry Smith  
Brenden Lawrence Smith  
Brian Brady Smith  
Brittany Smith  
Charles Clifford Smith  
Crystal Nicole Smith  
Dorissa Shelette Smith  
Magdalene Leigh Smith  
Matthew William Smith  
Pate Garner Smith  
Patrick Ryan Smith  
Philip Smith  
Ryan Stanley Smith  
Timothy Lee Smith, Jr.  
Vannessa Stuckey Smith  
Margaret Wesley Smithart  
Tyler Smoot  
Michael Corban Snider  
Jacob Lacolby Snow

Justin Lewis Snyder  
Drew Astin Sockwell  
Cheryl Lynn Solomine  
Jessica Sparhawk  
Robert Paul Sparkman  
Philip Gavin Speaks  
Katie Gilbert Spear  
Frederick M Spight, Jr  
Shanequa Trenae Springer  
Gabrielle Anne Sprio  
Charles Averett Stakely, V  
Chaz Standage  
Zachary Daniel Starr  
Mark Anthony Staton  
Timothy Scott Steele  
Benjamin Pleas Stell  
Jamie Thad Stephens  
Billy Evan Stevenson, III  
Omar Stewart  
Shelley Lovie Stewart  
Shontel Patrice Stewart  
Aaron Manuel Stinson  
Keisha LaJune Stokes-Hough  
William Anthony Stoll  
Nathaniel Stotser  
Stephen Craig Stovall  
Stephanie Ann Stradling  
Jennifer Marie Studebaker  
Lue Elton Sullivan, Sr.  
Mitchell James Surface  
Aaron Taylor Sutherland  
Mattison Audrey Sutton  
Julia Ann Swafford  
Chelsea Grace Swanson  
Kyle Jeffrey Sweatman  
Holly Ann Szafran  
Michael Joseph Tafelski  
David Richard Taggart  
James Richard Talbott  
Jean Elizabeth Talbott  
Georgios Kyriakou Tarasidis  
Malia Danielle Tartt  
Jackie Blake Tate  
Landy Veron Tate  
Thomas Jackson Tate, Jr.  
Ashlee Goodman Taylor  
Dennis Jerome Tchir  
Brooke Elizabeth Teal  
Maria Teresa Tello  
Sarah Tindle Telofski  
Anna-Claire Terry  
Kelley Lenore Terry  
Trent Vincent Testa  
Bradford Wallace Thomas  
Brenton Leigh Thompson

Tyler Warren Thull  
Daniel Tiede  
Randy Brian Tingle, Jr.  
Aaron Ray Tippetts, III  
Cameron Ann Tipton  
Tami Annette Todd  
Erica Scott Tolbert  
Andrew Thomas Toler  
Mark Daniel Toppen  
Kelley Elizabeth Towne  
Jennifer Marie Townsend  
Alexander Jordan Townsley  
Andrew Traylor  
Anthony Louis Troyke  
Janet Lynn Troyke  
Hannah Trucks  
Gerard Lynn Truesdale  
Gabriel Tucker  
Madison Elizabeth Tucker  
Andrew Bennett Tuggle  
Anna Michele Tullar  
Kimberly Joanna Turner  
Morgan Melissa Turner  
William Dixon Tutt  
Nicholas James Vail  
Lindsay Erin Van Noy  
Sarahanne Young Vaughan  
Matthew Christopher Vaughn  
Cruz Alan Vazquez  
Sophia Carolina Vazquez  
Arjun Vedmurthy  
Angelica Velez  
Kaemi Velez Calderon  
Ricardo E. Vielledent  
Susan Alicia Waddell  
Jacob Elias Nix Wade  
Lita Melinda Waggoner  
Harrison Carter Wagner  
Amber La Shay Walker  
James Murray Wallace, Jr.  
Willie Frank Wallace, III  
Gregory Adam Wallach  
Robert Edwin Waller, III  
Lauren Hall Walsh  
Maxine Talya Walters  
Evan Allister Ward  
Joshua Glen Ward  
Joycelyn Ward  
Megan Leigh Ware Fitzgerald  
Brianna Warner  
Gwendel Shannon Waters  
Robert Akira Watson  
Amanda Redfoot Wayne  
Howard William Weber  
Tony Whaley

Mary Landon Whatley  
Garrett White  
Mary Katherine White  
Rosalind Garner White  
Valerie Resch White  
Monica Shanell Whiting  
Catherine Fenton Whitley  
Lauren Anne Wiggins  
Kenneth Lee Wilber  
Courtney Elizabeth Willcox  
Alyssa Rose Williams  
Bridgette LaVon Williams  
Britney Marsha Williams  
Clayton David Williams  
Johnathan Lowell Williams  
Kirsten Emily Williams  
LeFrante Sherrell Williams  
Russell Todd Williams  
Zondra L. Williams  
Suntrease Wynique  
Williams-Maynard  
Hilary Michele Williamson  
Ryan Keith Willis  
Sharon Willis  
Brittany Ann Wilson  
Thomas Alexander Wilson  
Wynnora Wilson  
Taylor Amanda Wilters  
Bridgette Windham  
Dominique Rochelle Winfrey  
Joseph David Wirtes  
Daniel J Wisniewski  
Craig Richard Jattan Wood  
Stephen Keith Woodall  
Allison Nicole Worrell  
Alexandra Elizabeth Worthy  
Andrew Hestand Wright  
Virginia Carol Wright  
Kayla Michelle Wunderlich  
Nicholas Austin Wyatt  
Katie Lynn Yarboro  
Robert Andrew Yarbro  
Jarrunis Lumumba Yates  
Sheridan Todd Yeary  
Shu Lok Charles Yim  
Edward Scott Yoste, III  
Alyssa Abigail Young  
Blake Ellen Young  
Christal Rae Young  
Christopher Steven Youngpeter  
Chad Joseph Zito

# LAWYERS IN THE FAMILY



**John Anthony Lentine (1987) and John Campbell Lentine (2021)**  
*Father and admittee*



**Kara McCord (2021) and Ryan Duplechin (2017)**  
*Admittee and fiancé*



**Joseph David Wirtes (2021) and David G. Wirtes, Jr. (1985)**  
*Admittee and father*



**Daron M. Drew (2021), Judge Deborah Hill (1979), and Calvin David Biggers, Jr. (2006)**  
*Admittee, aunt, and cousin*



**Earl Hilliard, Jr. (2021), Judge Janine Hunt-Hilliard (1998), Congressman Earl F. Hilliard (1968), and Alesia Hilliard-Smith (1993)**  
*Admittee, wife, father, and sister*



**Robert Andrew Yarbro (2021) and Robert Michael Yarbro (1995)**  
*Admittee and father*



**Johnny Lewis Banks, III (2021) and Melody Banks (2018)**  
*Admittee and mother*



**Alexandra Calton (2021) and Walton B. Calton (1991)**  
*Admittee and father*

# LAWYERS IN THE FAMILY



**Charles Matranga** (2021),  
Justice Sarah Stewart (1992), and  
Judge Dominick Matranga (1965)  
*Admittee, aunt, and grandfather*



**Robert Justin Leavell** (2021), Barry C. Leavell (1966),  
Laura B. Leavell (2000), and  
William Dudley Motlow, Jr. (1980)  
*Admittee, father, wife, and uncle*



**Caitlin Cobb** (2021) and  
Justice (ret.) Sue Bell Cobb (1981)  
*Admittee and mother*



**Ashley Nicole Ivey** (2021) and  
Nancy M. Kirby (2000)  
*Admittee and mother*



**Barry Dale Burton** (2020) and  
Roger D. Burton (1978)  
*Admittee and father*



**Margaret Rose Browning** (2020),  
Katherine B. DeKeyser (2008), and  
Richard E. Browning (1980)  
*Admittee, sister, and father*



**Philip Gavin Speaks** (2021), Francis William Speaks, III  
(2012), Sarah Glass Speaks (2017), and Christopher  
Gowan Speaks (1991)  
*Admittee, brother, sister-in-law, and uncle*

