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## On The Cover

Another beautiful sunset over Choctawhatchee Bay on the pier to Baytowne Cove marina near the site of this year's ASB 145<sup>th</sup> Annual Meeting at Hilton Sandestin Beach Golf Resort & Spa

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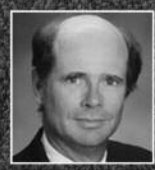
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## PRESIDENT'S PAGE

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



# Do the Right Thing – Be a Volunteer Lawyer

*President Shepard has designated a theme for each month of his term. 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!*

**May:** Lawyer Health and Wellness

**June:** Annual Meeting

I usually start my president's column with a long list of goals concerning your state bar becoming more transparent and more responsive to our members' needs. However, this time I am only going to mention three major goals that we are pursuing so that I can discuss a topic that is near and dear to my heart.

We are working on more than 10 goals for your state bar; here are three goals that relate to bar infrastructure:

1. Drafting a set of comprehensive bylaws for the state bar.
2. Creating an annual performance review process for the most senior members of the state bar staff.
3. Overhauling the database to make the state bar's website more user-friendly for our members and less time consuming for our staff to maintain.



Isn't it amazing that the state bar has never had a set of bylaws to clearly explain its policies and procedures, including what powers are vested in the president and the executive council, and what powers are reserved for the board of bar commissioners?

I mentioned the idea of annual performance reviews when I was vice president of the state bar four years ago. My suggestion went nowhere at that time, but now we are putting in a system of annual job performance evaluations and self-evaluations for the bar's most senior staff.

A complete overhaul of the state bar's database is long overdue. Our members should not have to struggle to find the information they need on the state bar website, and our staff

should not have to type in hundreds or even thousands of names and addresses and other information for the database.

I am hopeful that the database overhaul will include creation of a phone app that our members will use on their cell phones to quickly call up their membership card, look up contact information on other lawyers, and access other features of the state bar website.

Now let's get to the subject that I really want to talk about with you today – the importance of *you* being a volunteer.

The state bar has an excellent executive director, general counsel, and staff. Most of the state bar's goals and achievements would not be possible without them. By the same token, the state bar has excellent volunteers, and

most of our goals and achievements would not be possible with them as well.

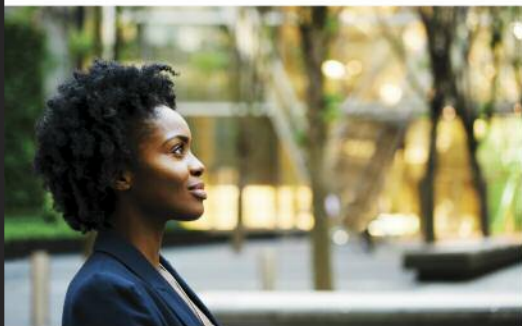
It is worth noting that the president, the members of the executive council, the members of the board of bar commissioners, and all the members of the various sections, committees and task forces are all lawyers volunteering their time and energy to the state bar's existing programs and new projects.

I had a friend in law school whose goal was to complete school and get a job with a federal or state agency. He would openly say that all he wanted to do is work and go home every night and wait for the opportunity to retire. Note that he was saying this when he was probably under thirty and still in law school.

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*(Continued from page 145)*

Well, if this also describes you, then this article probably isn't for you. I am writing this article for those of you who have a type A personality. That is not to say that effective lawyers have to be overbearing or unnecessarily argumentative, but rather that they like to set goals and work to achieve them. It does not matter if you practice in a large firm, a mega firm, a small firm, or a solo practice. We all get to the point where we need more than just our practice to feel useful.

It starts with first, a self-realization that you have a wealth of knowledge and experience from your years of practice, and second, the fact that there are many legal organizations that need your help. So, if you want to feel useful beyond your law practice, there is a way you can do that – by becoming a volunteer.

Let's start with the option of getting involved with your local or state bar association. To me, the difference between these organizations is the degree of organization and structure. With your local bar, you may be able to start a new program to help local lawyers. This is also true with your state bar, but you will have more opportunities to network with other volunteer lawyers and to figure out which of your ideas will work in the context of the state bar's mission statement and goals. The state bar gives you the opportunity to work on whatever area of the law interests you and potentially to help lawyers and their clients around the state.

I don't want to give you the impression that you have to come to any bar association with a sack full of great ideas. Our state bar and local bars have excellent existing programs, and you may enjoy getting involved in one of them. One example is mentoring young lawyers. Another example is par-

ticipating in our Volunteer Lawyers Programs' pro bono legal clinics. A third example is Alabama's version of the ABA's free legal answers program, whereby you can create an account, sign in, and then pick and choose questions from the public that you are willing to anonymously answer as a lawyer.

I'm speaking from experience here, because I mostly concentrated on practicing law and raising a family for the first 35 years of my legal career. I have been a Chapter 7 bankruptcy trustee for 40 years, and the position allowed me to also be active in commercial litigation and other areas that complemented my practice.

I did engage in occasional charitable activity, like serving as an elected member of the State Board of Education and as chair my church's annual giving campaign. But these activities would come and go every few years and never really addressed my knowledge and skills as an attorney.

When I was around 59 years old, I decided to cut back somewhat on my practice and spend more time with charitable work. It happened that a friend of mine had just been elected president of our local county bar, and he asked me if I would like to chair the CLE committee.

This was not as easy a decision as you might think. Twenty years earlier, I tried to get involved with my local bar and was placed on a committee. That was the last thing I ever heard from the bar for the rest of the year. It left me frustrated. I remembered that feeling later when my son, who practices law with me, had the exact same experience with our state bar. So you might say that I became a committee chair of our local bar because I thought that every lawyer should have a real chance to get involved. No volunteer lawyer should ever be overlooked.

So, I agree to manage the CLE committee and soon found that I enjoyed putting on educational events for our lawyer members. It was also a good way to meet lawyers in the community who practiced different areas of law and thus would never be involved in a case with me. During this time, I also began working with our local Volunteer Lawyers Program.

After three years of working with the CLE committee and the VLP, I decided to run for president of the bar. We had around 900 members, which may sound small to big city lawyers but was large enough to keep me busy campaigning for this volunteer position.

I won the election, and I absolutely enjoyed my year as bar president. I had fewer opportunities to use my legal skills, but I had more opportunities to use my organizational skills. I am speculating that I may have developed these skills during my law practice, which has ranged from a solo office to a firm of around twenty lawyers. I often organized clients' testimony and pleadings for a summary judgment hearing, a trial, or a mediation.

At this point, you may want to stop and say to yourself, "Do I want to organize clinics and events, or do I just want to participate in them?" That is a valid question for you to consider.

In any event, I ran next for the position of bar commissioner for my judicial circuit. Again, I had to campaign for this volunteer position, and I won the election.

I was somewhat disappointed when I found that there was not a clear path for whatever I could accomplish as a bar commissioner. So, I got permission from the state bar president to organize a statewide meeting of federal bankruptcy judges and clerks with the five volunteer lawyer programs in our state. It worked out well, as we discussed how to help

pro se debtors and low-income debtors who did not understand the bankruptcy system. Later, I created another statewide meeting for the various pro bono groups in the state, and a series of listening meetings for the state bar.

Have I worn you out yet? I realize that my experiences are related to my personality, and not every lawyer would want to do what I have done. But there is a message here that any lawyer can find a way to be active and relevant and useful as a volunteer.

To wind up the story of my life, in 2020 I ran for and was elected as the next president of our state bar. I also started a two-year term as president of Legal Services Alabama, which is the largest (over 75 staff lawyers) provider of free legal aid in Alabama.

I thought that I was well on my way to accomplishing all my volunteer lawyer goals. Then, in late 2020 I was diagnosed with stage 4 colon cancer.

Talk about having a bad day, week, and year. Still, after considerable thought and prayer with my wife and family, I decided that the chemotherapy would not stop me from fulfilling my goals. In fact, having goals provides a much better state of mind for me than inactivity.

So, here I am today at 68 years old, serving as state bar president, state bar foundation president, and Legal Services president. I am loving every minute of it. I still practice a little with my son and daughter-in-law, and my wife is an angel looking after my healthcare needs.

Before I conclude this article, there is one benefit of being a volunteer lawyer that I should have emphasized earlier. You will meet people and make friends that you never would have met otherwise.

One former state bar president, Sam Irby, calls me every week to see how I am doing and to discuss some goal or project. Our current state bar vice president, Tom Perry, calls as well, and we talk about our families and when

we might all take a trip together to New Orleans.

Here's the thing – they both live more than 250 miles from me. These are dear friends I never would have met if I had not become a volunteer.


So, I leave you with three good reasons to become a volunteer lawyer –


helping people, staying busy and useful, and forming new friendships that will brighten your life.

This column includes portions of an article written by Shepard for the American Bar Association's *Experience Magazine*, vol. 2021-2022, issue 3. ▲

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



It has been a great year for the Alabama State Bar. As I worked with President Taze Shepard, I watched one of the most inspirational displays of service I've ever seen. Despite his many health challenges this year, he never slowed down. He worked tirelessly for our bar to prepare us for many great opportunities to serve you better in the years to come. Please join us at the annual meeting to learn, network, and discover how our lawyers are *Making a Difference*.

An anniversary is always a reason to celebrate; therefore, I will share some reflections from this past year. As I stepped into this new role, I decided that my best course of action would be

to begin the work as if I were preparing for a complex civil trial. Two great decisions had been made prior to my arrival to assist in the process: the hiring of John Phelps as a consultant and the appointment of the Governance & Internal Operations Task Force to take a close look at the infrastructure of our bar. Not only did John help focus our work on identifying areas of concern and needed improvement, but he also helped me onboard as executive director.

The staff and many bar leaders worked together to learn as much as we could about the Alabama State Bar and to develop a plan of action. Through the never-ending scrutiny we were under,

we were able to complete four audits, revise our President and Leaders' Manual, develop a data-breach plan, begin our database conversion, realign and further develop our staff, reduce your license fees, revise our section financial policies, and better communicate with our members about bar activities and decisions. This list is certainly not exhaustive, and it only touches the surface of tasks completed and in progress.

Outstanding leaders who have been part of our great history should be commended. Many of these leaders have been called on to help me and others understand why our bar is so unique in our integrated model. As an integrated bar created under Ala. Code §§ 34-3-1 through -88 (1975) and the rules of the Alabama Supreme Court, our state bar serves in a dual role. First, the state bar is the licensing and

regulatory agency for lawyers in Alabama. Second, the state bar is a private association with responsibilities largely of a service nature including education, publications, and programming. Together, these activities benefit both the legal profession and the general public.

The Alabama State Bar joins many other states that are actively searching for and envisioning better ways to serve the legal profession. I celebrate our collaborative efforts and progress this year. We continue to build on our strong foundation and get better every day. Thank you for the opportunity to help guide the Alabama State Bar.

I applaud you all, appreciating your contribution to our profession and looking forward to building relationship, infrastructure, and a plan for the future. ▲

### *Alabama Bankruptcy Assistance Project*

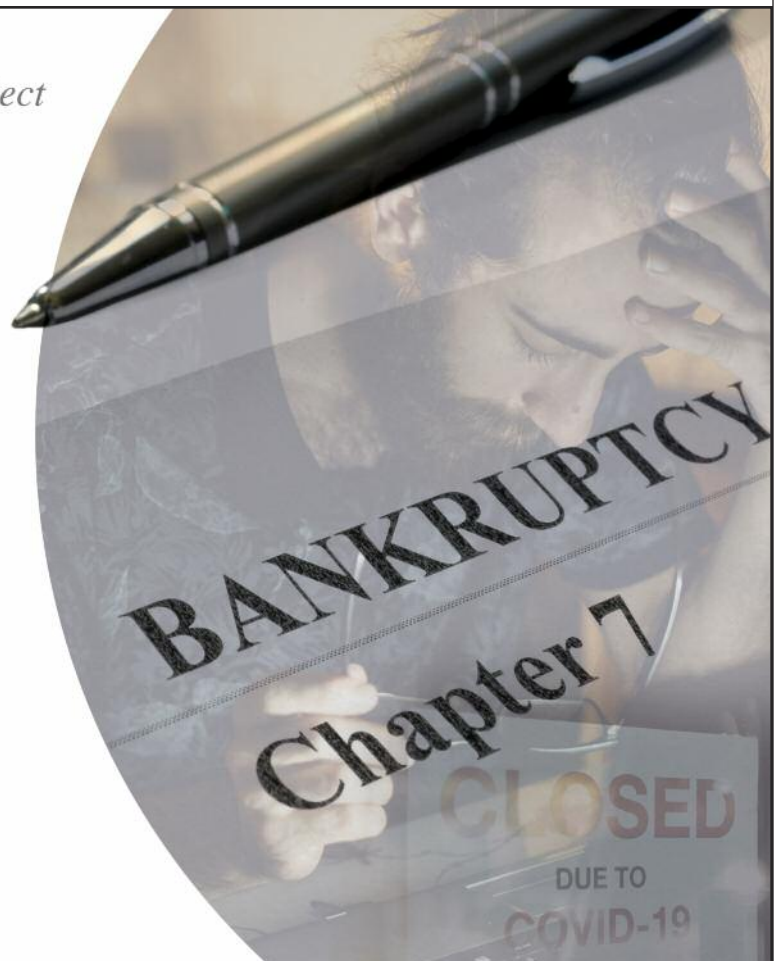
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## EDITOR'S CORNER

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



Welcome to the May 2022 issue of *The Alabama Lawyer*. In this one, we focus on adoptions.

A friend of mine is a probate judge who ends every adoption by telling the new family through his smile, "It gives me great pleasure to grant this adoption and to make your family whole. Congratulations." Applause generally follows, and a family is forever changed.

We decided we'd take this issue of our magazine to focus on adoptions – how they are done, their various forms – all in an effort to make your practice just that much easier.

I called on Sam McLure to help. Sam has been doing adoptions for a while now, and he understands them at a granular level. So, we put together this issue, and I think he did a capital job.

Susan Brown gave us our first article, "The Ukrainian Orphan Crisis and Refugee Adoption" (page 160). Her focus is refugee adoptions, right now those that arise from the war between Russia and Ukraine. The numbers of people fleeing the ravages of that war are staggering, and many of them are children. Susan grabbed hold of the problem, and she gave us the benefit of

her hard work, determination – and her research. Want to know the current state of Ukrainian law regarding children fleeing the country? She directs us to the website. She takes us by the hand and walks us through how to deal with Homeland Security, some federal statutes, and some state laws, and she even gives us direction on what forms we need and where to find them. And lest we underestimate her, she also helps us deal with adult refugees. This one is worth reading.

Now that we've whetted our appetite, Jonathan Griffith turns our focus back home with "A Primer on Alabama Adoptions" (page 166). If you've never done a simple adoption but have your face pressed against the glass trying to look inside the probate court building, pause and read. Jonathan directs us to the statutes, tells us what is important, and makes the process seem so simple that one wonders why everyone hasn't done adoptions all along.

Did you know that there is a special statute dealing with stepparent adoptions? Joshua Horn does, and he set his sharp pen to informing us all about it. Where are the statutes, what special steps are required, and how do we make a start? Take a look at his "Stepparent Adoptions" (page 172).

What about adoptions across state lines? Many lawyers don't realize that when an adoption requires taking a child from one state to another, another set of special rules apply, these from the Interstate Compact on the Placement of Children, called the ICPC. Jared Lyles is our guide for how to navigate these troubled shoals in "Interstate Adoptions" (page 175).

Sam McLure gives us a lesson on adoptions when the state has custody of a child that foster parents


want to adopt. What happens when foster parents don't agree with what the Department of Human Resources and maybe even the juvenile court's plans are for a foster child? His "Representing Foster Parents in Adoptions" is an eye-opener (page 179).

Now that we understand how to do a basic Alabama adoption, how to do a stepparent adoption, how to do an interstate adoption, and how to do an international adoption, we come back full circle to Susan Brown, whose "Counseling Adoptive Parents" gives us a lesson on how to deal with the parents who are adopting children in any of these situations (page 184). Her presentation is short, to the point, and best of all, helpful.

And when you finish these excellent articles, thumb over to page 152. For those of us who are neither as bright of eye nor as bushy of tail as once we were, Alfred, Lord Tennyson's *Ulysses* might just be a small draught from those fountains that Ponce de Leon searched Florida so futilely for. If only he'd had his issue of *The Alabama Lawyer*.

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 July. ▲



**40<sup>TH</sup>  
ANNIVERSARY**

**Alabama Association  
of Paralegals, Inc.'s**

**Summer Conference and Annual Meeting**

**August 18-21, 2022**

**Island House Hotel**

**Orange Beach, Alabama**

# "Ulysses"

By Alfred, Lord Tennyson

*It little profits that an idle king,*

*By this still hearth, among these barren crags,  
Match'd with an aged wife, I mete and dole  
Unequal laws unto a savage race,  
That hoard, and sleep, and feed, and know not me.*

*I cannot rest from travel: I will drink  
Life to the lees: All times I have enjoy'd  
Greatly, have suffer'd greatly, both with those  
That loved me, and alone, on shore, and when  
Thro' scudding drifts the rainy Hyades  
Vext the dim sea: I am become a name;  
For always roaming with a hungry heart  
Much have I seen and known; cities of men  
And manners, climates, councils, governments,  
Myself not least, but honour'd of them all;  
And drunk delight of battle with my peers,  
Far on the ringing plains of windy Troy.  
I am a part of all that I have met;  
Yet all experience is an arch wherethro'  
Gleams that untravell'd world whose margin fades  
For ever and forever when I move.  
How dull it is to pause, to make an end,  
To rust unburnish'd, not to shine in use!  
As tho' to breathe were life! Life piled on life  
Were all too little, and of one to me  
Little remains: but every hour is saved  
From that eternal silence, something more,  
A bringer of new things; and vile it were  
For some three suns to store and hoard myself,  
And this gray spirit yearning in desire  
To follow knowledge like a sinking star,  
Beyond the utmost bound of human thought.*

*This is my son, mine own Telemachus,  
To whom I leave the sceptre and the isle, –  
Well-loved of me, discerning to fulfil*

*This labour, by slow prudence to make mild  
A rugged people, and thro' soft degrees  
Subdue them to the useful and the good.  
Most blameless is he, centred in the sphere  
Of common duties, decent not to fail  
In offices of tenderness, and pay  
Meet adoration to my household gods,  
When I am gone. He works his work, I mine.*

*There lies the port; the vessel puffs her sail:  
There gloom the dark, broad seas. My mariners,  
Souls that have toil'd, and wrought, and thought with me –  
That ever with a frolic welcome took  
The thunder and the sunshine, and opposed  
Free hearts, free foreheads – you and I are old;  
Old age hath yet his honour and his toil;  
Death closes all: but something ere the end,  
Some work of noble note, may yet be done,  
Not unbecoming men that strove with Gods.  
The lights begin to twinkle from the rocks:  
The long day wanes: the slow moon climbs: the deep  
Moans round with many voices. Come, my friends,  
'T is not too late to seek a newer world.  
Push off, and sitting well in order smite  
The sounding furrows; for my purpose holds  
To sail beyond the sunset, and the baths  
Of all the western stars, until I die.  
It may be that the gulfs will wash us down:  
It may be we shall touch the Happy Isles,  
And see the great Achilles, whom we knew.  
Tho' much is taken, much abides; and tho'  
We are not now that strength which in old days  
Moved earth and heaven, that which we are, we are;  
One equal temper of heroic hearts,  
Made weak by time and fate, but strong in will  
**To strive, to seek, to find,  
and not to yield.***



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2022



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**DIFFERENCE**

ASB  
145th Annual  
Meeting

HILTON SANDESTIN BEACH GOLF RESORT & SPA  
MIRAMAR BEACH, FLORIDA



*Making a*  
**DIFFERENCE**

ALABAMA STATE BAR 145<sup>TH</sup>

*Annual Meeting*

HILTON SANDESTIN BEACH GOLF RESORT & SPA  
MIRAMAR BEACH, FLORIDA

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# Guest Speakers

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## ANDY ANDREWS

*Sponsored by the Solo & Small Firm Section*

### *Living a Life that Counts*

Did you know that every action you take – and every move you make – matters forever? In this keynote address created specifically for service organizations, Andy Andrews proves just how much of a difference one person can make. Andrews weaves wisdom, stories, laughter, and emotion into an unforgettable audience experience that includes a climax taken from his PBS television special. He is the author of the *New York Times* bestsellers *How Do You Kill 11 Million People?*, *The Noticer*, and *The Traveler's Gift*.



## PROFESSOR BRYAN FAIR

*Sponsored by the Diversity & Inclusion in the Profession Committee*

Prof. Bryan Fair will discuss the First Amendment implications of various state laws which restrict how teachers and professors can discuss race. His session will focus on the tenets of critical race theory, not as a diversity and inclusion “mandate,” but as a method of interrogating the role of race and racism in society that emerged in the legal academy and spread to other fields of scholarship. Prof. Fair will explore how critical race theory recognizes that race intersects with other identities, including gender, sexuality, gender identity, and others.

He is the Thomas E. Skinner Professor of Law at the University of Alabama School of Law. He teaches constitutional law, with a focus on inequality and the Fourteenth Amendment. He is the author of *Notes of a Racial Caste Baby: Colorblindness and the End of Affirmative Action*.



## JAN HARGRAVE

*Sponsored by the Alabama State Bar*

Jan Hargrave is the CEO of Jan Hargrave & Associates and is the nation's leading behavioral authority and body language expert. She will teach us ways in which our bodies communicate with the world around us. Hargrave is the author of five books on nonverbal communication, *Strictly Business Body Language*, *Judge the Jury*, *Freeway of Love*, *Let Me See Your Body Talk*, and *Poker Face*.



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- ▲ Frank Mims Bainbridge
- ▲ Daniel Alford Crowson, Jr.
- ▲ Hobart Amory McWhorter, Jr.

## Frank Mims Bainbridge

At the end of 2021, the Birmingham Bar Association, and all of Alabama, lost a giant of the legal profession with the death of Frank Mims Bainbridge. For 60 years, Frank brought a rigorous and creative legal mind to every undertaking. He also acted with extraordinary integrity and remarkable perseverance.

Frank was born and raised in Birmingham. In 1956, he graduated from the University of Alabama School of Law, having been a member of the board of editors of the law review. Frank then served two years as a first lieutenant in the Army and later joined the Bainbridge & Mims firm, which was founded by his father, Frank Bainbridge, and his uncle, Walter Mims. For 60 years, Frank practiced at Bainbridge & Mims, now known as Bainbridge, Mims, Rogers & Smith.

Frank excelled in his law practice, handling an extraordinary variety of matters. In a room full of lawyers, everyone relied on Frank's assessment of the law, the facts, and the best path forward. In other words, he was a lawyer's lawyer. Beyond his unparalleled professional judgment, Frank genuinely cared about his fellow lawyers, always demonstrating collegiality and respect for his colleagues, and intolerance for those who acted in an unprofessional manner. He also considered the practice of law an honorable and lofty profession. He prioritized professionalism, refusing to treat his law practice as only a moneyed business.

In 1977, Frank was elected president of the Birmingham Bar Association, after he had chaired a special committee to investigate a fraudulent divorce scheme in Alabama. To work closely with him and his committee, Frank recruited federal prosecutors and postal inspectors, to help end the illegal practice of selling fake divorce judgements to out-of-state residents. His work resulted in the imprisonment of three disbarred lawyers and the removal of two corrupt circuit judges. Frank's success in shutting down these fraudulent practices made national news, and the Alabama State Bar presented him with an award of merit for his leadership.

Appellate work for clients established his gift for successfully finding the perfect legal authority to support the clients' goals and objectives, even if it meant bending and changing Alabama law.

In recognition of his dedicated service to the profession in 2003, the Birmingham Bar Association named Frank as the "Outstanding Lawyer of the Year." More recently, in February 2021, the University of Alabama School of Law bestowed its highest honor upon him, the Sam W. Pipes Distinguished Alumnus Award.

Frank never cared for fax machines, computers, or emails (we put a desktop computer in his office for about two years and he refused to turn it on). His sole focus was finding the best strategy using the best legal principles to advantage his clients. He

(Continued from page 157)

lived an excellent and honorable life, both as a lawyer and as a wonderful person. In recent weeks following Frank's death, many reached out to share the positive impact he had on their lives, demonstrating profound respect for him.

He will be missed by all who were fortunate enough to know him and learn from him.

—Bruce F. Rogers, Birmingham

## Daniel Alford Crowson, Jr.

Danny Crowson, 48, of Birmingham, passed away on February 15 after a brief illness.

He will be remembered for being a devoted husband and father, loving son, a faithful servant, a great lawyer and honorable judge, and a friend to everyone he met. With his positive attitude and wonderful sense of humor, he was down to earth, gracious, and kind. His passing will leave a void, and he will be missed by everyone who knew him.

Danny was born May 12, 1973 in Birmingham. A 1991 graduate of Pelham High School, he went on to obtain a degree in political science from Jacksonville State University, where he was also a member of Pi Kappa Phi. In 2000, Danny graduated from the Birmingham School of Law and became a founding partner of Crowson, Morrison & Spann LLC.

He served as prosecutor for the City of Vincent from 2005 to 2015 and for the City of Montevallo from 2006 to 2015, and municipal court judge for the City of Calera from 2010 to 2015. In 2015, he was elected district court judge in Shelby County.

Danny received the Honorable Howell Heflin Appreciation Award, Alabama Judge of the Year, and State of Alabama Court Referral Services Award.

Over the years, he enjoyed playing tennis and basketball with his dad. He also enjoyed fishing with his many friends.

Preceding Danny in death are his father-in-law, Jimmy Mitchell, and his mother-in-law, Paula Mitchell Higgins, and his grandparents, Cleveland and Myrtle Crowson and J.T. and Gladys Barger.

Left to cherish his memory are his adoring wife of 25 years, Ashley Mitchell Crowson; his two loving children, Daniel Alford Crowson, III and Lauren Blake Crowson; his parents, Daniel Alford Crowson, Sr. and Barbara Barger Crowson; his sister, Renee' Crowson Doss; and many aunts, uncles, nephews, a niece, and cousins. He is also survived by a golden retriever, Bama, and a mini-goldendoodle, Bella.



Crowson

## Hobart Amory McWhorter, Jr.



McWhorter

Hobart McWhorter, an unforgettable and stalwart member of the Alabama and Birmingham bars for more than 60 years, died January 6, 2022 at the age of 90. This brief remembrance can only begin to portray the friend, partner, and force of nature Hobart was and remains to many lawyers whom he mentored or influenced.

Born in Birmingham on December 24, 1931, Hobart was descended from the McWhorter family of Gaylesville, Alabama and was proud of his Cherokee County roots. He attended Birmingham University School and Phillips Exeter Academy, then Yale University, where he was a member of the swim team. He obtained his bachelor of arts degree from Yale in 1953 and served as a lieutenant in the U.S. Army for two years, ultimately commanding a battery of artillery stationed in Hokkaido, Japan. Hobart earned the Juris Doctor degree from the University of Virginia School of Law in 1958, and then joined Bradley Arant All & Rose. Hobart remained associated with the Bradley firm for the next 63 years.

Hobart established himself early on as a superb trial lawyer, fearless in the courtroom and possessing an unyielding determination to win for his client. He was not one to hand out assignments to younger lawyers and then retire home while they did the work. To the contrary, he would often be found on nights and weekends at the office, searching for important precedents or preparing witness examination outlines.

Hobart recently remarked that juries like to be entertained, and throughout his career he certainly entertained them. Early on, he represented a local soft drink bottling company in personal injury cases where plaintiffs alleged there had been glass in their soda bottles. During one such trial, Hobart grabbed the bottle, removed the cap, added glass shards, and then drank the contents. The jury unsurprisingly returned a verdict for the bottler. Before the next such trial, plaintiff's counsel filed a motion asking that Hobart not be permitted to drink the evidence.

Hobart's skills as a trial lawyer were widely admired. He was a Fellow of the American College of Trial Lawyers and for decades was listed in numerous publications that recognize outstanding legal achievement. In the courtroom, while every case was at that moment the battle of the century, Hobart was always the professional, and unshakably committed to fair play and the rule of law. In addition to his courtroom accomplishments and skills, he was a great mentor to young

lawyers with whom he formed strong lifelong bonds, and he helped train generations of his firm's litigators.

If you ever met Hobart, it did not take long to see that he was one of a kind. In his spare time, he was an avid fly fisherman, traveling around the country and internationally in pursuit of the fish that would win the bet of the day. Hobart's wry wit and boundless sense of humor never failed to make him the life of the party. He was beloved by his family, friends, and colleagues. Hobart had a number of sayings he

frequently repeated. One that he often delivered as his litigation team was working on a critical issue was, "The Great Architect of the Universe never invented a substitute for results." Hobart's remarkable life was one of extraordinary results. Those of us blessed to learn, bond, and work with Hobart were granted the honor of a lifetime by that same Architect. ▲

—R. Thomas Warburton, Birmingham

**Allsup, Michael Lee**

Birmingham

Admitted: September 26, 1980

Died: December 16, 2021

**Andrews, John Fontaine**

Montgomery

Admitted: August 29, 1962

Died: December 26, 2021

**Ball, Eberhard Erich**

Bay Minette

Admitted: September 7, 1966

Died: January 25, 2022

**Bjurberg, Paul David**

Montgomery

Admitted: September 28, 1979

Died: May 15, 2021

**Boswell, Joseph Jerome**

Kansas City, MO

Admitted: October 14, 1964

Died: January 1, 2022

**Brinkley, John Allen**

Huntsville

Admitted: November 15, 1974

Died: January 2, 2022

**Burford, Jennifer Carin**

Birmingham

Admitted: April 26, 2002

Died: February 6, 2022

**Bynum, Frank Kitchell**

Birmingham

Admitted: September 14, 1964

Died: January 14, 2022

**Chapman, Lavonya Kelley**

Sarasota, FL

Admitted: April 26, 1996

Died: January 8, 2022

**Colvin, Gerald DeWitt, Jr.**

Birmingham

Admitted: December 7, 1972

Died: January 7, 2022

**Ermert, Michael Dwayne**

Birmingham

Admitted: September 28, 1990

Died: January 12, 2022

**Fields, Thomas Richard, III**

Montgomery

Admitted: April 23, 1993

Died: July 8, 2021

**Floyd, George Howell Jack**

Gadsden

Admitted: June 2, 1953

Died: August 24, 2021

**Harris, Robert Herman**

Miramar Beach

Admitted: September 27, 1976

Died: May 24, 2021

**Higginbotham, John Elliott**

Florence

Admitted: October 20, 1965

Died: March 9, 2022

**Holland, Lyman Faith, Jr.**

Mobile

Admitted: January 1, 1957

Died: February 15, 2022

**Jones, Robert Alphonso, Jr.**

Birmingham

Admitted: September 16, 1975

Died: January 14, 2022

**Keith, Marshall Alston, Jr.**

Selma

Admitted: April 10, 1969

Died: March 1, 2022

**Little, John Anthony**

Auburn

Admitted: September 26, 1997

Died: May 21, 2021

**Little, Kenneth Earl**

Birmingham

Admitted: June 1, 1954

Died: October 11, 2021

**Lohn, Andrew William**

Savannah

Admitted: April 23, 1993

Died: January 18, 2022

**McGill, Gerald Allen**

Pensacola

Admitted: April 29, 1991

Died: February 2, 2022

**Miller, Hon. Craig**

Montgomery

Admitted: April 12, 1966

Died: December 16, 2021

**Shelton, Kenneth Wayne, Sr.**

Decatur

Admitted: January 1, 1962

Died: February 5, 2022

**Sherling, Hon. Barber, Jr.**

Auburn

Admitted: April 10, 1975

Died: February 2, 2022

**Smith, Robert Sellers**

Huntsville

Admitted: September 3, 1959

Died: September 26, 2020

**Walkley, Stephen Cecil**

Orange Beach

Admitted: April 23, 1982

Died: November 28, 2020



# The Ukrainian Orphan Crisis and Refugee Adoption

*By Susan M. Brown*

**The war between Russia and Ukraine presents a crisis for many children.**

This article, while written almost entirely before the onset of Russia's war against Ukraine, may have life-saving application for clients to partner with orphan-care advocates seeking to bring these orphans into stable and safe American homes.