# LAWYERS IN THE FAMILY



**Christopher Eddins Meigs** (2020) and **Walter R.S. Meigs** (1973)  
*Admittee and father*



**Tatum Jackson** (2021) and **K. Stephen Jackson** (1983)  
*Admittee and father*



**William Slade Methvin** (2021) and **Tom Methvin** (1988)  
*Admittee and father*



**Jessica Ann Hunter** (2021) and **W. Wesley Causby** (2013)  
*Admittee and cousin*



**Tiffany Gayle Means** (2020) and **Tyrone C. Means** (1977)  
*Admittee and father*



**Joe Wiley Lewis Mitchell** (2021) and **Shannon Mitchell** (1991)  
*Admittee and father*



**Andrew Clay Crowder** (2021) and **Ellen Leonard** (1987)  
*Admittee and aunt*



**Shelby Lynn Morris** (2021) and **Cynthia R. Wright** (1996)  
*Admittee and mother*



**Corey Masuca** (2021) and **Wayman Powell, III** (1996)  
*Admittee and uncle*

# LAWYERS IN THE FAMILY



**Anne Elisabeth Poe (2021), Taylor Slate Poe (2021), Beth Slate Poe (1983),  
Cindy Slate Cook (1987), Shelly Slate Waters (1989), and Bill E. Cook (1977)**  
*Sister-brother co-admittees, mother, aunts, and uncle*



**LeFranté Williams (2020) and  
Leotis Williams, Sr. (2003)**  
*Admittee and father*



**Jacob Elias Nix Wade (2021) and  
Richard D.C. Nix (1997)**  
*Admittee and father*



**James Barnes Hilyer (2021) and  
Elizabeth Barnes Hilyer (1988)**  
*Admittee and mother*



**William David Breland (2021), Judge David J.  
Breland (1978), and Judge Alex Brown (1976)**  
*Admittee, father, and father-in-law*



**Chenelle Marie Jones (2021), Justin L. Jones  
(2013), and Brittney Faith Hardison Jones (2014)**  
*Admittee and cousins*

# LAWYERS IN THE FAMILY



**William Jacob Jones (2021) and Rhon Jones (1990)**  
*Admittee and father*



**Margaret Wesley Smithart (2020), Justin Hayes Nolen (2019), Elizabeth Couey Smithart (1989), and Circuit Judge Burt Smithart (1989)**  
*Admittee, fiancé, mother, and father*



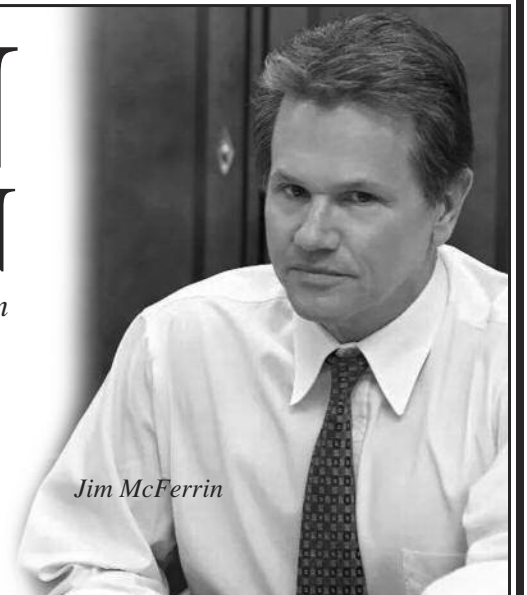
**Karmen Elise Gaines (2020) and Floyd D. Gaines (1992)**  
*Admittee and father*

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## ABOUT MEMBERS, AMONG FIRMS

Please email announcements to  
[margaret.murphy@alabar.org](mailto:margaret.murphy@alabar.org).

### About Members

**Will Hill Tankersley** announces that after 35 years in the practice of law and at the age of 65, he is retiring to his farm in Autauga County. He was a **Balch & Bingham** lawyer for 32 years. Before practicing law, he was a soldier.

### Among Firms

**Balch & Bingham LLP** announces that **John Banks, Avery Burns, Robert Humphrey,** and **Madison Tucker** joined the Birmingham office.

**Bradley Arant Boulton Cummings LLP** announces that **J. Bradford Currier** joined the Montgomery office as a senior attorney and that **Mazie Bryant** joined the Birmingham office as an associate.

**Burr & Forman LLP** announces that **Catherine Kirkland** joined as a partner in the Mobile office.

**Compton Jones Drescher** of Birmingham announces that **Hayes Arendall** joined as counsel.

**Cunningham Bounds LLC** of Mobile announces that **Amanda H. Herren** joined as an associate.

**Dentons Sirote** announces that **Nwando Anwah, Kristin Martin,** and **John Morson** joined as associates in the Birmingham office.

**FedEx Logistics, Inc.** of Memphis announces that **Michael E. Gabel** is vice president of legal affairs and compliance.

**Fish Nelson & Holden LLC** of Birmingham announces that **Jim Golden** joined as an associate.

**Gaines Gault Hendrix PC** announces the association of **Wilson Law PC**. The firm also announces that **David M. Wilson** and **Marie T. Prine** joined as partners, **Devona J. Segrest** joined as of counsel, and **Jonathan B. Metz** joined as an associate, all in the Birmingham office.

**Galese & Ingram PC** of Trussville announces that **Crawford J. McCullers** joined as an associate.

**Sandi Eubank Gregory** and **Heather Fann** announce the opening of **Gregory Fann Law LLC** and that **Amanda C. Lowndes** and **J.R. Thomas** joined as associates. Offices are at 201 Office Park Dr., Ste. 320, Birmingham 35223. Phone (205) 729-6685.

**Kent McPhail & Associates LLC** announces that **Douglas A. Baymiller** joined the Mobile office.

The **Montgomery County District Attorney's Office** announces that **Thurston H. Reynolds, III** and **Ahmad Smith** joined as deputy district attorneys.

**Ericka Powell** and **Kia Scott** announce the opening of **Powell & Scott LLC Special Education Lawyers** at 6772 Taylor Circle, Montgomery 36117. Phone (334) 316-0123.

The **Shelby County Public Defender's Office** announces that **James R. Hepburn, Jared L. Bevis,** and **Marissa Jamieson** joined as assistant public defenders.

**Steptoe & Johnson PLLC** of Charleston, WV announces that **Christopher Nahley** joined as a member. ▲



# BAR BY NUMBERS: 2021 EDITION

TO DATE



47,505 LOGINS TO FASTCASE  
3% WERE FIRST-TIME LOGINS



164,927  
DOCUMENTS  
VIEWED

49,104 SEARCHES



32,790  
DOCUMENTS  
PRINTED



215 ASB MEMBERS  
ATTENDED ANNUAL  
MEETING VIRTUALLY



375 ASB MEMBERS  
ATTENDED ANNUAL  
MEETING IN PERSON



303  
GUESTS



66  
SPEAKERS



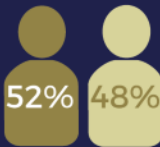
31 CLE  
SESSIONS



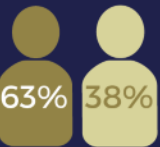
## MEMBER DEMOGRAPHICS



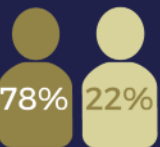
18% 36 OR YOUNGER



51% 37-59 YEARS OLD



31% 60+ YEARS OLD



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**9%**

INCREASE IN ACTIONABLE CALLS RECEIVED BY ALAP



139 ATTORNEYS & STUDENTS CURRENTLY SERVED BY ALAP



## BAR BY NUMBERS: 2021 EDITION

TO DATE



**NOTICE**

## DISCIPLINARY NOTICES

- ▲ **Transfers to Inactive Status**
- ▲ **Surrender of License**
- ▲ **Disbarment**
- ▲ **Suspension**
- ▲ **Public Reprimands**