On February 28, 2022, the Minister of Social Policy of Ukraine released emergency policies for orphaned children to leave the

country with only a passport and a birth certificate.<sup>1</sup> Shortly after that, that same minister limited the emigration of orphans based on concerns of human trafficking by foreign citizens attempting to subvert the normal Ukrainian adoption process.<sup>2</sup> On March 4, 2022, the minister released amended policies whereby orphans could leave the country with legal permission granted from either the orphanage director or the local province wherein an orphan was placed into foster care.<sup>3</sup>



Over 1.5 million Ukrainians have evacuated Ukraine for Poland and most likely the same or a higher number to Romania. Because of these swift efforts of Ukrainian officials, orphan-care advocates, and caregivers, thousands of orphans have been safely evacuated. Yet, the temporary housing available in Poland and Romania is insufficient to meet the growing need for care for the orphans who have arrived there.

As Americans seek to help the Ukrainian refugees – adults and children – they will need legal advice. This article aims to help you guide your clients through the decision-making process and learn about possible avenues at local, state, and federal levels.

### Gaining U.S. Entry

There are multiple procedural paths by which a foreign child might come into the U.S. The most obvious for Ukrainian orphans is to seek refugee status. According to U.S. Citizenship and Immigration Services of the Department of Homeland Security (USCIS), a refugee is someone who: 1) is located outside of the United States; 2) is of special humanitarian concern to the United States; 3) demonstrates that they were persecuted or fear persecution due to race, religion, nationality, political opinion, or membership in a particular social group; 4) is not firmly resettled in another country; and 5) is admissible to the United States.<sup>4</sup>

Refugees are admitted on a case-by-case basis upon interview by a USCIS Officer. The process begins with a USCIS Form I-590 for the child, and the forms, along with detailed instructions on how to use it, are available on the USCIS website.<sup>5</sup>

Another possible path to entry for a foreign orphan is Protection from Harm Parole. This special designation for temporary entry applies to children who face imminent harm in their home country and have no other means of protection. USCIS provides detailed forms and instructions.<sup>6</sup> To support the application, you will have to provide supporting evidence such as the severity and imminence of the harm the child fears, the child's particular vulnerabilities, that parole is the only available mechanism for protection, and that relocation to another part of the child's home country or a neighboring country is not possible or would not prevent the harm the child fears.<sup>7</sup> However, be aware that according to USCIS, "[p]arole is generally not intended to be used to avoid normal refugee processing or to provide protection to individuals at generalized risk of harm around the world."<sup>8</sup>

The most streamlined entry for orphans currently emigrating from Poland or Romania may be through an accredited visiting program. This provides a quicker temporary visa using forms B1 or B2 Visitor Visas. Once again, USCIS has forms and instructions.<sup>9</sup>

Next, if your client is caring for a Ukrainian child already in the U.S., the child may be eligible for Temporary Protected Status (TPS). The U.S. Secretary of Homeland Security "may designate a foreign country for TPS due to conditions in the country that temporarily prevent the country's nationals from returning safely, or in certain circumstances, where the country is unable to handle the return of its nationals adequately."<sup>10</sup> On March 3, 2022, Secretary of Homeland Security Alejandro N. Mayorkas announced a new designation of Ukraine for TPS for 18 months.<sup>11</sup> However, this will only benefit Ukrainian individuals who were residing in the U.S. since March 1, 2022. Essentially, it prevents Ukrainian nonimmigrants from having to return to Ukraine for the next 18 months.<sup>12</sup>

The goal of these paths to entry is just that: entry. They do not grant citizenship, but only temporary safety. If your clients have a child in need of a more permanent situation, there is a little-known avenue for permanency and long-term protection: Special Immigrant Juvenile Status (SIJ). This special status provides a seldom-used path to safety for at-risk foreign children.

### SIJ Basics

A common means of providing at-risk foreign children permanent care and citizenship is adoption. International adoptions require chess-like maneuvering, to say the

least. Even the simplest involves two to three courts, three to five governments (national, state, local, foreign, domestic), and at least two to three U.S. federal agencies. For at-risk children who are already in the U.S., however, the normal process simply doesn't fit. Normally, foreign courts initiate the adoption process, and adoptive parents must be thoroughly vetted and spend time in-country before bringing the child here. Typically, visas and immigration issues are resolved before the child enters the country.

This is not so with children temporarily in the U.S. who have been subjected to abuse, abandonment, or other harm in their home country. How can they be kept safe when returning home to begin the typical international adoption process is so dangerous? Cases – even outside of the refugee context – are easy to imagine: A child visiting family, a young student sent to study in the U.S., a child here with a foreign sports team for an invitational tournament or winter training. All of these children would be in the U.S. on temporary visas. If their caregivers here discover these children are being abused at home, what are they to do? Keep the child here illegally and face kidnapping charges? Return the child to the home country for more abuse? It's a tough choice. But SIJ status may provide an answer to clients who come to you in such a quandary.

### SIJ Requirements

SIJ status is an immigration designation granted by USCIS. It allows children who are at risk in their home country to remain legally in the U.S. The designation appears in a definitions section of

How can they be kept safe when returning home to begin the typical international adoption process is so dangerous?

the U.S. Code: § 8 U.S.C. § 1101(a)(27)(J). It requires:

- that the child be under 21 years old;
- be currently living in the U.S.;
- be unmarried; and
- have a valid juvenile court order issued by a U.S. state court finding that:
  - > the child is dependent on the court or in the custody of a state agency or of an individual or entity appointed by the court;
  - > the child cannot reunify with one or both of their parents because of abuse, abandonment, neglect, or similar basis under state law; and
  - > it is not in the child's best interest to return to the home country.<sup>13</sup>

That's it. Yet the law is never as easy as it seems. Here are a few important requirements to remember.

### In State Court

First in priority, though not in sequence: a juvenile court order must be sought, above all, for the

protection of the child, not primarily for immigration purposes. If USCIS senses otherwise, it may summarily deny the child's application. So, when filing your materials in state court, make sure anyone reading knows your clients' main concern is protecting the child. The need for specific findings satisfying the SIJ requirements must be incidental. On this point, "Don't write so that you can be understood, write so that you can't be misunderstood."<sup>14</sup>

So, this complex issue involving international politics and federal immigration issues must start at home. Your clients should be caregivers who are willing to offer a permanent home for the child or at least a long-term safe residence. Keeping the child here only to later invoke the foster care system seems an inadequate remedy and indeed may not be in the child's best interests.

Your first step to protect the child is to petition a juvenile court of the state to issue an order for protection. But where exactly should you make your first filing, and what should it be? You can make your filing in any state court with authority under state law "to make judicial determinations about the custody and care of juveniles."<sup>15</sup> Notably, this definition of *juvenile court* under federal immigration law is far broader than Alabama's definition of the same term in Ala. Code § 12-15-102(12). That section uses the term *juvenile court* to refer only to circuit or district courts having authority under the Alabama Juvenile Justice Act. Under the SIJ definition, though, divorce courts, probate courts issuing adoption decrees or guardianship orders, and what we call juvenile courts may all make findings necessary to support an SIJ application.<sup>16</sup>

Usually, venue will be in the county where your clients live and are caring for the child. You should prepare them for the expenses of the proceedings and to open their home for examination by the court. A home visit by a social worker is almost certain. A guardian ad litem likely will be appointed to represent the child's interests and report to the court. A post-placement report or home study prepared by a licensed social worker likely will detail your clients' personal information – financial, marital, philosophical, familial, educational, and more. And you may need the services of a private investigator in the child's home country or here talking with relatives here to prove the abuse, abandonment, or other circumstances there. Thus, the GAL, social worker, and investigator are all at your clients' expense – not including legal fees.

You should prepare your clients to appear at court – perhaps to file the original sworn petition and certainly to testify. Your clients should also be aware that the process in state court will take longer than they imagine. Yes, some judges dealing with child-safety issues will act speedily. But you will be asking the court to do something out of the ordinary and to make very specific findings of fact. Outliers make even the most pro-active judge cautious. Be prepared to push for emergency orders if needed or to seek relief from another court with concurrent jurisdiction if you just can't get a ruling.

Your filing might be a dependency petition and petition for custody,<sup>17</sup> request for a protection from abuse order,<sup>18</sup> petition for guardianship,<sup>19</sup> or adoption petition.<sup>20</sup> Your client's goals and the specifics of your county will dictate your best

You should prepare your clients to appear at court – perhaps to file the original sworn petition and certainly to testify.

course. Indeed, you might seek relief in more than one court simultaneously if concurring jurisdiction exists (the subject of another article on another day). You will need to meet all state-court requirements for notice, burden of proof, and rules of court for whichever procedure you choose.

Finally, you must be certain that the court's order includes express findings necessary for your clients to make the SIJ application. There must be an order saying expressly that 1) the child is in custody of an individual or entity appointed by the court, 2) the child cannot reunify with one or both parents because of abuse, abandonment, neglect, or something similar, and 3) it is not in the child's best interests to return to the home country.

And don't forget confidentiality! Nearly all court orders involving children are subject to strict confidentiality requirements. Be sure to have the judge make a finding that any such seal is lifted for the limited purpose of allowing your

client to make and support the SIJ application.

### At USCIS with SIJ Application

You have an order in hand. Now it's on to the joys of federal agency forms. Your clients may complete the appropriate forms themselves to save costs. Just be sure to review the documents before submission so you can refine language as needed. The current SIJ forms are: Form I-360 for the SIJ application (just 19 pages without supporting documents); and, if your I-360 is granted, Form I-485 for adjustment to status as permanent resident (18 pages). Of course, the agency will likely request additional information and will issue determinations as it sees fit.

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As far as timing for USCIS to decide – it’s the federal government. Their agents definitely care about the child, but they are unquestionably backlogged – even more so with the current situation in Ukraine. The critical moment for your clients, however, is the filing of the application. Once filed, and so long as it remains pending, the child may legally stay in the U.S. until a determination of SIJ status is issued. After status is granted, you can make efforts toward permanent residence.

**Beware the Hague**

The Hague Convention provides a legal mechanism by which the parent of a wrongfully abducted

The Hague Convention provides a legal mechanism by which the parent of a wrongfully abducted child can petition the courts of a contracting state for return of the child.<sup>21</sup>

child can petition the courts of a contracting state for return of the child.<sup>21</sup> Typically, the Convention is invoked in child-custody disputes between ex-spouses following a divorce. The Convention applies only between contracting countries. By becoming a contracting country, each country decides that a child’s place of habitual residence should have jurisdiction over custody issues.<sup>22</sup>

Your state court may balk at the idea of taking jurisdiction of a foreign child for fear the Convention precludes jurisdiction. However, despite its underlying preference for place of habitual residence, the Convention does not dictate state court jurisdiction.<sup>23</sup> Indeed, the federal law that implements the Convention, the International Child

Abduction Remedies Act (ICARA), plainly provides that the “courts of the States and the United States district courts shall have concurrent original jurisdiction of actions arising under the Convention.”<sup>24</sup> What the Hague Convention does is force your court to decide the parent’s wrongful abduction claim before deciding any other issues.<sup>25</sup>


**Yet Hope Remains**

If your child’s alleged abusive parent does come to court to seek return of the child, your clients need not despair. The court retains discretion, but there are persuasive defenses to a petition under the Convention.

As an initial matter, the parent may not have met the prima facie case for return of the child. Your clients’ retention of the child in the U.S. must be wrongful, that is, in breach of the parent’s custody rights actually being exercised in the country of habitual residence.<sup>26</sup> Further, your clients may argue that the parent did not have custody or that the child’s habitual residence is here.

There is some conflict among U.S. courts about how to determine habitual residence. The Convention does not define the term. Some courts look to parental intent. Did the child’s parent intend for them to continue living in the home country? Other courts focus instead on the child’s experiences. Where does the child feel most settled and have life experiences and ties?<sup>27</sup>

Further, the Convention provides five defenses that may be available to your clients. Three of those defenses may be proved by a preponderance of evidence:



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- more than a year has passed, and the child is settled in the new home;<sup>28</sup>
- the parent having custody rights consented to the retention of the child;<sup>29</sup> and
- the parent was not exercising custody rights at the time of the retention.<sup>30</sup>

Two of the defenses require clear and convincing evidence:

- return of the child would expose the child to a grave risk of “physical or psychological harm or otherwise place the child in an intolerable situation”;<sup>31</sup> and
- return of the child would violate fundamental U.S. principles “relating to the protection of human rights and fundamental freedoms.”<sup>32</sup>

The first three defenses may or may not exist for your clients. The last two, though requiring stronger evidence, have a good chance of success if you have filed your case to protect the child and ultimately seek SIJ status. The grave risk defense provided in the Convention and the juvenile court findings required by the SIJ definition seem indeed to rest on precisely the same evidence.

Moreover, though a Hague Convention challenge may slow your timeline, the Convention itself requires unusually fast determinations. You have genuine grounds to press for timely hearings and rulings.

### Concluding Thoughts

The SIJ path is not easy. This article hasn’t even mentioned the potential political issues involved in the foreign relations arena.<sup>33</sup>

But the process is worthwhile if it can keep a little one from harm. And these days, there are many such children in harm’s way. We hope you never have to counsel a client needing to take this path. But if you do, Godspeed, and thank you for your work. ▲

### Endnotes

1. <https://www.kmu.gov.ua>. The servers are not always working due to the war. You can view the document in English if you click on the word “English” on the top right of the first page.
2. *Id.*
3. *Id.*
4. U.S. Citizenship and Immigration Services, *Refugees* (available at <https://www.uscis.gov/humanitarian/refugees-and-asylum/refugees>) (last updated March 2, 2022); *See also* 8 U.S.C. § 1101(a)(42).
5. U.S. Citizenship and Immigration Services, *Form I-590* (available at <https://www.uscis.gov/sites/default/files/document/forms/i-590.pdf>).
6. U.S. Citizenship and Immigration Services, *Guidance on Evidence for Certain Types of Humanitarian or Significant Public Benefit Parole Requests* (available at <https://www.uscis.gov/humanitarian/humanitarian-parole/guidance-on-evidence-for-certain-types-of-humanitarian-or-significant-public-benefit-parole-requests#DocumentstoSubmit>).
7. *Id.*
8. *Id.*
9. <https://www.uscis.gov/forms/explore-my-options/visit-the-united-states> and <https://www.uscis.gov/working-in-the-united-states/temporary-visitors-for-business/b-1-temporary-business-visitor>.
10. U.S. Citizenship and Immigration Services, *Temporary Protected Status* (available at <https://www.uscis.gov/humanitarian/temporary-protected-status>).
11. *Id.*
12. U.S. Department of Homeland Security, *Secretary Mayorkas Designates Ukraine for Temporary Protected Status for 18 Months*, March 3, 2022 (available at <https://www.dhs.gov/news/2022/03/03/secretary-mayorkas-designates-ukraine-temporary-protected-status-18-months>).
13. If the Department of Health and Human Services has custody of the child, that Department must generally give consent as well.
14. President and Chief Justice William Howard Taft.
15. 8 CFR 204.11(a); *See Budhathoki v. Nielsen*, 898 F.3d 504 (5th Cir. 2018) (bare order for child support not enough to qualify as order for care and custody).
16. USCIS Publication, *Immigration Relief for Abused Children, Special Immigrant Juvenile Status, Information for Juvenile Court Judges and Child Welfare Professionals*.
17. Ala. Code § 12-15-317; Form JU-6.

18. Ala. Code § 30-5-3.
19. *Id.* at § 26-2A-75.
20. *Id.* at § 26-10A-16.
21. The Convention on the Civil Aspects of International Child Abduction, Concluded 25 October, 1980 (hereinafter, “Hague Convention”).
22. *Hague Convention*, Article 3(a).
23. *See* Garbolino, Hon. James, D., *The 1980 Hague Convention on the Civil Aspects of International Child Abduction: A Guide for Judges* (“Hague Guide”), 2d ed., at 6, Federal Judicial Center, 2015.
24. 22 U.S.C. §§ 9001–9011 at § 9003(a).
25. *Hague Convention*, Article 16; Parents may pursue administrative procedures in attempts to negotiate return of the child. But these lack enforcement authority, and the ultimate order must come from a court.
26. *Hague Convention*, Art. 3(a), (b).
27. *See* Garbolino at 55-56.
28. *Hague Convention*, Art. 12.
29. *Id.* at Art. 13(a).
30. *Id.*
31. *Id.* at Art. 3(a).
32. *Id.* at Art. 20.
33. Your clients, of course, will want to avoid being the focal point of media in an international incident. Consider contacting a U.S. Senator and the State Department to give them notice that the situation is pending in state court. You want them to hear from you first, not an angry foreign official.

### Susan M. Brown



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# A Primer on Alabama Adoptions

*By Jonathan A. Griffith*

Many attorneys love the idea of connecting a loving family with a child in need of a forever home, but are intimidated by the adoption process. This article is designed to help those lawyers.

## Overview – Statutory Nature of the Adoption Process

The adoption process is statutory, and it demands strict compliance with Alabama’s Adoption Code, all of which is located in §§ 26-10A-1 to -35.

## Pre-Placement Investigation (“Home Study”)

The adoption process begins when you file a petition for adoption. More about the petition is below.

However, when possible, the first step should be a pre-placement investigation (“home study”).<sup>1</sup> While it is ideal to complete this step before filing the petition, sometimes there is simply no time to complete a pre-placement home study, and the court may waive the requirement, or it may order a post-placement home study instead.<sup>2</sup>



However, the statute does not require a pre-placement home study for adoptions by stepparents or by relatives falling within one of several statutory categories.<sup>7</sup>

The purpose of the pre-placement home study is to determine the suitability of the petitioners’<sup>3</sup> home (which is the adoptee’s future home), and it includes a criminal background investigation. The statute allows the petitioners to initiate the home study by a direct request through DHR or a licensed child-placing agency, or by filing a request with the probate court.<sup>4</sup> The petitioners should include a copy of the home study report with the petition for adoption.<sup>5</sup> By statute, the home study must be performed by DHR or a licensed individual or agency.<sup>6</sup>

However, the statute does not require a pre-placement home study for adoptions by stepparents or by relatives falling within one of several statutory categories.<sup>7</sup>

**Jurisdiction and Venue**

The statute allows the petition to be filed with the probate court in the county in which (1) the minor adoptee resides; (2) a petitioner resides or is in military service; or (3) an office of any agency or institution operating under Alabama law having guardianship or custody of a minor or an adult is located.<sup>8</sup> Although the probate court has original jurisdiction over petitions for adoption, a matter will be transferred to juvenile court for the limited purpose of termination of parental rights if a person whose consent is required fails or is unable to provide such consent.<sup>9</sup> Additionally, in the event of a contested adoption, either party (or the court itself) may move the probate court to transfer the case to juvenile court for a hearing on that issue.<sup>10</sup> That transfer is discretionary.

**The Adoption Petition**

The petition itself is a short document, containing the pertinent information outlined in the statute regarding the petitioners and the adoptee, each petitioner’s desire to adopt the child, any relevant court orders (including juvenile court orders) that may pertain to the adoptee, and information regarding anyone from whom consent is required.<sup>11</sup> As outlined below, several other supporting documents are required and should be filed along with the petition.

**Accountings and Affidavits**

Alabama law prohibits an individual or organization from accepting any type of fee for matching adopting parents with an adoptee.<sup>12</sup> Thus, the petition should be accompanied by sworn affidavits by both the petitioners and, if applicable, the biological parents stating that no money or other things of value have been exchanged in connection with the relinquishment of the adoptee.<sup>13</sup>

Additionally, the petitioners should file a sworn disclosure of anticipated disbursements.<sup>14</sup> This affidavit should include a listing of all anticipated charges, expenses, and fees for services that they anticipate to pay in the matter (and to whom they will be paid), including attorney’s

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and legal fees, as well as court costs.

Notably, no affidavits regarding fees and charges are required in the case of a stepparent adoption or if the petitioners fall within one of the provided categories of relatives of the adoptee, unless ordered by the court.<sup>15</sup>

Once paid, the petitioners must file a “sworn statement that is a full accounting of all disbursements paid in the adoption.”<sup>16</sup>

### Consents – Express and Implied

The petition should also be accompanied by the express, written consent of any adoptee who is 14 years of age or older, the adoptee’s mother, and (subject to exceptions) the adoptee’s presumed father.<sup>17</sup>

The consents should be drafted and executed as a typical affidavit, before a notary public, and they should include the information specifically required by the statute, including the individual’s name, relationship to the adoptee, and the individual’s acknowledgment that he is knowingly, voluntarily, and irrevocably forfeiting all parental rights and obligations.<sup>18</sup> Take a careful look at the statute and follow it.

In some cases, the court may determine that consent of one or both parents is implied. The statute provides that consent or relinquishment of an individual is implied when (1) the father, with reasonable knowledge of the pregnancy, fails to offer financial or emotional support for six months prior to the adoptee’s birth; (2) a parent leaves the adoptee without provision [the adoptee’s] identification for 30 days; (3) a parent leaves the adoptee in another’s care without maintaining a significant parental relationship with the adoptee for six months; (4) a parent receives notice of a pendency of adoption and fails to answer or respond within 30 days; and (5) a father fails to comply with the requirements for the registration of putative fathers in § 26-10C-1.<sup>19</sup>

### Special Note on Consent and the Putative Father Registry

Determining whether the biological father’s consent is required depends on that father’s legal status. While



Failing to file with the registry within 30 days of the child’s birth has severe repercussions to the putative father’s ability to receive notice of and contest an adoption petition.

legal and presumed fathers’ consents are clearly required, the consent of a putative father is required only if “he complies with Section 26-10C-1 and he responds within 30 days to the notice he receives under Section 26-10A-17(a)(10).”<sup>20</sup> Section 26-10C-1 codifies Alabama’s Putative Father Registry, where a man who claims to be the father of a child born out of wedlock can file a “Notice of Intent to Claim Paternity.” Filing with

the registry entitles the putative father to notice of an adoption petition for a child born within 300 days of the date or dates of sexual intercourse listed in the registry and to the same biological mother listed in the registry.<sup>21</sup>

Failing to file with the registry within 30 days of the child’s birth has severe repercussions to the putative father’s ability to receive notice of and contest an adoption petition. As stated above, the Adoption Code provides that a putative father’s consent is only required if he complies with the registry. Further, failing to register is listed as a ground for finding implied consent.<sup>22</sup> The registry itself provides that “[a]ny person who claims to be the natural father of a child and fails to file his notice of intent to claim paternity [...] prior to or within 30 days of the birth of a child born out of wedlock, shall be deemed to have given an **irrevocable implied consent** in any adoption proceeding.”<sup>23</sup> The statute continues to say that registering is “**exclusive procedure available**” to entitle a putative father “to notice of and the opportunity to contest any adoption proceeding.”<sup>24</sup>

Once the Department of Human Resources receives notice of an adoption petition under § 26-10A-7, the department will send the probate court a copy of the “Notice of Intent to Claim Paternity” filed by any putative fathers, and the probate court will then give notice to the putative father.<sup>25</sup> If no putative fathers have registered, no further search is required.

Under the statute, any man who later wishes to claim paternity of the adoptee has already given irrevocable implied consent to the adoption and is not entitled to notice pursuant to § 26-10A-17(a)(10).

If the putative father has registered, but fails to respond to notice he receives under § 26-10A-17(a)(10),



his consent is not required. § 26-10A-7(a)(5). However, the question of what effect the registry ultimately has on a putative father's rights in relation to contesting an adoption has not been directly addressed by a majority of the Alabama Court of Civil Appeals or the Alabama Supreme Court.

### Notice/Service of Process

Unless service has previously been waived, the petitioners must serve notice of the pending adoption on the individuals and agencies listed in § 26-10A-17. These include (but are not limited to) those from whom consents or relinquishment are required (unless notice has been waived or parental rights have been terminated), any legally appointed custodians or guardians of the adoptee, anyone having physical custody of the adoptee (excluding foster parents), the Department of Human Resources, and the father and putative father if made known by the mother or otherwise known by the court (subject to exceptions, such as if parental rights have been terminated or the court has determined implied consent).<sup>26</sup>

Service must be perfected according to the Alabama Rules of Civil Procedure and must inform the recipient that a response is required within 30 days if he intends to contest the adoption.<sup>27</sup> Service must also include a copy of the adoption petition for parties listed in § 26-10A-17(a)(2) through (10) – essentially all parties except for those whose consents are required under § 26-10A-7.<sup>28</sup>

If a parent's whereabouts are unknown (including in the event one parent fails or refuses to disclose the identity or location of the other parent), the statute provides that the court shall allow service by publication, by posting, or by any other substituted service.<sup>29</sup>

The statute allows for service by certified mail to the agency or individual who performed the pre-placement investigation and DHR.<sup>30</sup>

Petitioners must provide the court with proof of service of the notice on all for whom such notice is required before the adjudicational hearing occurs.<sup>31</sup>

When you file your adoption petition, you may want to also file a notice of intent, demonstrating to



When you file your adoption petition, you may want to also file a notice of intent, demonstrating to whom you intend to send notice of the adoption.

whom you intend to send notice of the adoption. That will demonstrate the petitioners' intent to serve the individuals according to the Alabama Rules of Civil Procedure and whether the petitioners anticipate needing to request permission from the court to serve any notices by publication, and it will assure the court that the petitioners will notify the court when all relevant parties have received proper notice.

### Interlocutory Decree

When you file your adoption petition, you should file a motion and proposed order for an interlocutory decree granting the petitioners temporary legal custody. Section 26-10A-18 provides that the court shall enter such a decree “[o]nce a petitioner has received the adoptee into his or her home for the purposes of adoption and a petition for adoption has been filed.” The decree delegates custody of the adoptee to the petitioners, as well as the responsibility for the adoptee's care, maintenance, support, and medical care.<sup>32</sup>

### Motion for Dispositional Hearing

Finally, the adoption petition should be accompanied by a motion to set a dispositional hearing under § 26-10A-25. That statute provides that once the pre-placement home study has been completed (or waived by the court), the court shall schedule a dispositional hearing as soon as possible, or no later than 90 days after the filing of the petition.<sup>33</sup>

In the event a home study has not been completed, or if it has been waived, or where the adoptee is a special needs child, the dispositional hearing must be set no later than 120 days after filing.<sup>34</sup>

You can combine the order setting the dispositional hearing with the proposed order for interlocutory decree.

### Optional Appointment of Guardian Ad Litem

“Upon the motion of any party, or upon the court's own motion, before or after the filing of petition for adoption the court may appoint a guardian ad litem for the adoptee. . . .”<sup>35</sup> This step may be beneficial in cases where one of the parties is a minor or could be

deemed legally incompetent. In such case, a motion should be included with the petition, or even before filing the petition, if need be.

### Contested Hearings

If a party files a motion to contest a pending adoption, the court “shall set the matter for a contested hearing.”<sup>36</sup> At such hearing, the court will determine whether the adoption is in the best interest of the adoptee, the requirements of the statute have been fulfilled, and all proper consents and relinquishments have been obtained (and not withdrawn).<sup>37</sup> As noted above, the probate court has original jurisdiction over adoption proceedings, but the statute affords the probate court discretion to transfer the matter to juvenile court to conduct the contested adoption hearing.<sup>38</sup>

The probate court is required to give notice of the contested hearing by certified mail to all parties involved in the adoption proceeding, and the contestant and each petitioner is required to attend the hearing. A guardian ad litem must be appointed and present to represent the adoptee’s interests.<sup>39</sup>

After the hearing (which may be continued from time to time to permit further discovery or investigation), the court will decide to either dismiss the adoption proceeding or deny the contest.

If the court denies the contest, it may immediately proceed with the dispositional hearing, and the court shall order the contestant to pay all legal costs the petitioners incurred because of the contest.<sup>40</sup> If the court grants the contest and denies the adoption, the court shall order reimbursement to the petitioners “for all medical and living expenses incidental to the care and well-being of the minor child for the time the child resided with the petitioners for adoption.”<sup>41</sup>

### Dispositional Hearing

To obtain a final decree of adoption, the petitioners must present clear and convincing evidence that: (1) the adoptee has been in the physical custody of the petitioners for 60 days (unless waived by the court);



After the hearing (which may be continued from time to time to permit further discovery or investigation), the court will decide to either dismiss the adoption proceeding or deny the contest.