### Transfers to Inactive Status

- Columbiana attorney **William Thomas Harrison** was transferred to inactive status, effective September 3, 2021, by order of the Supreme Court of Alabama. The Supreme Court of Alabama entered its order based upon the September 3, 2021 order of Panel II of the Disciplinary Board of the Alabama State Bar in response to a Harrison's petition filed with the Office of General Counsel requesting he be transferred to inactive status. [Rule 27(c), Pet. No. 2021-932]
- Birmingham attorney **Sidney James Hughes** was transferred to inactive status, effective September 21, 2021, by order of the Supreme Court of Alabama. The Supreme Court of Alabama entered its order based upon the September 27, 2021 order of Panel II of the Disciplinary Board of the Alabama State Bar in response to Hughes's petition filed with the Office of General Counsel requesting he be transferred to inactive status. [Rule 27(c), Pet. No. 2021-968]
- Montgomery attorney **Samuel L. Masdon, III** was transferred to inactive status, effective September 27, 2021, by order of the Supreme Court of Alabama. The Supreme Court of Alabama entered its order based upon the September 27, 2021 order of Panel II of the Disciplinary Board of the Alabama State Bar in response to Masdon's petition filed with the Office of General Counsel requesting he be transferred to inactive status. [Rule 27(c), Pet. No. 2021-977]
- Horton attorney **Sarah Alexander Stephens** was transferred to inactive status, effective September 3, 2021, by order of the Supreme Court of Alabama. The Supreme Court of Alabama entered its order based upon the September 3, 2021 order of Panel II of the Disciplinary Board of the Alabama State Bar in response to Stephens's petition filed with the Office of General Counsel requesting she be transferred to inactive status. [Rule 27(c), Pet. No. 2021-930]

## Surrender of License

- On September 22, 2021, the Alabama Supreme Court issued an order accepting the voluntary surrender of **Alfred Quinton Booth's** license to practice law in Alabama, with an effective date of July 20, 2021. [ASB No. 2019-1141]

## Disbarment

- Birmingham attorney **Barry Wayne Walker** was disbarred from the practice of law in Alabama, effective October 14, 2021. The Supreme Court of Alabama entered its order based on the Disciplinary Board's order, wherein Walker was found guilty of violating the Alabama Rules of Professional Conduct. In ASB No. 2019-1414, Walker was found guilty of violating Rules 1.15 [Safekeeping Property] and 8.4(d) and (g) [Misconduct], Alabama Rules of Professional Conduct. In ASB No. 2019-1498, Walker was found guilty of violating Rules 1.5(c) [Fees], 1.15 [Safekeeping Property], and 8.4(c), (d), and (g) [Misconduct], Alabama Rules of Professional Conduct. In both cases, Walker either failed to deposit settlement funds into his trust account and/or failed to properly disperse settlement funds to the clients. [ASB Nos. 2019-1414 and 2019-1498]

## Suspension

- Oneonta attorney **Harold Jerome Colley** was suspended from the practice of law in Alabama for 91 days, effective October 14, 2021. The Supreme Court of Alabama entered its order based upon the Disciplinary Commission's acceptance of Colley's conditional guilty plea, wherein Colley pled guilty to violating Rules 1.3 [Diligence], 1.4 [Communication], and 1.16 [Declining or Terminating Representation], Alabama Rules of Professional Conduct. Because of Colley's previous transfer to inactive status, in ASB Nos. 2010-1963, 2011-215, 2011-218, 2011-508, 2011-640, 2011-683, 2011-971, 2011-142, and Rule 27(c) 2010-1819, Colley was unable to perform legal work for which he had been paid and failed to refund clients the unearned portion of the fees paid. [ASB Nos. 2010-1963, 2011-215, 2011-218, 2011-508, 2011-640, 2011-683, 2011-971, 2011-142, and Rule 27(c) 2010-1819]

## Public Reprimands

- Fultondale attorney **Huel Malone Carter** received a public reprimand with general publication for violating Rules 1.15(b) [Safekeeping Property] and 8.4(g) [Misconduct], Alabama Rules of Professional Conduct. The pertinent facts are in 2010 Carter represented an individual as it pertained to a motorcycle accident. During the course of litigation, Carter received two checks via hand delivery from opposing counsel. One check was to satisfy a Medicare lien. Carter continued negotiating with Medicare and held the check hoping Medicare would agree to further reduce its lien. The check ultimately went stale, and in 2017, a debt collection agency sent a letter to Carter's client indicating they were collecting the Medicare debt. Due to Carter's failure to deliver the check to Medicare, his client's Social Security disability payments were later garnished in an effort to satisfy Medicare's lien. Carter is also required pay any costs taxed against him pursuant to Rule 33, Ala. R. Disc. P, including but not limited to a \$1,000 administrative fee. [ASB No. 2016-1357]
- Birmingham attorney **Derrick Kendall Collins** received a public reprimand without general publication on September 17, 2021 for violating Rule 3.5(c) [Impartiality and Decorum of the Tribunal], Alabama Rules of Professional Conduct. The violation arose at a hearing wherein the presiding judge described Collins's behavior as mocking, belligerent, grandstanding, bullying, heavy-handed, intimidating, and threatening. Collins admitted frustration and being loud. The presiding judge expressed she was frightened, uncomfortable, and afraid of Collins and his behavior at the hearing. Moreover, she felt disrespected and scared. Additionally, opposing counsel described Collins's behavior as outrageous and very inappropriate. He stated Collins raised his voice a number of times, disrespected the court, and threatened to mandamus the judge if she ruled against him. Moreover, he stated the judge told Collins his behavior was highly inappropriate and he should not speak to her in that manner. Collins is also required to pay any costs taxed against him pursuant to Rule 33, Alabama Rules of Disciplinary Procedure, including but not limited to a \$1,000 administrative fee. [ASB No. 2019-1396]
- On October 29, 2021, the Disciplinary Board of the Alabama State Bar ordered **Lawrence Buford Hammet, II** of Nashville, Tennessee to receive reciprocal discipline of a

(Continued from page 59)

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public reprimand with general publication for violating Rules 1.5, and 1.15, Alabama Rules of Professional Conduct. The Disciplinary Board ordered that Hammet receive the identical discipline as that imposed by the Supreme Court of Tennessee. Hammet charged his client a clearly excessive fee and improperly withdrew funds from his trust account. [Rule 25(a) Pet. No. 2021-237]

- Montgomery attorney **Beverly Jean Howard** was issued a public reprimand with general publication on October 29, 2021 as ordered by the Disciplinary Commission of the Alabama State Bar, for violating Rules 1.1 [Competence], and 8.4(d) [Misconduct], Alabama Rules of Professional Conduct. In June 2020, Howard notified DHR that her clients were withdrawing from a safety plan that was previously entered into where custody of their children would be placed in custody of a relative. DHR filed a dependency action regarding the children. Thereafter, the judge ordered the children be placed into protective custody. Howard filed a "Notice to the Court" that informed the court that her clients gave temporary and legal custody to a relative and therefore could not release the children to custody of DHR. Howard failed to disclose the name of the relative or provide any legal documentation that custody of the children was now held by a relative. Under Alabama law, "legal custody" of a child cannot be transferred absent a court order. The client executed a "Delegation of Powers" under Code of Alabama Section 26-2A-7. Howard, as an experienced domestic relations attorney, should have known that Section 26-2A-27 does not transfer "legal custody of a child" and cannot be used to avoid the jurisdiction of the court in dependency proceedings. As such, Howard erred in notifying the court that "legal" custody of the child had been transferred to another and failed to properly advise the client that Section 26-2A-27 could not be used to avoid the court order placing the children in protective custody. [ASB No. 2020-795]
- Hamilton attorney **Oliver Frederick Wood** received a public reprimand with general publication for violating Rules 1.1 [Competence], 1.3 [Diligence], 1.4(a) [Communication], and 8.4(a), 8.4(d), and 8.4(g) [Misconduct], Ala. R. Prof. C. The pertinent facts are in November 2018 Wood was hired to represent a husband in a divorce. The client was unsure of his wife's whereabouts, but mentioned she was released from prison in 2011. Wood and his secretary told the client he would serve his wife by publication. The client checked the newspaper over the next several weeks, but never saw the publication notice. During the

course of the representation, the client experienced difficulty communicating with Wood. Five days after the client filed a bar complaint, and seven months after he was retained, Wood filed the divorce case. Wood did not attempt service by publication until May 15, 2019. Service was perfected by publication on May 29, 2019. On June 10, 2019, Wood met with his client's wife and had her sign a waiver of service and an answer. The court records reflect that he did not file these documents. In his response to the bar complaint, Wood stated that the case was progressing, that the divorce was now contested because of a property dispute, and that the client was satisfied. However, his client indicated he was anything but satisfied and that he does not have any more money to retain a subsequent lawyer. The client is still having trouble communicating

with Wood. The court record reflects nothing has been done in the case since Wood filed the complaint and that no answer or default judgment has been filed. With this conduct Wood violated Rules 1.1, 1.3, 1.4(a), 8.4(a), 8.4(d), and 8.4(g), Ala. R. Prof. C., by failing to provide competent representation to his client, willfully neglecting a legal matter entrusted to him, failing to keep his client reasonably informed about the status of his matter and promptly complying with request for information, engaging in conduct that was prejudicial to the administration of justice, and engaging in conduct that adversely reflects in his fitness to practice law. Wood is also required pay any costs taxed against him pursuant to Rule 33, Ala. R. Disc. P, including but not limited to a \$1,000 administrative fee. [ASB No. 2019-651] ▲