(2) all consents, relinquishments, terminations, or waivers have been obtained; (3) service of notice of the adoption proceeding has been perfected; (4) all contests, if any, have been resolved in the petitioners’ favor; (5) each petitioner is suitable and desires to become the adoptee’s parent; (6) adoption is in the adoptee’s best interest; and (7) all other statutory requirements of the adoption code have been met.<sup>42</sup>

### The Written Decree

Upon the court’s finding of clear and convincing evidence of the items listed in § 26-10A-25(b), the court shall issue a written decree of

its findings.<sup>43</sup> The written decree granting the adoption must include the adoptee’s new name, along with an order that from the date of the decree, the adoptee shall be the petitioners’ child, and be “accorded the status set forth in Section 26-10A-29.” That portion of the code provides that the adoptee “shall be treated as the natural child of the adopting parent or parents and shall have all rights and be subject to all of the duties arising from that relation, including the right of inheritance.”<sup>44</sup>

### Post-Dispositional Hearing Matters

Following the dispositional hearing and the court’s written decree, the statute requires the court to send a copy of the final order to DHR and a certificate of the final order of adoption to the State Registrar of Vital Statistics of the State Board of Health.<sup>45</sup> The State Registrar of Vital Statistics will then generate a new birth certificate for the adoptee, including the adoptee’s new name along with each adoptive parent’s name. The statute also requires the original birth certificate and adoption decree to be sealed and filed, protected from inspection except upon court order.<sup>46</sup>

### Appeals

Appeals from final decrees of adoption must be filed in the Alabama Court of Civil Appeals within 14 days of the decree.<sup>47</sup> The statute requires the appellate

court to prioritize such appeals over other cases.<sup>48</sup> Appellants must serve notice of the appeal to everyone entitled to receive notice of the pending adoption petition under § 26-10A-17, except those for whom consent or relinquishment was implied or not required under §§ 26-10A-9 and 26-10A-10.<sup>49</sup>

Notices of appeal must maintain the adoptee’s confidentiality and should only specify the identity of the court where the appeal is pending; the docket number of the petition; the nature of the appeal; and the name, address, and telephone number of the attorney filing the petition.<sup>50</sup> The caption of the appeal should only include the initials of the adoptee’s birthname.<sup>51</sup> The initials of the natural parents and the petitioners must be indicated in all appellate pleadings and briefs.<sup>52</sup> ▲

**Endnotes**

1. Ala. Code § 26-10A-19.
2. *Id.* at § 26-10A-19(c).
3. For clarity, we adopt the plural form, *petitioners*, though, of course, a single person, a *petitioner*, can also adopt.
4. *Id.* at § 26-10A-19(b).
5. *Id.* at § 26-10A-19(a).
6. *Id.* at § 26-10A-19(d).
7. *Id.* at § 26-10A-19(h).
8. *Id.* at § 26-10A-4.
9. *Id.* at § 26-10A-3.
10. *Id.* at § 26-10A-24(e).
11. *Id.* at § 26-10A-16.
12. *Id.* at § 26-10A-23(a).
13. *Id.* at § 26-10A-23(d).
14. *Id.* at § 26-10A-23(b).
15. *Id.* at §§ 26-10A-27, -28.
16. *Id.* at § 26-10A-23(c).
17. *Id.* at § 26-10A-7.
18. *Id.* at § 26-10A-11.
19. *Id.* at § 26-10A-9.
20. *Id.* at § 26-10A-7(a)(5).



The State Registrar of Vital Statistics will then generate a new birth certificate for the adoptee, including the adoptee’s new name along with each adoptive parent’s name.

21. *Id.* at § 26-10C-1(f).
22. *Id.* at § 26-10A-9(a)(5).
23. *Id.* at § 26-10C-1(i) (emphasis added).
24. *Id.* (emphasis added); See also *Ex parte Z.W.E.*, 2021 Ala. LEXIS 23 at \*22 (Ala. 2021) (Parker, C.J., concurring) (“By law, a father of an unborn child conceived out of wedlock may take responsibility for the child by filing a notice with the putative father registry. § 26-10C-1(a)(2) and (c). If he fails to file, he forfeits his parental rights. § 26-10C-1(i).”); *Cf. T.C.M. v. W.L.K.*, 248 So. 3d 1, 5 (Ala. Civ. App. 2017) (“we will not further consider the issue whether the father’s failure to timely register with the Alabama Putative Father Registry should be fatal to his contest of the adoption.”); *C.Z. v. B.G.*, 278 So. 3d 1273, 1282 (Ala. Civ. App. 2018) (“In line with *T.C.M.*, we decline to consider further the arguments of the prospective adoptive parents that the failure of the father to provide all the information required by the APFRA should negate his right to contest the adoption of the child.”).
25. Ala. Code § 26-10C-1(f).
26. *Id.* at § 26-10A-17(a).
27. *Id.* at § 26-10A-17(b).
28. *Id.*
29. *Id.* at § 26-10A-17(c)(1).
30. *Id.* at § 26-10A-17(c)(2).
31. *Id.* at § 26-10A-17(e).
32. *Id.* at § 26-10A-18.
33. *Id.* at § 26-10A-25.
34. *Id.*
35. *Id.* at §§ 26-10A-11, -12.
36. *Id.* at § 26-10A-24.
37. *Id.*

38. *Id.* at § 26-10A-24(e).
39. *Id.* at § 26-10A-24(b).
40. *Id.* at § 26-10A-24(g), (i).
41. *Id.* at § 26-10A-24(h).
42. *Id.* at § 26-10A-25(b).
43. *Id.* at § 26-10A-25(c).
44. *Id.* at § 26-10A-29(a).
45. *Id.* at § 26-10A-32(a).
46. *Id.* at § 26-10A-32(c).
47. *Id.* at § 26-10A-26(a).
48. *Id.* at § 26-10A-26(b).
49. *Id.* at § 26-10A-26(c).
50. *Id.*
51. *Id.*
52. *Id.*

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# Stepparent Adoptions

*By Joshua B. Horn*

**Stepparent adoptions are the most common form of adoption filed in Alabama.**

With divorce rates at more than 50 percent, it is common for adults to help raise their spouse's children.

The Alabama adoption code streamlines stepparent adoptions. These stepparent adoptions are governed by Ala. Code § 26-10A-27, and with a little research, they can be handled easily by attorneys who do not specialize in family adoption law.

This article aims to serve as a guide to those interested in filing a stepparent adoption.

General adoption provisions apply. The probate court in Alabama has original jurisdiction over adoption proceedings.<sup>1</sup> Petitions should be filed in the county in which the adoptee resides or has a legal residence.<sup>2</sup> The consent of the adoptee's mother and father are required in all adoptions in Alabama.<sup>3</sup> This requirement is not waived or exempted in a stepparent adoption.

Alabama law also requires the consent of all adoptees 14 years of age or older.<sup>4</sup> It is important to know that the child wants to be adopted before any paperwork is completed. Although there are exceptions to the consent requirements, this article focuses on the streamlined approach for stepparents to adopt. Notice of all adoptions have to be sent to the State Department of Human Resources, including stepparent adoptions.

During the first consultation with all potential clients looking to adopt a stepchild, consent of the parents should be one of the first questions asked. Without the consent of both natural parents, adoptions are much more complicated and should be handled by an experienced adoption attorney, as they may then involve implied consent arguments and a contested adoption hearing.

I'm always surprised at the number of calls I get about a stepparent adoption when the biological parent is not legally married to anyone. Often these clients have lived with the legal parent for many years. However, the first requirement to be met is that the petitioning parties be "husband and wife."<sup>5</sup> The adoption code makes no exception for couples living together who are not married.

The stepparent seeking to adopt a minor child must have resided with the minor child for one year prior to filing a petition for adoption.<sup>6</sup>

If these requirements are met, a petition can be filed with the probate court along with the consents of the legal parents and the child (if the child is 14 or older).

A petition to adopt a child is a relatively simple form. It must contain information regarding the petitioner, the biological parents, and the child. The information shall include the dates of birth of the petitioner and the adoptee, marital

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status of the petitioner, the adoptee's birth name, the adoptee's name upon the completion of the adoption, the county of residence of the petitioner and the adoptee, how long the adoptee has resided with the petitioner, and statements regarding the consents of the mother.<sup>7</sup> The adoptee's original birth certificate and the marriage license of the petitioner and the adoptee's parent should be attached as exhibits to the petition for adoption. The petition's signature is to be notarized on the petition.

Know your local judges. Some expect things that the code does not strictly require, such as a statement regarding the petitioner's criminal history.

Once the petition for adoption is filed, notice of the petition shall be served on the biological parents as well as the State Department of Human Resources. Service may be waived in writing by the parents. Service of process shall be made in accordance with the Alabama Rules of Civil Procedure except that service may be perfected on state DHR by certified mail. Many attorneys make the mistake of sending notice to the local or county department of human resources. It is important to note that only the state DHR office has access to the putative father registry. Therefore, sending notice to the local or county office is not sufficient.

Ala. Code § 26-10A-19 typically requires an investigation into the petitioner as well as the petitioner's home. However, as part of the stepparent provision in § 26-10A-27, the preplacement and/or post-placement investigation is not required unless the probate court, in its discretion, requires an investigation. Even though § 26-10A-23 requires that the petitioner file an accounting with the court detailing all expenses paid in relation to the adoption, that is expressly waived in stepparent adoptions by § 26-10A-27.

Once state DHR has received notice, a review of the putative father registry will occur as well as a child abuse and neglect (CA/N) investigation. After DHR has completed these investigations, it will

send an acknowledgment letter to the probate judge. The probate judge cannot enter a final order on an adoption without this acknowledgment letter from DHR. The petitioner's attorney should always ensure the probate judge has received this letter before the final hearing to avoid unnecessary time and expense to the client.

Once the probate judge has reviewed the filed petition, the written consents of the adoptee's parents, and the acknowledgement letter from state DHR, a final hearing will be set. Section 26-10A-25 requires the probate judge to set the final hearing within 90 days of the filing of the petition. At this hearing, the probate judge must find by clear and convincing evidence that the adoptee has resided with the petitioner for the required time, that all necessary consents have been obtained, that service has been made to all persons entitled to receive notice, that all contests have been resolved, and that it is in the adoptee's best interests for the final adoption decree to be entered.<sup>8</sup>

If the probate judge determines all the above requirements are met, a written decree shall be entered showing the new name of the adoptee.<sup>9</sup> This decree further orders that from the date of the decree, the adoptee shall be accorded the same status as a biologically-born child of the petitioner, including the right to inheritance.<sup>10</sup> Issuance of the final decree also terminates the parental rights of the consenting parent.

From the date of the final decree, the petitioner is no longer a

stepparent, but "shall be treated as the natural child of the adopting parent," and the adopting parent has the responsibility of providing for the child until the child reaches the age of majority – 19.<sup>11</sup> It is vitally important to discuss the legal requirements and consequences with the petitioner prior to filing for an adoption.

## It is even possible for the adoptive parent to be granted custody of the adopted child in a divorce over the biological parent of the child.

This responsibility cannot be terminated by divorce. Minor children who have been adopted will be treated as biological children of the marriage. The domestic relations court overseeing a divorce can and will order child support to be paid by the non-custodial parent. It is even possible for the adoptive parent to be granted custody of the adopted child in a divorce over the biological parent of the child.

Stepparent adoptions seek to obtain a permanent home and family for minor children. They are a highlight for attorneys and give great pleasure. Stepparent adoptions are not complicated and can be completed quickly. It is my experience that most probate judges will sit down with the attorney and walk them through the process. However, we hope that after reading this article, and with a little research, that will not be needed. ▲

### Endnotes

1. Ala. Code § 26-10A-3.
2. *Id.* at § 26-10A-4.
3. *Id.* at § 26-10A-7.
4. *Id.* at § 26-10A-7(a)(1).
5. *Id.* at § 26-10A-5(a).
6. *Id.* at § 26-10A-27(1).
7. Petition requirements are codified in Ala. Code § 26-10A-16.
8. *Id.* at § 26-10A-25(b).
9. *Id.* at § 26-10A-25(c).
10. *Id.* at § 26-10A-29(a).
11. *Id.* at § 26-10A-29(a).

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# Interstate Adoptions

*By Jared N. Lyles*

## The Interstate Compact on the Placement of Children act

(the ICPC) was put into place to encourage the cooperation and communication between state authorities that are involved in the interstate placement of children in foster care or for adoption.<sup>1</sup>

For the purposes of this article, with some exceptions (more about those in a minute), when a child crosses states lines for the purpose of adoption – whether the child is

sent through an agency or a person in the business of placing children for adoption or by a state government – the ICPC applies.

### When the ICPC Applies

The ICPC applies to sending agencies. It then defines a sending agency quite broadly as “a party state, or officer or employee thereof; a court of a party state; a person, corporation, association, charitable agency or other entity which sends, brings or causes to be sent or brought any child to an-

other party state.”<sup>2</sup> Those sending agencies are not allowed to “send, bring or cause to be sent or brought into any other party state any child...as a preliminary to a possible adoption unless the sending agency shall comply with each and every requirement set forth in this article and with the applicable laws of the receiving state.”<sup>3</sup>

Basically, a child can’t be sent by a state, a court of a state, or any sort of child-placing organization into another state for the purpose of placing the child in foster care or for adoption, unless the other state agrees through the ICPC process.

### When ICPC Does Not Apply

Certain family members are excluded from the ICPC. It does not apply when this is done by a “parent, step-parent, grandparent, adult brother or sister, adult uncle or aunt or his guardian and leaving the child with any such relative or nonagency guardian in the receiving state.”<sup>4</sup> Essentially, the ICPC does not apply when a family member brings a child to another state so that the child could remain with another relative or a guardian.

Because the ICPC applies only to out-of-state placements of children in foster care or for adoption, the ICPC does not apply in simple non-dependency custody cases – your run-of-the-mill domestic case. For instance, the ICPC does not apply to divorce custody actions or to a custody action between the child’s parents and third parties (for example, grandparents).

Let’s make up an example and see how this works: Perhaps your clients, the Smiths (who are Alabama residents), have a longtime friend who was about to have a child in Florida who she could not care for. The friend called the Smiths and asked them to adopt her child. They agreed, left Alabama, and arrived at the hospital in Florida. The Smiths worked with a hospital social worker to obtain the right paperwork and signatures needed to transition custody. The biological mother signed a voluntary delegation of authority to the Smiths. The social worker knew that your clients live in Alabama and didn’t mention any other statutes or requirements. Having returned to Alabama, the Smiths engaged your services to petition for adoption.

When you send notice of the adoption petition to State Department of Human Resources (SDHR) pursuant to Ala. Code § 26-10A-17, SDHR may send an

acknowledgement letter to the probate court raising concerns that the adoptive petitioners have violated the ICPC, the Child Care Act of 1971,<sup>5</sup> or both.

However, by their plain text, the ICPC and the Child Care Act of 1971 do not apply to wholly private adoptions. They regulate only adoptions by “sending agencies” and the “placing” of children for adoption from out of state. In the event DHR argues that the Smiths’ adoption petition violates these statutes because the child was a resident of another state and brought into this state for the purpose of adoption, do not be alarmed. You can argue that DHR’s interpretation is too broad. When examined, the statutes do nothing to prohibit, or even to regulate, the Smiths’ adoption petition.

The ICPC is expressly inapplicable to arrangements made by a qualifying relative – a parent, stepparent, grandparent, adult brother, adult sister, adult uncle, adult aunt, or guardian – who leaves the child with a “non-agency guardian,” which aptly describes your clients, the Smiths.<sup>6</sup> If the drafters had intended Article III to apply to placements with all persons, they could have used that language in that article. However, they did not. We are left with the plain language of the article as written. Therefore, the ICPC “shall not apply.”<sup>7</sup>

Likewise, the Child Care Act of 1971 (CCA) should not present a concern. Section 38-7-15 provides that “[n]o person or agency shall bring. . .any child into the State of Alabama. . .without first obtaining the consent of the department.”<sup>8</sup>

First, the CCA predates the ICPC. The CCA was adopted in 1971 (Acts 1971, 3<sup>rd</sup> Ex. Sess., No. 174, p. 4423, § 1), and the ICPC was adopted in 1979 (Acts 1979, No. 79-675). These statutes cover similar, but not identical, subjects. Though it is entirely possible that the ICPC supersedes the CCA, there is no case law on this issue.

Second, the Alabama Court of Civil Appeals has already addressed the effect of § 38-7-15 on adoption petitions. In *Wolf v. Smith*, the biological mother, then living in Texas with the child, decided to consent to an adoption by acquaintances of her friend in Alabama.<sup>9</sup> Later, the biological mother sought reversal of the final decree of adoption. She argued that the adoptive parents failed to obtain the consent of the state before bringing the child into Alabama pursuant to § 38-7-15. The Alabama Court of Civil Appeals held



that: “[T]he obvious purpose of the statute is to insure a full disclosure of all pertinent information on a child being brought into Alabama for adoption. . . . In the present case, [the natural mother] was present in the court and questioned by counsel on [her social, background, and medical information]. . . . [Information and birth certificates] [were] before the court. . . . [A]n in-home investigation. . . . was conducted by [the State agency]. . . . Thus, all pertinent information on the child which is mandated by the statute was available to the court.”<sup>10</sup>

The court found that where all the necessary and proper information is before the probate court, a technical noncompliance with the statute is a “harmless procedural error.”<sup>11</sup> Finally, the court held that failure to comply with § 38-7-15 does not render an adoption void.<sup>12</sup>

The purposes of the ICPC and the Child Care Act of 1971, particularly when read in conjunction, are intended to prevent both adoption professionals and other states from engaging in adoptions across state lines without communicating with DHR and other states’ ICPC offices. And, indeed in our hypothetical case, the Smiths worked closely with a social worker at the hospital in Florida to obtain the birth mother’s signatures and transition custody of the child. The social worker knew that the Smiths were from Alabama, and all information pertinent to the child’s circumstances had been properly provided to the probate court for consideration. There is no indication in either statute that they are intended to be used to deter situations like the Smiths, where persons with prior friendships or familial relationships choose to transfer parental rights for the benefit of each other and their child, although they happen to live in different states.

In our hypothetical case, you would have many good arguments. Your clients, private parties and friends of the biological mother, received the child from the biological mother, also a private party. Under ICPC, the out-of-state mother caused the child to be brought to Alabama and to be left with a non-agency guardian. Thus, ICPC does not apply due to the

very terms of its own limiting language. And case law provides that adopting parents need not comply with § 38-7-15, assuming it has not been superseded by ICPC, because all information pertinent to the child’s best interests is before the probate court.

Neither you nor your clients nor the court nor the state should lose sight of the child’s best interest. If the court questions whether it should proceed with the Smiths’ petition due to concerns over the ICPC or the CCA, you should point the court to the plain text of the ICPC, to the relevant case law, and the particular facts of your case, and that the adoption is in the child’s best interests.<sup>13</sup> You should argue that the child has been in the care of the Smiths since his birth and in their exclusive care since his initial release from the hospital. All these documents have been notarized and executed in accord with the requirements of the adoption code. A pre-placement or post-placement home study has been or will be completed soon. The child has bonded and attached to the Smiths and their entire family. There is utterly no evidence to the contrary. Once the time for any contest has passed, nothing should stand in the way of a final decree.

Ultimately, the strongest argument in favor of moving forward with the adoption, despite any misplaced ICPC concerns, boils down to basic American civics. The power of governance is divested into three co-equal branches of government, whose individual powers are held at bay through checks and balances. The legislature creates executive agencies with certain limited powers. If an executive agency oversteps its enumerated powers, it falls upon the judicial branch – here, the probate court – to hold the executive branch in check.

### The ICPC Process

If you have determined that ICPC applies, the first step is to prepare the sending state’s ICPC Form 100A.<sup>14</sup> Many states have created their own form.

Let’s change up our hypothetical to say that the ICPC applies. Your clients would then submit

**If an executive agency oversteps its enumerated powers, it falls upon the judicial branch – here, the probate court – to hold the executive branch in check.**

Florida's 100A form to the Florida Compact office with all necessary supporting documents.<sup>15</sup> If the Florida Compact office approves the ICPC application, it will then send the application to the Alabama Compact office for approval.<sup>16</sup> Note that Alabama is reputed to have some of the highest standards for ICPC in the country – what may suffice for one state doesn't necessarily suffice for Alabama. Helpful contacts for each state can be found at <https://www.icpc.statepages.org/>.

In addition to the 100A form, the ICPC packet sent to Alabama should contain:

- the child's birth certificate and a signed medical examination (or if the child is a newborn, the hospital records);
- the biological parents' consents, relinquishments, or an order terminating parental rights;
- your clients' home study;
- a form and written interview regarding social and medical information of the birth parents performed by the state sending agency, a licensed child-placement agency, or licensed social worker;
- an American Indian Heritage Affidavit;
- Legal risk affidavits signed by the adoptive parents if a consent, relinquishment, or termination of rights has not been obtained on the birth father;
- an affidavit waiving the governing law of Florida if the adoption will be finalized in Alabama; and
- a statement of adoption expenses.

The Alabama Compact office may then request more information as necessary to complete the process.<sup>17</sup> Alabama will notify the Florida office of its approval. Once the child has been brought to Alabama to reside with the Smiths, Form 100B, the Report on Child's Placement Status, will need to be submitted to both the Alabama and Florida ICPC offices. Once the adoption is finalized in Alabama, an additional 100B will need to be forwarded to both ICPC offices.

If an agency is in fact involved with the adoption, they should be reminded that violating ICPC may subject the agency to penalties in both the sending and receiving state and constitutes "full and sufficient grounds for the suspension or revocation of any license, permit or other legal authorization held by the sending agency which empowers or allows it to place, or care for children."<sup>18</sup> ▲

## Endnotes

1. Ala. Code § 44-2-20(I) (1975).
2. *Id.* at § 44-2-20(II)(b).
3. *Id.* at § 44-2-20(III)(a).
4. *Id.*
5. *Id.* at §§ 38-7-1 to -19.
6. *Id.* at § 44-2-20(VIII)(a).
7. *Id.*
8. *Id.* at § 38-7-15(a).
9. *Wolf v. Smith*, 435 So. 2d 749, 750-1 (Ala. Civ. App. 1984).
10. *Id.* at 752.
11. *Id.*
12. *Id.*
13. Consider also case law from other states excusing adoptive parents from strict compliance with ICPC: *R.F. v. Dep't of Children and Families*, 50 So. 3d 1243, 1246 (Fla. Dist. Ct. App. 2011) ("Although there is a technical non-compliance with the compact, the paramount concern is the best interest of the child. DCF has provided no reason why it is in R.F.'s best interest to return to Florida pending ICPC proceedings and disrupt permanent placement with his family in New York. Rather, DCF has taken an overly legalistic position that cannot be reconciled with the facts in this case."); *In Matter of Adoption of Calynn M.G.*, 523 N.Y.S. 2d 729 (Sur. Ct. 1987) ("As often happens, children are placed from one compact State into another without observing the compact procedures. . . Rather than leaving this child's future unsettled. . . the best interests of the child dictate that the child be permitted to remain with the adoptive parents. . . and that the necessary steps be taken to finalize the adoption."); *State Dep't of Youth and Family Services v. K.F.*, 803 A. 2d 721, 723, 730 (2002) ("[T]he ICPC does not apply to relative placement and, therefore, it does not require the prior approval of the receiving state when a court in this state has decided against foster care in favor of placing children with their out-of-state maternal grandparents. . . [T]he trial court's determinations. . . that placement of the children with their maternal grandparents would not be detrimental and was in the best interests of the children are fully supported by the record."); *cf. In re Adoption Guardianship No. 3598*, 701 A. 2d 110, 323 (Md. Ct. App. 1997) ("[W]e do not rule out the possibility of a trial court, under appropriate circumstances, dismissing an adoption petition as a violation of the ICPC.")
14. See *Interstate/Intercountry Services to Children, Policy and Procedures*, effective November 1, 2016, Revision No. 3 (available at <https://dhr.alabama.gov/wp-content/uploads/2021/05/00-Interstate-Intercountry-Services-to-Children-Policy.1-doc.pdf>).
15. Florida ICPC-100A Form (available at [http://centerforchildwelfare.fmhi.usf.edu/kb/icpc/100A%20Form%20\(CF%20794,%20Oct%2705\).pdf](http://centerforchildwelfare.fmhi.usf.edu/kb/icpc/100A%20Form%20(CF%20794,%20Oct%2705).pdf)).
16. Ala. Code § 44-2-20(III)(b).
17. *Id.* at § 44-2-20(III)(c).
18. *Id.* at § 44-2-20(IV).

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*There seems to be a common misperception in our culture that biological parents not only love their children, but love them better, and more fiercely, than non-related family ever could.*

# Representing Foster Parents in Adoptions

*By Samuel J. McLure*

**Timothy (this is an entirely hypothetical case) came into foster care at the age of 11 months.**

He had five broken bones, gangrene, and a g-tube. He was diagnosed as suffering from failure to thrive, he was globally developmentally delayed, and he had extensive unexplained scarring on top of old scarring. He was in foster care for 13 months, where he thrived, grew, healed, caught up developmentally and began to swallow, eat, talk, walk, laugh, and play. He first word was “mommy,” and it was to his foster mother.

However, the juvenile court sent him back to his abusers – his biological family. To be fair, the Alabama Juvenile Justice Act requires the court and DHR to reunite a child with the child’s biological family as quickly as they safely can. Ala. Code § 12-15-101 (b) (3).

However, when he went back home, he was again abused by his biological family, though it took a while for that to come to light. Thankfully, DHR stepped in again, filed a new dependency petition, the juvenile court agreed, and returned Timothy to foster care. This

time DHR placed him with a different foster family. After an additional 13 months in foster care, DHR was planning, again, to return Timothy to his biological family.

There seems to be a common misperception in our culture that biological parents not only love their children, but love them better, and more fiercely, than non-related family ever could. To borrow from another author, to believe this is always and everywhere true is to stick your head in the sand with a blindfold on.

There is little dispute that the best-case scenario for a child is to be born into a family of a married mother and father who love each other and love their children and who are committed to a permanent relationship with each other.

Sadly, too many children aren't born into those homes. Many are unwanted from conception and treated as such by their biological family. Some of them come into foster care. Children who come into foster care may have been beaten, starved, used as an ashtray (with the burns to prove it), pimped out for drugs, sexually assaulted, suffered bones broken, have their spirits crushed, and the list could go on.<sup>1</sup>

In the case of Timothy, many blood relatives filed their own petitions for custody. All of them believed, and testified in court under oath, that no abuse occurred, that things were blown out of proportion, and, many believed, that Timothy harmed himself. They testified that they were a good family. The truth was that their beliefs were misplaced.

The only hope that Timothy had was a string of foster families who were willing to put everything on

the line for him. They hired an attorney, went to court, and worked together in an effort to protect Timothy's safety. Along with some deeply loving medical professionals, they persuaded DHR to pursue termination of parental rights, all of which was followed by an adoption. Timothy was adopted by a foster family who protects him and loves him. He is thriving.

Sometimes a child's best hope is a foster family who will be a real family and fight like a mama bear for him – for the rest of his life.

### Approaching Foster Parent Representation

Many foster parents lack the tools and knowledge to advocate for the best interests of the child in their care. All foster parents have to go through a Trauma Informed Parenting for Permanency and Safety class (TIPS) where they learn that their role is to provide a temporary safe home for a child while the Department of Human Resources (DHR) works with parents to alleviate the underlying causes of dependency.

So, when a lawyer is consulted by foster parents who feel at odds with the system, what does that lawyer do?

The first hurdle a practitioner must overcome is the Foster Parent Agreement (FPA) signed by every Alabama foster parent. Section 9 of the FPA states that a foster parent will not “file a petition in any court pertaining to any child placed in our home by the Department of Human Resources, or take any steps toward the adoption of the child, or take any steps to obtain any order granting us legal or physical custody or placement of the child without the WRITTEN

CONSENT of the State Department of Human Resources.”

To the extent this agreement is a contract, the lawyer should argue that it is either void or voidable. In light of the nearly-dozen Alabama appellate cases affirming the dignity of foster parents and non-biological caregivers to seek permanency for the children in their care through independent court actions, section 9 of the FPA can be argued to be void as a violation of public policy.<sup>2</sup>

Section 5 of the FPA states that the foster parent agrees to “treat the children who we may receive for care as well as we would treat members of our family.” Even if the agreement were not void or voidable, Section 5 can be argued to have overruled Section 9: what family would stand idly by while their biological child is sent to live with an abuser? Furthermore, even if all of the above were not true, our courts have held that DHR is the only party who has the standing to advance the argument that a foster parent has failed to honor the FPA.<sup>3</sup>

The practitioner should not be surprised if their representation of foster parents is sometimes not well-received, depending on the local juvenile court and the local DHR. However, it is important to demonstrate that the foster parents often are the only stable caregiver in the child's life: they go to medical appointments, sporting events, every birthday party, and they tuck the child into bed every night – adding up to many hours of attention and care. Sometimes, they've observed the parents in a way that DHR has not. Often, they have information – first-hand – that no one else does. They can bring a lot to the table.

Every foster parent struggles with the tension of advocating for the child without rocking the boat. In 2004 the legislature codified certain protections for foster parents in the Foster Parents' Bill of Rights.<sup>4</sup> Included in those enumerated rights is the right of foster parents to "provide input to the department in identifying the types of resources and services that would meet the needs of the children currently in their care...and to advocate for the same without threat of reprisal."<sup>5</sup> Additionally, the Alabama Supreme Court has routinely held that the juvenile courts are open to foster parents intervening in juvenile court proceedings concerning the child.<sup>6</sup>

### Legal Mechanisms to Aid Foster Parents in Gracious Advocacy

Foster parents may seek to intervene in the juvenile court case involving a child in their care. Intervention is governed by Rule 24 of the Alabama Rules of Civil Procedure. As with all initial pleadings before the juvenile court, a motion to intervene, accompanied by a notice of appearance, must be hand-filed with the juvenile court.

Additionally, foster parents can petition for legal custody of the child in their care under any one of several theories.

Foster parents can also file their own petition for termination of parental rights in the juvenile court. Section 12-15-317 provides that a petition to terminate parental rights may be filed by "any interested person." In most cases, DHR's own policy allows or requires it to join the foster parents' petition to terminate parental rights.<sup>7</sup>

Lastly, foster parents can petition the probate court for adoption – even without DHR's consent.