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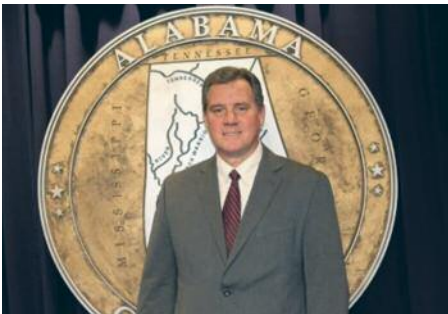
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## LEGISLATIVE WRAP - UP

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

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**David A. Kimberley**  
*Deputy Director*  
*Alabama Law Institute*  
dkimberley@lsa.state.al.us

The council and membership of the Alabama Law Institute met on December 20, 2021. As a result of the meeting, a new slate of proposals is being put forward for consideration in the 2022 Legislative Session.

These bills represent 3,700 hours of intense effort by more than 122 lawyers who are volunteering their time on drafting committees to improve the laws of our state. We appreciate their efforts.

Also deserving of our appreciation are the legislative members of our Executive Committee who will work to see these efforts through to enactment: Representative Mike Jones, Senator Arthur Orr, Senator Rodger Smitherman, Representative Chris England, and Senator Will Barfoot.

In addition to the new proposals, there were also a couple of bills carried over from the 2021 session being presented again in 2022. The new bills for this session are:

## Garnishment Condemnation Request Notification by Posting

Several million dollars is currently being held up in circuit clerks' accounts after being withheld from wages by the employers of judgment debtors. However, our state's circuit clerks are often unable to send the monies along to all the businesses successful in obtaining judgments against those who owe them money because of an inability to get the defendant served for a second time with a garnishment condemnation notice. After five years, the clerk must send the money on to the county commission, never to reach the business that is owed the money. Some of the larger counties are in very difficult positions by individually holding in excess of one million dollars in such funds at any given time.

As a result, the ALI proposes a notification by posting bill, limited in scope to post-trial garnishment condemnation motions. This bill proposes a very simple solution to the often unlikely, if not impossible, second personal service (after initially having been served with the lawsuit, many defendants have moved, quit their jobs, etc.).

The posting of the garnishment notice on the circuit clerk's community-accessible website and on a courthouse community-accessible bulletin board is a realistic approach

calculated to provide a reasonable prospect of a defendant having a realistic opportunity to learn of the garnishment condemnation and his/her rights in that process. The bill addresses the constitutional issues raised in cases about the information a defendant must have access to for the notification to be meaningful – such as being apprised of possible exemption opportunities and the right to request a hearing on that issue.

Thirteen states, including Florida, Texas, and Virginia, now have some form of service by posting. This bill is modeled after Michigan's posting law and is appropriately limited in scope, applying only to the post initial service, post-trial stage of litigation. It makes no changes in the pre-judgment requirements for the initial service of lawsuits.

It is important to keep in mind the defendants have already been deprived of the money since it has been withheld from their paycheck due to the judgment entered against them. Despite that, the defendant cannot get any credit on the judgment since it is tied up in the circuit court account, unable to be paid to the creditor. So, this bill provides a way to also benefit the defendant as well as the plaintiff.

## Gig Economy/ Marketplace Platform

Assessing and properly characterizing the employment status of marketplace contractors in relation to marketplace platforms has been challenging, with important issues such as benefits and tax liabilities at stake. The Gig Economy drafting committee proposes this bill with an uncomplicated approach beneficial to marketplace platforms and contractors alike. This bill provides a clear picture of responsibilities and expectations.

The drafting committee examined the efforts of other states to address these challenges, and in conjunction with the Alabama Department of Labor, adapted Kentucky's approach for application in Alabama's burgeoning marketplace platform economy. Key provisions of the Alabama Marketplace Platform/Marketplace Contractor Classification Act are:

- Adds the definitions for marketplace platform and marketplace contractor to Ala. Code Section 25-4-10.
- Excludes certain marketplace platforms/marketplace contractors from the definition of employment in Ala. Code Section 25-4-10.
- Sets out IRS and Department of Labor adopted and approved criteria as benchmarks to enable someone to clearly assess when a marketplace contractor would be classified as an independent contractor in activities involving a marketplace platform.

## Uniform Probate Code Preliminary Revisions Bill

The last major revisions to the Alabama Uniform Probate Code were made in 1983. The Standing Trust Committee has now undertaken the daunting task of reviewing the Alabama Probate Code in comparison to other states' probate laws, and the 2019 version of the Uniform Law Commission's Uniform Probate Act to determine if there are helpful upgrades that can be made. A project of such magnitude will ultimately take one or two years.

During this process, former probate judge and current Alabama Supreme Court Justice Mike Bolin raised some concerns to the committee about pitfalls for practitioners he has observed in his years on the bench and asked the committee to examine those first. As a result, while the committee's work on comprehensive revisions to the Uniform Probate Code continues, the committee has targeted and addressed a few areas where some immediate improvements/upgrades can be made in the interim.

Some examples are:

- Specifically incorporates some of the definitions of Title 43 Chapter 8 and some from the Uniform Act.
- All will contests will originate in probate court.
- No removal will be available in counties where the probate judge exercises equity jurisdiction concurrent with that of the circuit court by virtue of a local act or Alabama constitutional amendment specific to such county.
- Upon the filing by a party of a notification to remove, the probate court clerk shall send the record to the circuit court clerk.
- Any failure by the probate clerk to send the entire record to the circuit clerk can be cured upon motion, and will not be considered a jurisdictional defect.
- The removing party is required to provide the circuit court with some specified information about the proceedings (parties, reason for removal, whether it will be a full or partial removal, etc.)
- The circuit court may remand a removed matter to the probate court (regardless of whether or not the probate judge is required to be learned in the law, as is required under current law).
- The court may consider taxation of costs in for improper or vexatious removals.
- The removal of a will contest may not be made within 42 days of the first probate court trial setting without leave of court.

(Continued from page 63)

## Uniform Guardianship, Conservatorship, and Other Protective Arrangements

The Law Institute proposes the first comprehensive revision to Alabama's Guardianship and Conservatorship laws since 1987. This bill provides significant upgrades in due process and other protections for any person subject to a guardianship, conservatorship, or protective arrangement. It also expands oversight and accountability for guardians and conservators.