### The Probate Court's Duties For Orphans

The Alabama Constitution, 1901, Amendment 354, S, § 6.06, provides that the probate court shall have general jurisdiction over "orphans' business."<sup>8</sup> Prior to 1854, the Alabama Probate Court was referred to as the Orphans' Court. Many states, such as Maryland and Pennsylvania, still use the name Orphans' Court. Prior to 1973, the probate courts performed the duties of juvenile courts such as issuing judgments and orders for custody, discipline, supervision, care, protection, or guardianship of minors.<sup>9</sup> After 1973, juvenile courts became separate, and probate courts were granted original jurisdiction over adoption.<sup>10</sup> Petitions for adoption must be filed in the probate court, and probate courts have original jurisdiction over all proceedings brought under the Alabama Adoption Code.<sup>11</sup>

The functional goal of the juvenile court is to preserve the child's biological family unit wherever possible;<sup>12</sup> the goal of the probate court is to provide permanence and stability for the child.<sup>13</sup> Both considerations stand on equal footing, and the paramount consideration is the best interest of the child.<sup>14</sup> In achieving its goal of providing permanence for children, the probate court performs an incredibly important role in seeking the child's best interest.

Contrary to popular opinion, a probate court's jurisdiction over an adoption petition does not conflict with a juvenile court's jurisdiction. A probate court does not have to

postpone an adoption while a case concerning the adoptee is pending in juvenile court.<sup>15</sup> Indeed, a probate court's "orders, judgments, and decrees . . . are accorded the same validity and presumption accorded courts of general jurisdiction."<sup>16</sup>

### Ex parte A.M.P.

So, what happens when a juvenile court and a probate court each have ongoing matters related to the minor child?

In *Ex parte A.M.P.*, the great-aunt, great-uncle, and biological mother appealed the probate court's final order granting the adoption petition of the adoptee's foster parents, who filed their petition after caring for the adoptee for nearly five years.<sup>17</sup> One main issue of the appeals was whether the probate court erred by failing to transfer the adoption petition to the juvenile court that was overseeing matters related to the adoptee.<sup>18</sup>

The Supreme Court of Alabama held that a juvenile court has no authority to stay or interrupt the sovereign domain of the probate court.<sup>19</sup> The court reached this conclusion by analyzing four statutory provisions that provide when the adoption proceeding can or must be transferred to another court. Three out of four of the provisions are completely discretionary.

First, a probate court may transfer an adoption to district court on motion of any party.<sup>20</sup>

Second, if other custody actions are pending in another court, the probate court may transfer and consolidate the adoption with that custody action.<sup>21</sup>

Third, the probate court may transfer a contested adoption hearing, rather than the entire adoption

proceeding, to the juvenile court, which, once disposed, is remanded back to the probate court.<sup>22</sup>

Finally, the probate court is mandated to transfer the matter to the juvenile court for the limited purpose of termination of parental rights where a party whose consent is required fails or is unable to consent.<sup>23</sup>

Another issue on appeal in *A.M.P.* was whether there was clear and convincing evidence that the biological mother impliedly consented to the adoption.<sup>24</sup> If the probate court does not transfer the proceedings, “it is the probate court that hears and determines whether all necessary consents or relinquishments, either express or implied, are present.”<sup>25</sup> Such a determination occurs during the dispositional hearing, or, if there has been a contest, the contested hearing.<sup>26</sup>

Ultimately, the Court in *A.M.P.* recognizes that “[a] fair reading of the Alabama Adoption Code is that the court with original jurisdiction over adoptions should be able to determine whether a parent whose consent is required has, through his or her acts or omissions, impliedly consented to an adoption.”<sup>27</sup>

Further, when DHR is involved in the life of a juvenile, the type of custody that DHR holds determines whether DHR’s consent is required. There may arise a situation where pre-adoptive parents seek permanency for the adoptee in probate court after the child has been in foster care for years but DHR does not consent to the adoption. The *A.M.P.* Court recognized that DHR’s consent is not required if DHR has only temporary custody.<sup>28</sup>

### Applying *A.M.P.*

In *K.P. v. G.C.*, the Alabama Court of Civil Appeals affirmed a final decree of adoption even

though DHR held custody, moved the child to another home, and opposed the adoption.<sup>29</sup>

Once a child has been received in the home of the petitioners for the purposes of adoption, the probate court issues an interlocutory decree granting the petitioners custody and care of the adoptee pending the final order.<sup>30</sup> However, in *T.C.M. v. W.L.K.*, a juvenile court issued a pick-up order directing law enforcement to remove the child from the home of the petitioners, who at the time had been granted an interlocutory decree from the probate court.<sup>31</sup> The Alabama Court of Civil Appeals resolved the conflicting orders between the juvenile and probate court in favor of the probate court, holding that a juvenile court lacks authority to enter an order that “seeks to supplant the currently valid interlocutory custody order entered by the probate court in the adoption action.”<sup>32</sup>

A probate court has a duty to hear the merits of the adoption petition. By its own handbook, a probate court “may not dismiss a petition for adoption prior to a dispositional hearing due to the court’s own concerns that it lacks jurisdiction.”<sup>33</sup> If there is no motion for a contested hearing, a dispositional hearing is the only one necessary to complete the adoption and must be held as soon as possible after the home study has been completed.<sup>34</sup>

Any matters still pending in the juvenile court after the probate court grants a final decree of adoption become moot. Adoption creates a new legal person and renders all other proceedings related to the child in juvenile court moot.<sup>35</sup>

### Termination of Parental Rights v. Implied Consent

In juvenile court, DHR or any interested party can file for termination

of parental rights.<sup>36</sup> Some statutory grounds for the petition include abandonment, excessive use of drugs or alcohol, abuse, felony conviction, failed rehabilitation, failure to provide for the material needs of the child, and failure to maintain consistent contact or visits.<sup>37</sup>

In a related, but completely separate framework and code section, the probate court has authority to find that a biological parent has given implied consent to an adoption.<sup>38</sup> The probate court may consider the parent’s abandonment of the adoptee, leaving the adoptee without provision for the adoptee’s identification for 30 days, knowingly leaving the adoptee without provision for support and communication, otherwise not maintaining a significant parental relationship, failing to respond within 30 days to notice of an adoption, and failing to register with the Putative Father Registry.<sup>39</sup> As stated above, the Alabama Supreme Court has affirmed a probate court’s authority to determine whether a biological parent has given implied consent even while matters are pending in the juvenile court.<sup>40</sup>

### Concluding Thoughts

Like Timothy, there are many children across the state who, for years, remain in foster care or are juggled through the child-protection system without any significant movement toward permanency. In some of those cases, the best route a foster parent can take is to turn from the juvenile court to the probate court and file to adopt their foster child. In *A.M.P.*, Justice Stuart examined these situations: “Furthermore, even under existing law, relatives of the child who . . . belatedly come forward seeking custody only when the termination

of parental rights is imminent are in almost all cases not a viable alternative to the termination of parental rights and the placement of the child for adoption. This fact is especially true in a case such as this one, where the result of the effective termination of the mother’s rights and adoption is a continuation in the custody of the only people the child has known as parents... So long as our child-protection system does not promote the best interest of our children, concerned parties with the best interest of the children at heart will continue to turn to the probate courts of our State in appropriate cases.”<sup>741</sup>

Probate courts have the ability to grant adoptions for children who need the permanency of a loving home – which oftentimes becomes the only remaining path to permanency for children like Timothy. ▲

**Endnotes**

1. There is another common but wrong perception that DHR removes children over light recreational drug use. Generally, DHR removes a child for much more serious reasons, and there are probably no people more acquainted with the worst child abusers than DHR case workers.
2. *Ex parte A.M.P.*, 997 So. 2d 1008, 1015 (Ala. 2008) (holding that the probate court was not required to transfer adoption proceeding to juvenile court for termination of parental rights, before entering final order of adoption in favor of child’s foster parents; probate court had jurisdiction to find, and did find, that each parent had impliedly consented to the adoption, so there was no basis for transfer); *Ex Parte J.W.B.*, 933 So. 2d 1081 (Ala. 2005) (affirming the probate court’s denial of the putative father’s contest despite litigation in multiple courts in two states); *Ex Parte C.L.C.*, 897 So. 2d 234 (Ala. 2004) (holding that the entry of an adoption decree by a juvenile court constituted error due to the exclusive jurisdiction of the probate court over adoptions); *M.M. v. B.L.*, 926 So. 2d 1038 (Ala. Civ. App. 2005) (reversing an adoption decree entered by a juvenile court because the probate court has original and exclusive jurisdiction over adoption); *L.C.S. v. J.N.F.*, 941 So. 2d 943 (Ala. Civ. App. 2005) (holding that the probate court has the authority to refuse to transfer an adoption case to juvenile court, that the probate court did not have to stay the adoption due to a pending juvenile case, and that the adoption case rendered the juvenile proceeding moot); *L.E.D. v. State Dept. of Human Resources*, 888 So. 2d 1239 (Ala. Civ. App. 2004) (holding

that the probate court, rather than juvenile court, was the proper forum for foster parents to seek an adoption of three foster children; probate court had jurisdiction over proceedings brought under the adoption code); and *K.P. v. G.C.*, 870 So. 2d 751 (Ala. Civ. App. 2003) (the probate court granted an adoption where the petitioners had the birth mother’s consent, even though DHR held custody, had moved the child to another home, and opposed the adoption).

3. *Ex parte A.M.P.*, 997 So. 2d 1008, 1021 (holding that DHR is the proper party to decide how to best protect its interest in the foster-care agreement with the foster parents”).
4. Ala. Code §§ 38-12A-1 to -2 (1975).
5. *Id.*
6. See endnote 2.
7. *Permanency and Concurrent Planning Policy*, Alabama Department of Human Resources, revised August 5, 2019, pgs. 8, 11.
8. A constitutional amendment is on the ballot for November 8, 2022 under Senate Bill 68, which would remove “orphans’ business” from the jurisdiction of the probate court.
9. *The Handbook for Alabama Probate Judges*, (10<sup>th</sup> ed., vol. 1, 2019), at 9.
10. *Id.*
11. *Ex parte A.M.P.*, 997 So. 2d 1008, 1016 (Ala. 2008).
12. Ala. Code § 12-15-101 (2021). However, in the context of termination of parental rights cases, “the paramount consideration of the trial court . . . is the best interests of the children involved.” *B.S. v. Cullman County Dept of Human Res.*, 865 So. 2d 1188 (Ala. Civ. App. 2003), citing *A.R.E. v. E.S.W.*, 702 So. 2d 138, 139-40 (Ala. Civ. App. 1997).
13. *A.M.P.*, 997 So. 2d at 1024 (Stuart, J., concurring).
14. *Id.*; See also Ala. Code § 12-15-101(b)(3) (identifying the following as one of the goals of a juvenile court: “To reunite a child with his or her parent or parents . . . unless reunification is judicially determined not to be in the best interests of the child.”); *In re Smith*, 469 So. 2d 659, 661 (Ala. Civ. App. 1985) (“[T]he natural parent has a prima facie right to the child’s custody. However, the right is not absolute, but is subject to the equally well-settled rule that the best interest and welfare of the child are controlling in child custody cases.”) (citing *Borsdorf v. Mills*, 275 So. 2d 338 (1973)).
15. *L.C.S. v. J.N.F.*, 941 So. 2d 973, 978 (Ala. Civ. App. 2005) (holding that “we perceive no legal impediment to the probate court’s exercise of its statutory jurisdiction to determine whether a man may be deemed to have consented to an adoption petition simply because a dispute exists concerning the validity of another court’s judgment declaring that that man is, in fact, the father of the proposed adoptee”).
16. *Handbook* at 9.
17. *A.M.P.*, 997 So. 2d at 1010-1.
18. *Id.* at 1015.
19. See *id.*
20. *Id.* at 1016 (citing Ala. Code § 12-12-35).
21. *Id.* at 1017 (citing § 26-10A-21).
22. *Id.* at 1017 (citing § 26-10A-24).

23. *Id.* at 1017-8 (citing § 26-10A-3).
24. *Id.* at 1015.
25. *Id.* at 1018.
26. Section 26-10A-25(b)(2); § 26-10A-24(a)(3).
27. *A.M.P.*, 997 So. 2d at 1019.
28. *Id.* at 1019-20 (citing § 26-10A-7(a)(4))(holding that § 26-10A-7(a)(4) requires DHR’s consent only if DHR holds permanent custody, and DHR only holds permanent custody after the juvenile court terminates all parental rights, and even then it can grant the adoption over DHR’s objection if it finds the objection to be unreasonable).
29. *K.P. v. G.C.*, 870 So. 2d 751 (Ala. Civ. App. 2003).
30. Section 26-10A-18.
  3. *T.C.M. v. W.L.K.*, 208 So. 3d 39, 42 (Ala. Civ. App. 2016).
  3. *Id.* at 44 (citing *Ex Parte A.M.P.*, 997 So. 2d at 1022-23).
33. *Handbook*, at 106 (citing § 26-10A-25; *In re Adoption of F.I.T.*, 43 So. 3d 621 (Ala. Civ. App. 2010)).
34. *Id.* at 105.
35. See § 26-10A-29(b) (“Upon the final decree of adoption, the natural parents of the adoptee . . . are relieved of all parental responsibility for the adoptee and will have no parental rights over the adoptee.”)
36. See § 12-15-317.
37. *Id.* at § 12-15-319(a)(1)-(12).
38. *Id.* at § 26-10A-9.
39. *Id.*
40. *A.M.P.*, 997 So. 2d at 1019.
41. *Id.* at 1024-5 (Stuart, J., concurring).

**Samuel J. McLure**



Samuel McLure is the founder of The Adoption Law Firm. He graduated magna cum laude from Faulkner Law School in 2011. He and his wife were

inspired to establish The Adoption Law Firm while they were adopting their first son from the Hungarian foster care system. They went on to become foster parents with their local county DHR and now serve on the board of the Montgomery Foster and Adoptive Parent Association. McLure has written several publications on orphan care and adoption, including *The End of Orphan Care*, Archdeacon Books (June 8, 2016) and *Absent Biological Fathers in Adoption: Noticing the Nuance of Notice*, Faulkner Law Review, vol. 6, issue 2, pg. 305 (spring 2015).



# Counseling Adoptive Parents

*By Susan M. Brown*

As lawyers, we are called to be both advocates and counselors.

Clients may come to you for help with legal filings about an adoption. But to advise them wisely, you should be sure they have realistic expectations about this most important decision. Here are a few basic considerations to help your clients make informed decisions.

## For International Refugee Adoptions

### **Entry into the U.S.**

This involves complex political and legal issues, best handled by professionals. Clients should work through a child-placement organization to get the child into the U.S. Otherwise, see the article in this issue about Ukrainian refugees.



### Immigration

The child will enter the U.S. on a special visa for refugees or some other protected group. The child will not have permanent U.S. citizenship until the clients complete a complex application process with U.S. Citizenship and Immigration Services. There are several paths to citizenship depending on the child's age, time here, adoption status, family circumstances, and situation in the home country. Applications may take anywhere from nine months to five years to complete.

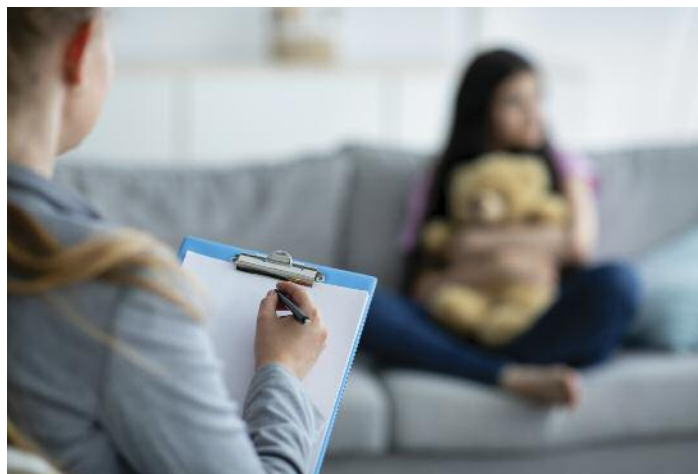
### Adoption

Refugee children have been displaced in the most sudden and frightening way possible. They need love and stability above all. For children who have no surviving family, immediate adoption may be the best answer. American children whose parents have died or are unable to care for them also suffer greatly and often have abandonment issues later in life, even in the best of circumstances.