While the ULC's 2017 UGCOPAA persons-centered draft was the impetus for this project, the committee made many adaptations to address Alabama's somewhat unique situations and challenges. Some of the innovations are as follows:

- Discards the antiquated and/or obsolete terms or "ward" and "protected person."
- Adds a "Bill of Rights" for persons subject to petitions seeking a guardianship, conservatorship, or protective arrangement.
- Provides an individual subject to guardianship or conservatorships meaningful notice of their rights and how to assert those.
- Increases the procedural due process of individuals subject to a guardianship, conservatorship, or other protective arrangement.
- Establishes clear standards for court findings and requires those findings to be clearly articulated in the court's orders as to the need for any court action.
- Requires creation of person-centered plans by the guardian or conservator that include involving the individuals subject to guardianships or conservatorships in decisions to be made about their lives.
- Provides for the filing of guardian/conservator plans.
- Facilitates compliance by guardians and conservators of filed plans through periodic court monitoring.
- Gives more guidance to guardians and conservators, many of whom are lay persons, on how to perform their duties.
- Emphasizes and encourages the court's application of a least restrictive alternative by allowing the court to tailor limited orders to address specific needs.
- Provides for enhanced monitoring of guardianships/conservatorships through court appointed visitors.
- Establishes notification requirements of key hearings and events to those naturally interested in the subject's condition (such as spouses, adult children, etc.).
- Assists the court's response to any substantiated allegation of exploitation or misuse of assets by allowing the court to restrict access to the subject and/or his/her property when necessary.
- Standardizes/harmonizes the age of majority threshold with other state laws.
- Gives guidance to the court in matters involving allegations of a minor's abuse.
- Provides guidance for those petitioning for guardianship of a minor and to courts in determining the proper jurisdiction over the petition.
- Enhances occasions where appointment of counsel for a subject and/or a subject's parents may be required.
- Boosts the burden of proof required and also increases parental due process for the establishment of a minor's guardianship, conservatorship, or protective arrangement where there are objections to the necessity of such arrangement(s).
- Clarifies and expands the information required to be provided to the court and to all parties at the time of petitioning the court for a guardianship, conservatorship, or protective arrangement.
- Curtails wholesale removal of actions from probate court to circuit court where the probate court exercises the equity jurisdiction of a circuit court.
- Integrates the Alabama Uniform Adult Guardianship and Protective Proceeding Jurisdiction Act (now found at Title 26, Chapter 2B) into the UGCOPAA in order to heighten awareness of the AUAGAPPJA's basic jurisdiction provisions and the need to examine jurisdiction in every action filed to appoint a guardian or conservator.
- Gives the probate court equal and concurrent jurisdiction with the circuit court for protective proceedings that arise out of Title 38, Chapter 9.
- Requires regular reporting of financial activities of a guardian or conservator to the court, visitor, and designated interested persons.
- Requires notification to the court, visitor, and designated interested persons of any change of



residence/domicile of the person who is the subject to a guardianship, conservatorship, or power of attorney.

- Requires a guardian to petition the court for the appointment of a conservator when holding property of the subject exceeding \$50,000.

## Probate Judges' Jurisdiction Revisions

The Alabama Constitution lists the powers of the probate court in Article VI, Section 144. That section sets out the general jurisdiction of the probate court and also provides probate courts shall have "such further jurisdiction as may be provided by law." Alabama Code Section 12-13-1 provides that further jurisdiction.

Despite this, appellate courts have had to address some uncertainty about the extent of the probate court's authority on name changes. Further, the state needs increased court resources to deal with Adult Protective Services and elder abuse matters. A unique committee made up of circuit judges, district judges, and probate judges was convened to study the matter and proposes amending Ala. Code Section 12-13-1 in the three ways below.

First, the amendment will give probate judges concurrent jurisdiction with circuit judges in Adult Protective Services cases. This work is in line with the type assessments probate judges are already making. Also, these Adult Protective Services matters require DHR officers to find judicial officers just about any time of day. DHR having another resource available to address these issues will enhance judicial efficiency and responsiveness.

Second, the amendment will allow probate judges that are attorneys to handle elder abuse cases. Again, this is a natural extension of the work already being done by the probate courts in guardianship, conservatorship, and other protective proceedings matters. The limiting provision requiring appointment by the presiding circuit judge of attorney probate judges is necessary because the quasi-criminal nature of the elder abuse statutes impacts upon due process issues attorneys should assess.

Third, a recent case confirmed that, despite some previous practices to the contrary, name-change authority of probate courts is only for adult name changes. Since name changes are already routinely handled by probate courts, Section 12-13-1 specifying probate courts also have the ability to rule on name change petitions for minors is appropriate, provided circuit courts maintain that authority where a domestic relations matter involving that minor is pending.

## Revision of Fractional Stock Statute

The Business Entities Committee is in the process of a full review of the entire Business and Nonprofit Entities Code and so will have more to put forward in the coming months. In the interim, however, the committee proposes for the 2022 session a small change in the Business and Nonprofit Entities Code at Section 10A-2A-6.04 (regarding fractional stock) so that corporations would no longer issue scrip in registered or bearer form. The proposed revisions also establish notice requirements for when scrip is issued or transferred.

These changes are necessary for consistency with current Ala. Code Section 10A-2A-6.25, which provides that no stock certificate may be issued in bearer form. The change also conforms with the Alabama General Partnership Law, the Alabama Limited Partnership Law, and the Alabama Limited Liability Company Law and follows a national trend. ▲



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**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

### State Immunity

#### **Ex parte Cooper, No. 1200269 (Ala. Sept. 30, 2021)**

Director of ALDOT was entitled to Section 14 state immunity on claim that he breached a duty to a motorist to maintain roadways in reasonably safe condition and failed to follow general ALDOT duties.

### State Agent Immunity

#### **Smith v. Alexander, No. 1200215 (Ala. Sept. 30, 2021)**

DHR employees were entitled to state agent immunity in exercising discretion and judgment in their making decisions concerning the handling of a DHR-supervised minor who, after multiple violent incidents, was arrested and jailed, and during whose custody the minor had confrontation with jail guards which eventually caused catastrophic injury to minor. Decision to leave minor in jail and to bail him out after initial court date was discretionary and based on determination that minor could not be safely transported solely by DHR personnel. DHR employee's determination that jail was not a "placement" was entitled to deference.

### Medical Liability; Punitive Damages

#### **Bednarski v. Johnson, No. 1200183 (Ala. Sept. 30, 2021)**

Hope Johnson and her mother visited OBGYN for birth-control pills. Mother advised that she had experienced blood clots, and on blood testing of Hope, it was determined that she had factor V Leiden, a condition which contributes to clotting. Nevertheless, OBGYN prescribed hormonal birth control pills, which taken by someone with factor V increases the risk of clotting. Within two months, Hope visited an AUC Clinic, complaining of shortness of breath, headaches, etc. She was diagnosed with bronchitis by Bednarski. She returned to AUC two days later with worsened conditions and was given an inhaler by Dr. Willis at AUC. She died the next day of a blood clot. Hope's estate sued AUC and the OBGYN's practice and doctor – the latter groups settled. The trial court entered a judgment on jury verdict (as remitted) of \$6.5 million. The supreme court affirmed in a *per curiam* opinion of four justices, with Chief Justice Parker concurring almost entirely but separately. The holdings: (1) Plaintiff could not be deemed as a matter of law to have been aware that Willis treated Hope in the second visit, based on the medical records available before filing the complaint. Even though the prescription for the inhaler listed Willis as the prescribing

physician, other records indicated that Bednarski treated her that day (which was incorrect). (2) Plaintiff exercised reasonable diligence in attempting to ascertain Willis's status and identity as a potential defendant by seeking information concerning him before expiration of the limitations period, especially given defendants' concession that defendants themselves did not determine who treated Hope on the second visit until after expiration of the limitations period. (3) Amendment to complaint for negligent and wanton hiring and supervision regarding the conduct of Dr. Willis against AUC related back to filing of original complaint against AUC, as it was transactionally related and sought liability against the same defendants as those originally sued based on the same events, though under a different theory of recovery. (4) Statements made during closing and evidence adduced at trial did not improperly inject an unpleaded negligent hiring claim into the case. (5) Defendant waived any challenge to qualification of plaintiff's expert witness. (6) Trial court's remittitur of damages to \$6.5 million was supported under the *Gore* guideposts – the trial court's conclusion that the conduct was reprehensible and was the result of a health-care model which maximized profit was supported by the record, and comparable cases did not render the award of damages disproportionate to the conduct.

## Rule 54(b)

***Builder Systems, LLC v. Klammer*, No. 1200433 (Ala. Sept. 30, 2021)**

Claims and counterclaims were too intertwined to support Rule 54(b) certification of order disposing of the Klamers' claims.

## Mandamus; Recreational Use

***Ex parte City of Gulf Shores*, No. 1200366 (Ala. Sept. 30, 2021)**

Plaintiff sued city after being injured while walking on a city-owned boardwalk. City sought summary judgment based on recreational use statute, Ala. Code § 35-15-1 et seq, which circuit court denied. City petitioned for mandamus. The supreme court denied the writ not on the merits, but on the failure of the city to respond at summary judgment to plaintiff's argument relying on a number of cases under which plaintiff contended the boardwalk in this case was a "public way," like a sidewalk, that the city has a duty to maintain regardless of the recreational-use statutes.

## Jury Trial Waiver

***Ex parte Taylor*, No. 1200537 (Ala. Sept. 30, 2021)**

Plurality decision; jury waiver in employee's confidentiality agreement with employer covered claims alleging sexual and other harassment.

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(Continued from page 67)

## Appellate Jurisdiction; Post-Arbitral Proceedings

***Wynlake Residential Assn v. Husley, No. 1200242 (Ala. Oct. 22, 2021)***

In the context of Rule 71B (for post-arbitral actions seeking to vacate an arbitration award upon which confirmation is sought), when a Rule 59 motion is filed before the clerk's entry of the award as the judgment of the circuit court, the Rule 59 motion quickens upon the entry of the judgment. The quickening of the Rule 59 motion thus began the triggering of the 90-day period for the trial court to rule on the Rule 59 motion, pursuant to Rule 59.1. On day 91, however, the motion was denied by operation of law, which triggered the 42-day time for appeal. The appeal in this case was filed after the 42-day deadline, and thus there was no appellate jurisdiction.

## Rule 54(b)

***Alabama Ins. Und. Assn. v. Skinner, No. 1200132 (Ala. Oct. 22, 2021)***

Rule 54(b) certification was improper under the intertwining doctrine in action by insurer for a declaration of no coverage against co-insureds, where the trial court granted summary judgment as to one insured but left pending the claim as to the other insured.

## Elections

***Hiltz v. Bedwell, No. 1200217 (Ala. Oct. 29, 2021)***

Contestee in election contest is not required to file its own contest to offer evidence of provisional ballots which should have been counted for contestee.

## Compulsory Counterclaims; Separate Trials

***Ex parte McQueen, No. 1200594 (Ala. Oct. 29, 2021)***

Trial court abused its discretion in ordering separate trial under Rule 42(b) of compulsory counterclaims. Trial court made no finding that a consolidated trial would be prejudicial, or that judicial economy would be served, or that convenience of the parties would be served, with a separate trial, as required by the rule.

## Premises Liability; Open and Obvious Dangers; Visually-Impaired Plaintiff

***Owens v. Ganga Hospitality, LLC, No. 1200449 (Ala. Oct. 29, 2021)***

Plurality panel decision; in premises liability case, alleged lack of illumination in a loading and unloading area of hotel, which allegedly was an open and obvious danger, would not

be evaluated from the standpoint of a blind or severely visually impaired plaintiff but rather from the standpoint of a reasonable person. Although plaintiff appeared to argue existence of duty based on ADA standards, plaintiff failed to point to a specific ADA-based standard which was breached and causally connected to the accident.

## Immunity

***Ex parte Young, No. 1200184 (Ala. Oct. 29, 2021)***

Judicial immunity barred claims brought against circuit judges by inmate, even one for injunctive relief brought under 42 U.S.C. § 1983, if it is against a judicial officer for actions taken in the judicial capacity. Construing a pro se complaint liberally, the claims against a court reporter and clerk were for records under the Open Records Act, and that claim sought relief for the performance of an administrative function and not for actions requiring the exercise of discretionary functions. Therefore, immunity did not apply to that claim.

## Contempt; Procedure

***Ex parte SE Property Holdings, LLC, No. 1190814 (Ala. Nov. 5, 2021)***

Trial court's denial of a contempt motion is subject to direct appeal, notwithstanding the otherwise limiting language of Rule 70A(g), Ala. R. Civ. P., where the contempt petition initiates an independent proceeding and is adjudicated as a final judgment. Trial court's denial of contempt petition without holding a hearing, as required by Rule 70A(c)(2), was error.

## Default Judgments; Procedure

***Ex parte Living By Faith Christian Church, No. 1190872 (Ala. Nov. 5, 2021)***

Trial court is not required to hold a hearing on a motion for default judgment brought under Rule 55(b)(2), after a party has appeared in the action.

## Public Education Employees; Constitutional Law

***Bronner v. Barlow, No. 1200570 (Ala. Nov. 19, 2021)***

Plurality opinion; the court reversed the trial court's grant of summary judgment to certified class of public employees in claim under 42 U.S.C. § 1983 concerning PEEHIP benefits – specifically, a policy change in 2010 under which the PEEHIP board eliminated a “combining allocation program” and phased in a new premium rate structure, which requires a public-education employee married to another public-education employee to gradually begin paying the same monthly premiums for family hospital-medical coverage that other PEEHIP

participants were required to pay. The trial court had concluded that the 2010 policy violated equal protection. The plurality disagreed, finding the policy did not implicate fundamental rights or discriminate against a protected class, and thus the rational basis test applied and that the policy was sustainable under rational basis review.

### Case Management Orders; Public Nuisance

***Ex parte Endo Pharmaceuticals, Inc.*, No. 1200470 (Ala. Nov. 19, 2021)**

Plurality opinion; in multi-plaintiff action brought by hospitals against opioid defendants, trial court abused its discretion by entering a case management order directing parties to try a public-nuisance claim before trying other claims, and that the public nuisance claim would be tried in two phases, “liability” and “special damages.” Although the court rejected defendants’ argument that special damage implicated the “standing” of the hospitals, ordering separate trials on liability and special damage was nevertheless an abuse of discretion because they would implicate overlapping issues. Special damage was required to be proven by each plaintiff in order to establish liability – meaning the damage suffered by each plaintiff for uncompensated treatment costs.

## From the Court of Civil Appeals

### Rule 40

***Johnson v. Brown*, No. 2200509 (Ala. Civ. App. Nov. 19, 2021)**

Although trial court did not provide the required 60-day notice before trial, error was waived by not filing objection and motion to continue and by announcing trial-ready.

## From the United States Supreme Court

### Qualified Immunity

***City of Tahlequah v. Austin*, No. 20-1668 (U.S. Oct. 18, 2021)**

Officers were entitled to qualified immunity in their use of deadly force in encounter with Rollice while he was in his ex-

spouse’s garage, where officers had been summoned by the ex-spouse to the premises because of Rollice’s having appeared there intoxicated. As captured on video, Rollice had grabbed a hammer from the workbench and turned around to face the officers. Rollice grasped the handle of the hammer with both hands, as if preparing to swing a baseball bat, and pulled it up to shoulder level. The officers backed up, drawing their guns. At this point the video is no longer silent, and the officers can be heard yelling at Rollice to drop the hammer. He did not. Instead, Rollice took a few steps to his right, coming out from behind a piece of furniture so that he had an unobstructed path to Officer Girdner. He then raised the hammer higher back behind his head and took a stance preparing to throw the hammer or charge the officers. The officers then used deadly force. Especially in Fourth Amendment cases, courts may not define “clearly established” law at too high a level of generality.

### Qualified Immunity

***Rivas-Villegas v. Cortesluna*, No. 20-1539 (U.S. Oct. 18, 2021)**

Officers were entitled to qualified immunity in connection with physical restraints placed on suspect in arrest. The Court concluded that “even assuming Circuit precedent can clearly establish law for purposes of § 1983,” the relied-upon precedent in this case was not factually indistinguishable. This comment might indicate that the Court could consider the propriety of the use of Circuit precedent as being the basis for evading a “clearly established” finding.

## From the Eleventh Circuit Court of Appeals

### FLSA; Overtime

***Gelber v. Akal Security, Inc.*, No. 18-14496 (11<sup>th</sup> Cir. Sept. 30, 2021)**

Employer (security contractor for government which repatriates persons ordered from removal from the U.S.) could not lawfully automatically deduct one-hour meal breaks from otherwise compensable overtime worked by employees. At issue in this case were the meal breaks associated with return flights of over 90 minutes in which Air Security Officers (ASOs) were undisputedly working and were being paid overtime, but in which they had very little duties (and

(Continued from page 69)

thus watched movies) – in these, Akal deducted automatically one hour for meal breaks. The Court affirmed the district court’s finding of an FLSA violation and further affirmed a no-willfulness finding.

### Statutory Construction; Agency Deference

#### ***Catalyst Pharmaceuticals, Inc. v. Jacobus Pharmaceutical Co., No. 20-13922 (11<sup>th</sup> Cir. Sept. 30, 2021)***

Orphan Drug Act incentivizes pharmaceutical companies to develop “orphan drugs” – drugs for rare diseases that affect such a small portion of the population that there otherwise would be no financial incentive to research and develop treatments. One such incentive is to grant market exclusivity to the manufacturer of an FDA-approved orphan drug for a seven-year period for any drug utilized to treat the “same disease or condition.” 21 U.S.C. § 360cc. In this case, the FDA found the statutory phrase ambiguous and interpreted it to authorize approval of a drug made by Jacobus for treatment of LEMS (a rare autoimmune disorder), after it had previously approved a drug for treatment of LEMS manufactured by Catalyst. The district court erred in granting summary judgment to Jacobus in an action by Catalyst in attempting to enforce its exclusivity.

### Government Speech

#### ***Leake v. Drinkard, No. 20-13868 (11<sup>th</sup> Cir. Sept. 28, 2021)***

City conditioned Sons of Confederate Veterans’ participation in municipal-sponsored parade on agreement not to fly the Stars and Bars. One of the Sons sued claiming a First Amendment violation. The district court granted summary judgment to the city and municipal defendants, and the Eleventh Circuit affirmed: When [the] government speaks, it is not barred by the Free Speech Clause from determining the content of what it says.

### Statutory Construction

#### ***Colon v. Twitter, Inc., No. 20-11283 (11<sup>th</sup> Cir. Sept. 27, 2021)***

The mass shooting at the Pulse nightclub in Orlando was not an act of “international terrorism” as defined in the Anti-Terrorism Act, 18 U.S.C. §§ 2333(a) & (d)(2).

### FTCA

#### ***Smith v. USA, No. 20-11329 (11<sup>th</sup> Cir. Sept. 27, 2021)***

Although the Federal Tort Claims Act waives sovereign immunity for the acts or omissions of a federal employee only when a private person would be liable under state tort law

for those same acts or omissions, plaintiffs failed to point to any state-law duty under which the private property owner would be liable for placement of the mailbox.

### FLSA; Fluctuating Workweek Method

#### ***Hernandez v. Plastipack Packaging, Inc., No. 19-12655 (11<sup>th</sup> Cir. Oct. 13, 2021)***

Employer’s payment of bonuses – a shift premium for night work and holiday pay – on top of his fixed salary does not preclude the use of the fluctuating workweek method, so long as an employee receives a fixed salary covering every hour worked in a week.

### Voting Rights

#### ***Jones v. Governor of Florida, No. 20-12304 (11<sup>th</sup> Cir. Oct. 18, 2021)***

The Court upheld Florida’s newly-passed constitutional amendment, under which felons can have voting rights restored upon fulfilling their legal financial obligations, against an equal-protection attack grounded in alleged gender discrimination; there was no evidence the amendment was animated by gender-based bias.

### Colorado River Abstention

#### ***Gold-Fogel v. Fogel, No. 20-14310 (11<sup>th</sup> Cir. Oct. 20, 2021)***

Insurer filed interpleader action for insurance proceeds concerning death of Andrew. Cathleen (ex-wife) and David (son) filed competing claims. David filed state-court action asserting common-law and Florida state-law claims that Cathleen violated the Marital Settlement Agreement by failing to pay David child support. Like Cathleen’s federal declaratory-judgment claim, David’s state-law case turns on the meaning of the Marital Settlement Agreement. David moved to stay the federal action pending disposition of the state-court action under *Colorado River*. The federal court granted the motion. The Eleventh Circuit held the district court did not abuse its discretion in staying the federal action – note that the order of filing of the actions in this case was not dispositive.

### Attorneys’ Fees; Civil Rights

#### ***Common Cause Georgia v. Secretary of State, No. 20-12388 (11<sup>th</sup> Cir. Oct. 28, 2021)***

Litigant which prevailed in a TRO concerning election procedures could be deemed a prevailing party under 42 U.S.C.

§ 1988 based on having prevailed in the TRO itself. Litigant's obtaining any significant relief being requested, either in final form or pendente lite, creates prevailing party status.

## Social Security

### ***Pupo v. Commissioner, No. 19-14633 (11<sup>th</sup> Cir. Nov. 4, 2021)***

Commissioner's denial of SSI benefits was not supported by substantial evidence for two reasons. First, the ALJ erred by not addressing one of Pupo's medical diagnoses, her incontinence, when assessing her residual functional capacity. Second, the Appeals Council erred by not considering the new medical evidence submitted by Pupo following the ALJ's denial of her SSI claim.

## ADA; Accrual

### ***Karantsalis v. City of Miami Beach, No. 20-11134 (11<sup>th</sup> Cir. November 12, 2021)***

Plaintiff filed initial suit under ADA in 2008, alleging public accommodation claims arising from his MS diagnosis. He dismissed his first lawsuit without prejudice based on belief that his then-mild symptoms from MS were insufficient to confer standing, because at the time he could walk, run, stand, etc. In 2017, he began falling, and in 2019 he was prescribed a wheelchair. He brought a second suit in 2019 under ADA Title II. The district court dismissed based on the statute of limitations. The Eleventh Circuit reversed, holding that his claim accrued in 2017. "[F]or purposes of his ADA claim and taking all allegations as true, Karantsalis's injury did not occur until at least 2017, when his mobility decreased to the level that he could no longer readily access and use the City's public services because of its ADA non-compliant facilities."

## Railroad Employees

### ***CSX Transportation, Inc. v. USA, No. 20-12494 (11<sup>th</sup> Cir. Nov. 10, 2021)***

(1) Relocation benefits provided by a railroad to its employees are exempt under the Railroad Retirement Tax Act as "bona fide and necessary expenses incurred [by the employee] . . . in the business of the employer," 26 U.S.C. § 3231(e)(1)(iii); and (2) there is no requirement to prove or substantiate anything beyond compliance with the statute.

## Federal Preemption; Consumer Protection

### ***Marrache v. Bacardi USA, Inc., No. 20-10677 (11<sup>th</sup> Cir. Nov. 8, 2021)***

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In a case concerning the deceptive impact of the inclusion of “grains of paradise” in Bombay Sapphire Gin, the Court held that § 562.455 of the Florida Deceptive and Unfair Trade Practices Act (“FDUTPA”) was not preempted by federal law, i.e., the Food Additives Amendment of 1958.

### Qualified Immunity; Excessive Force

**Johnson v. City of Miami Beach, No. 20-10834 (11<sup>th</sup> Cir. Nov. 19, 2021)**

In excessive force § 1983 case, district court granted summary judgment solely on basis that officer’s conduct did not give rise to assault or battery nor was excessive. The Eleventh Circuit reversed, because under Johnson’s version of events and the videos of the account, Johnson’s arrest was effected and he was fully secured, not resisting, and not posing a threat when officer struck him in his face.

### Judicial Records; Sealing; Collateral Order Doctrine

**Callahan v. United Network for Organ Sharing, No. 20-13932 (11<sup>th</sup> Cir. Nov. 17, 2021)**

Internal communications attached to briefing in the district court were held to be judicial records, and the Court refused to seal them for lack of good cause. An order granting a motion to unseal conclusively decides a disputed question and resolves an important issue separate from a lawsuit’s merits, and it is thus immediately reviewable under the collateral order doctrine. Materials at issue were judicial records because the documents at issue “were used in connection with merits briefing such that the public right of access attaches.” They were attached to the hospitals’ supplemental brief in support of a preliminary injunction. District court did not abuse its discretion in employing the multi-factor balancing test for evaluating whether good cause exists to prevent public access, balancing “the asserted right of access against the other party’s interest in keeping the information confidential.”

### FDCPA; Standing

**Hunstein v. Preferred Collection & Mgmt Services, Inc., No. 19-14434 (11<sup>th</sup> Cir. Nov. 17, 2021)**

The Court withdrew its prior panel opinion (concerning standing to seek statutory damages in an FDCPA case) and elected to take the case en banc. In the last panel decision, the panel had held that the transmittal of consumer’s personal information to a third-party vendor, which then used the information to attempt collection of a debt, was action-

able because (1) the violation of § 1692c(b) alleged in this case gave rise to a concrete injury in fact under Article III, and (2) the debt collector’s transmittal of the consumer’s personal information to its dunning vendor constituted a communication “in connection with the collection of any debt” within the meaning of § 1692c(b).

### Bankruptcy

**In re Gaime, No. 20-12240 (11<sup>th</sup> Cir. Nov. 16, 2021)**

Tort plaintiff obtained significant wrongful-death judgment in state court against tort defendant (insured by State Farm). Tort plaintiff filed a petition for involuntary bankruptcy against the tort defendant, after which State Farm moved to intervene, post-judgment, in the wrongful-death action. Held: 11 U.S.C. § 362(a) (the automatic-stay provision) precluded State Farm’s motion to intervene, and bankruptcy court did not abuse its discretion in refusing to lift the stay.

### Qualified Immunity

**Charles v. Johnson, No. 20-12393 (11<sup>th</sup> Cir. Nov. 15, 2021)**

Charles (who claims to suffer from bipolar disorder) resisted arrest for over five minutes post-midnight. He was later subdued and arrested with the help of a civilian and a second deputy. He brought an excessive force claim and a claim for refusal to accommodate under the Rehabilitation Act. The district court granted summary judgment. The Eleventh Circuit affirmed, holding: (1) “civilian’s rendering of brief, ad hoc assistance to a law enforcement officer is not state action, absent proof of a conspiracy to violate the constitutional rights of another;” (2) a “tackle” arrest is not per se unconstitutional, and in the circumstances it “was among the least forceful ways to advance the arrest and gain control of the situation,” and thus arresting officer was entitled to qualified immunity because his use of force was not even unreasonable; (3) second officer’s use of taser to obtain control over suspect was not per se unconstitutional nor an excessive level of force in the circumstances; (4) Rehabilitation Act claim failed because plaintiff did not establish that his alleged bipolar disorder or panic attacked substantially limited a major life activity.

### Bankruptcy; Notice

**In re Le Centre on Fourth, LLC, No. 20-12785 (11<sup>th</sup> Cir. Nov. 15, 2021)**

Tort plaintiffs (Jacksons) sued LCF (bankrupt defendant) and related parties on premises liability claim in state court.





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Tort plaintiffs' counsel received amended disclosure statement noting that plan would release LCF and related parties, but LCF did not serve the Jacksons with a specific form of notice required by the Federal Rules of Bankruptcy Procedure. After plan confirmation, LCF and related parties moved to dismiss state court action; Jacksons then moved BK court for leave to press their claims nominally against the related parties to obtain insurance proceeds. The BK court denied that motion, and the district court affirmed. The Eleventh Circuit affirmed, holding that the Jacksons received sufficient notice to satisfy due process and that the bankruptcy court did not abuse its discretion by ruling that the Jacksons could not pursue their nominal claims.

RECENT CRIMINAL DECISIONS

# From the Alabama Supreme Court

## Double Jeopardy

**Ex parte Collins, No. 1200443 (Ala. Nov. 5, 2021)**

While affirming defendant's capital murder conviction under Ala. Code § 13A-5-40(a)(7) arising from his participation in a "murder for hire" scheme, the court reversed his conviction for criminal conspiracy under Ala. Code § 13A-4-3. Under *Blockburger v. United States*, 284 U.S. 299 (1932), criminal conspiracy is a lesser included offense of capital murder committed for pecuniary gain.

# From the Court of Criminal Appeals

## Felony Murder; New Trial

**Ex parte State (v. Justin Simpson), CR-20-0810 (Ala. Crim. App. Nov. 19, 2021)**

Circuit court erred by granting defendant a new trial after a jury convicted him of capital murder and felony murder. Rule 24.1(a) requires circuit court to sentence defendant before ordering a new trial. Because circuit court erred by



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granting new trial without first sentencing defendant, the court pretermitted review of whether the circuit court placed itself into the place of the jury by rejecting reweighing the evidence and rejected the guilty verdicts.

### Community Corrections

#### **Bothwell v. State, CR-20-0203 (Ala. Crim. App. Oct. 15, 2021)**

Ala. Code § 15-18-175(d) requires circuit court to make findings before revoking a community corrections sentence, but neither that statute nor Rule 27.6(f) requires those findings to be made in a written order. Circuit court's rejection of arguments for "rehab" as an alternative to revocation of community corrections sentence "implicitly made the findings that § 15-18-175 requires."

### Restitution

#### **Davis v. State, CR-20-0202 (Ala. Crim. App. Oct. 8, 2021)**

Circuit court erred in ordering defendant, convicted of criminal trespass under Ala. Code § 13A-7-3, to pay restitution for loss of items not proximately caused by criminal conduct.

### Youthful Offender

#### **M.S.P. v. State, CR-20-0182 (Ala. Crim. App. Oct. 8, 2021)**

Proper avenue for collateral relief from youthful offender adjudication is through common law writ of error *coram nobis*, because Ala. R. Crim. P. 32 cannot be used to challenge the adjudication.

### Juvenile Transfers

#### **D.M. v. State, CR-20-0261 (Ala. Crim. App. Oct. 8, 2021)**

Juvenile court did not err in transferring defendant to circuit court for prosecution as adult on charges of felony murder, robbery, and capital murder. Defendant did not preserve contention that juvenile court's finding was based solely on hearsay, and state produced "clear and convincing" evidence that transfer was in his best interest or the best interest of the public. "Clear and convincing" standard required to support the transfer under Ala. Code § 12-15-203 may be met even if evidence is conflicting.

### Search and Seizure

#### **Byrd v. State, CR-20-0609 (Ala. Crim. App. Oct. 8, 2021)**

Law enforcement officer's discovery of contraband in defendant's jacket did not violate Fourth Amendment. Defendant was being treated by paramedics, and officer was

asked to take jacket off of defendant's front porch. Officer patted the jacket to check for weapons and found a pill bottle containing marijuana. Officer's actions were justified under the emergency assistance exception to the warrant requirement.

### Heat of Passion

#### **Williams v. State, CR-20-0294 (Ala. Crim. App. Oct. 8, 2021)**

The court affirmed defendant's murder conviction and found no error in circuit court's refusal for a jury instruction regarding heat of passion manslaughter. Evidence showed that defendant knew that his wife had sex with the victim several days earlier, but there was nothing else to "come close to what our courts have said is catching one's spouse in 'the act of adultery' or 'actual sexual intercourse'" at the time of the killing to constitute provocation.

### Rule 32

#### **Matthews v. State, CR-20-0462 (Ala. Crim. App. Oct. 8, 2021)**

Trial court lost jurisdiction to modify dismissal of Rule 32 petition 30 days after that judgment.

### Uniform Mandatory Disposition of Detainers

#### **Brown v. State, CR-20-0223 (Ala. Crim. App. Oct. 8, 2021)**

Defendant was not entitled to dismissal of his charge under the Uniform Mandatory Disposition of Detainers Act, Ala. Code § 15-9-80 et seq., because its 180-day time limit was tolled by the suspension of jury trials in Alabama due to COVID-19 pandemic.

### District Court Discovery

#### **Dees v. State, CR-20-0276 (Ala. Crim. App. Oct. 8, 2021)**

Court denied mandamus relief from the district court's denial of discovery in defendant's felony case before preliminary hearing. While a district court is authorized to order discovery in felony cases until the completion of preliminary hearing, it is not required to do so, and defendant showed no abuse of discretion in the denial of her discovery request. ▲

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