Adoption in Alabama is handled by the probate court for the clients' county of residence. This process can be lengthy. The clients will have to pay for a home study and a post-placement report, court fees, notification fees, and attorney fees. Even some uncontested adoptions can take anywhere from six to 18 months. Once the process is completed, your clients will need to apply for a new birth certificate for the child.

### Counseling

Long-term counseling for the child and for your clients' existing family is essential. The child has been through trauma that will have lifetime consequences. Clients should expect to guide them through post-traumatic stress and abandonment issues. It is essential that the child learn good coping skills. Regular counseling will help.



Your clients and their children will also need support. For the good of their own children, experts agree that it is best not to disrupt birth order in the home. That is, it's best for all children in the home to take in a child younger than the youngest. Counseling will help every family member adjust.

### They're a Parent!

Legally, adoption is like the birth of a new person. Your clients will have lifetime responsibilities as parents to the child they take in. The child will inherit from them just like their biological children. They are responsible for health care, education, shelter, discipline, etc., just as if this child were their biological child. ▲

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#### Susan M. Brown



Susan Brown is an associate with The Adoption Law Firm. She has practiced since 2003, privately and as a staff attorney with two Alabama appellate courts. Her part-time practice focuses on legal writing and complex legal research for the firm's adoption cases. Brown lives in Fairhope with her husband and their two young children. They attend St. Margaret's of Scotland Catholic Parish.

# ALABAMA LAWYERS HALL OF FAME

*As with most good programs, the Alabama Lawyers Hall of Fame started with a good idea.*

Montgomery attorney Terry Brown wrote me a letter in 2001 when I was the Alabama State Bar president. At the time, he was the immediate past president of the Montgomery County Bar Association. Terry suggested that the state bar should establish an Alabama Lawyers Academy of Honor, essentially a Hall of Fame, recognizing Alabama attorneys who have achieved national or international renown and who have brought honor to themselves, the state of Alabama, and the legal profession. He also suggested that the Hall of Fame be located in the former Alabama Supreme Court Building which was sitting empty and unused.

In the fall of 2002, state bar President Fred Gray appointed a task force to explore the feasibility of establishing an Alabama Lawyers Hall of Fame. President Gray appointed me as chair of the task force to consider selection criteria and other issues. He hoped that we would make a quick report to the board of bar commissioners and that an initial induction ceremony would take place in 2003 while he was still bar president.

As we all know, the proverbial “devil” is always in the details. The task force conducted research on existing halls of fame, studied positions both for and against “living” versus “posthumous” induction, and then presented our recommendation. The

report was made in 2003 and approved by the board of bar commissioners. Next, a Hall of Fame Selection Committee was appointed, nominations were solicited, and the first group of inductees was finally selected for a ceremony held in May 2005 for the 2004 honorees.

Over the years, we have recognized judges, both appellate and trial, both federal and state; military heroes; public servants; law professors; governors; senators; members of congress; mayors; a vice president of the United States; and a speaker of the house of representatives. But our largest single demographic is the group of lawyers, all outstanding individuals, who have labored in the field of private practice. All of our lawyer-inductees are the true giants, the mentors, and, yes, the heroes of our profession.

Inductees into 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 group of inductees, at least one honoree must have died a minimum of 100 years ago in order to give due recognition to historic figures as well as the more recent lawyers of the state.

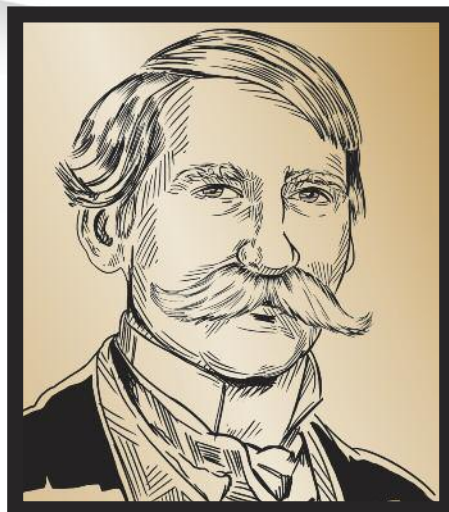
The 12-member selection committee consists of the immediate past president of the Alabama State Bar, a member

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. The committee meets annually to consider the nominees and to make selections for induction.

Please consider making nominations for the Hall of Fame. The nomination form and instructions can be found at [www.alabar.org](http://www.alabar.org). Great lawyers cannot be considered for induction if they have not been nominated. Plaques commemorating the inductees are in the lower rotunda of the judicial building, and profiles of all inductees are on the state bar's website.

—Samuel A. Rumore, chair, Alabama Lawyers Hall of Fame Selection Committee

*Due to the coronavirus pandemic, the 2019 Hall of Fame induction ceremony scheduled for May 1, 2020 at the Alabama Supreme Court was postponed to March 11, 2022. The new selectees to the Hall of Fame represent the finest exemplars of the Alabama legal profession and bring the total number of Hall of Fame members to 75. We hope that all of their stories will serve to inspire the present and future citizens of Alabama.*



**HENRY W. HILLIARD (1808-1892)**

A lawyer, professor, Methodist preacher, diplomat, and statesman; born in Fayetteville, North Carolina in 1808 and attended South Carolina College; admitted to practice in 1829; moved to Tuscaloosa, Alabama in 1831 and served as a professor of literature; in 1834 he moved to Montgomery to open a law practice; served in Alabama House of Representatives (1838); elected to Congress for three terms; served as a regent for the Smithsonian Institute; supported the Compromise of 1850; fought to maintain the Union until Alabama seceded; served Alabama as a brigadier general and fought with General Bragg in the west; returned to diplomatic service in 1877 and appointed United States Minister to Brazil by President Hayes.



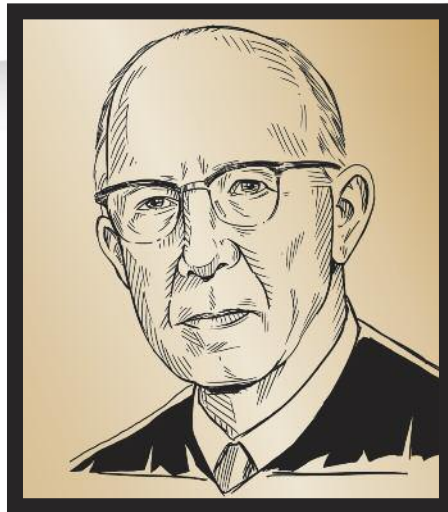
**CLIFFORD J. DURR (1899-1975)**

Respected nationally as a defender of civil liberties during the post-WWII Red Scare; a supporter of the civil rights movement; born in Montgomery, Alabama where his family owned Durr Drug Company; educated at the University of Alabama where he was elected president of his class; won a Rhodes scholarship to Oxford University in England and graduated in 1922; a member of the Alabama and Wisconsin bars; worked at the Reconstruction Finance Corporation in Washington, D.C. and was later nominated to the Federal Communications Commission; resigned from the FCC because he refused to sign Harry Truman's Federal Loyalty Oath; later returned to Alabama and worked with Fred Gray in defending Rosa Parks.



**BROOX G. GARRETT (1915-1991)**

Born in Grove Hill, Alabama (1915); attended the University of Alabama; admitted to the Alabama State Bar (1939); a member of Phi Beta Kappa; Omicron Delta Kappa; Farrah Order of Jurisprudence; entered the private practice of law in 1939 in Brewton, Alabama; entered the United States Navy in 1941 and discharged as a lieutenant in 1945; a member of the Alabama State Bar Board of Bar Commissioners (1966); elected vice president of the Alabama State Bar in July 1981 and succeeded as president in November 1981 when preceding president died; served on the Alabama Law Institute, as county solicitor of Escambia County, as a member of the Brewton Board of Education and as a Fellow of the American College of Trial Lawyers.



**RICHARD T. RIVES (1895-1982)**

Born in Montgomery, Alabama; lawyer; judge; politician; military leader; educated at Tulane University and passed the bar examination when he was 19 years old; served in the United States Army during WWI; president of the Montgomery Bar Association and president of the Alabama State Bar (1939-1940); established his own law firm; named to the U.S. Fifth Circuit Court of Appeals and later the newly-created U.S. Eleventh Circuit Court of Appeals; repeatedly ruled against segregation laws and wrote opinions on significant cases involving public transportation, education, housing, voting rights, and legislative reapportionment; received honorary degrees from Notre Dame University and Cumberland School of Law.



**ELLENE G. WINN (1911-1986)**

Born in Clayton, Alabama; earned degrees from Agnes Scott College (BA, 1931) and Radcliffe College (MA, 1932); earned law degree from Birmingham School of Law (1941); became an associate at Bradley, Baldwin, All & White (now Bradley) in 1944 and is believed to be the first woman to present an oral argument before the Supreme Court of Alabama; made partner at firm in 1958 becoming one of the first women partners at a major law firm in Alabama or the Southeast. The Winn Initiative was established in her honor for her contributions to the practice of law and the community and continues to encourage the successful development and mentoring of women in the legal profession. ▲

# ALABAMA LAWYERS HALL OF FAME PAST INDUCTEES

## 2018

Jeremiah Clemens (1814-1865)  
Carl Atwood Elliott, Sr. (1913-1999)  
Robert A. Huffaker (1944-2010)  
Henry Upson Sims (1873-1961)  
George Peach Taylor (1925-2008)

## 2017

Bibb Allen (1921-2007)  
Mahala Ashley Dickerson (1912-2007)  
John Cooper Godbold (1920-2009)  
Alto Velo Lee, III (1915-1987)  
Charles Tait (1768-1835)

## 2016

William B. Bankhead (1874-1940)  
Lister Hill (1894-1984)  
John Thomas King (1923-2007)  
J. Russell McElroy (1901-1994)  
George Washington Stone (1811-1894)

## 2015

Abe Berkowitz (1907-1985)  
Reuben Chapman (1799-1882)  
Martin Leigh Harrison (1907-1997)  
Holland McTyeire Smith (1882-1967)  
Frank Edward Spain (1891-1986)

## 2014

Walter Lawrence Bragg (1835-1891)  
George Washington Lovejoy (1859-1933)  
Albert Leon Patterson (1894-1954)  
Sam C. Pointer, Jr. (1934-2008)  
Henry Bascom Steagall (1873-1943)

## 2013

Marion Augustus Baldwin (1813-1865)  
T. Massey Bedsole (1917-2011)  
William Dowdell Denson (1913-1998)  
Maud McLure Kelly (1887-1973)  
Seybourn Harris Lynne (1907-2000)

## 2012

John A. Caddell (1910-2006)  
William Logan Martin, Jr. (1883-1959)  
Edwin Cary Page, Jr. (1906-1999)  
William James Samford (1844-1901)  
David J. Vann (1928-2000)

## 2011

Roderick Beddow, Sr. (1889-1978)  
John McKinley (1780-1852)  
Nina Miglionico (1913-2009)  
Charles Morgan, Jr. (1930-2009)  
William D. Scruggs, Jr. (1943-2001)

## 2010

Edgar Thomas Albritton (1857-1925)  
Henry Hitchcock (1792-1839)  
James E. Horton (1878-1973)  
Lawrence Drew Redden (1922-2007)  
Harry Seale (1895-1989)

## 2009

Francis Hutcheson Hare, Sr. (1904-1983)  
James G. Birney (1792-1857)  
Michael A. Figures (1947-1996)  
Clement C. Clay (1789-1866)  
Samuel W. Pipes, III (1916-1982)

## 2008

John B. Scott (1906-1978)  
Vernon Z. Crawford (1919-1985)  
Edward M. Friend, Jr. (1912-1995)  
Elisha Wolsey Peck (1799-1888)

## 2007

John Archibald Campbell (1811-1889)  
Howell T. Heflin (1921-2005)  
Thomas Goode Jones (1844-1914)  
Patrick W. Richardson (1925-2004)

## 2006

William Rufus King (1776-1853)  
Thomas Minott Peters (1810-1888)  
John J. Sparkman (1899-1985)  
Robert S. Vance (1931-1989)

## 2005

Oscar W. Adams (1925-1997)  
William Douglas Arant (1897-1987)  
Hugo L. Black (1886-1971)  
Harry Toulmin (1766-1823)

## 2004

Albert John Farrah (1863-1944)  
Frank M. Johnson, Jr. (1918-1999)  
Annie Lola Price (1903-1972)  
Arthur Davis Shores (1904-1996)

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# FAREWELL TO REBECCA OATES A Judicial Servant and Friend

*By Presiding Judge William C. Thompson, Alabama Court of Civil Appeals*

When Rebecca Oates, the clerk of the Alabama Court of Civil Appeals, announced her retirement, effective January 1, 2022, the court of civil appeals and the Alabama State Bar experienced the loss of a faithful servant and friend.

In 1991, Rebecca began her career with the court of civil appeals by serving as an administrative assistant in the clerk's office. This position inspired her to attend Jones School of Law at Faulkner University in Montgomery and earn a Juris Doctorate. After graduating from law school and passing the bar in 1994, she became a staff attorney for the clerk's office. Still striving for knowledge

and growth, Rebecca attended Troy State University and in 1998 earned a master's in human resources.

In 2004, Rebecca became the first appellate mediation administrator for the court of civil appeals. In 2006, she was promoted to assistant clerk, and in 2014, the court appointed her clerk of the court. With this appointment, Rebecca became the first female clerk of the Alabama Court of Civil Appeals.

Rebecca is a member of the National Conference of Appellate Court Clerks, the Alabama Supreme Court's Committee for the Alabama Rules of Judicial

Administration, and the Alabama State Employees Association. She is a former treasurer for the Montgomery-Judicial Chapter of the Alabama State Employees Association and was selected as the Alabama "State Employee of the Year" in 2009 by the Alabama State Employees Association. She is a former member and president of the Montgomery Association of Legal Secretaries and the Sunrise Exchange Club, and a former volunteer with the American Red Cross. Rebecca is a charter member of Trinity United Methodist Church in Prattville.

Rebecca's commitment to the court and the citizens of Alabama has remained steadfast. The Alabama Court of Civil Appeals will miss her smile, sunny disposition, and kindness, as well as her wisdom and commitment to excellence, her outstanding and conscientious service, her loyalty, and her "need to get the job done!" This court bids its good and faithful servant farewell with the words of Wayne Simms, one of our senior staff attorneys, who opines:

*The life of law exacts a price –  
Mere dint of effort won't suffice  
With bills to pay, and clients rife,  
Juris Doctors lean toward strife.*

*Yet some are known to stray from that –  
To shun the cloak of avocac  
And take instead the role of clerk  
In lieu of private-practice work.*

*A decade plus a score of years  
Rebecca Oates assuaged the fears  
Of "learned counsel" turned perplexed  
By writs and stays, by rules and text.*

*One thousand calls – at least – a year  
Would seek to catch Rebecca's ear  
And ask her yet again to state  
How might a brief not be marked late.*

*What started as a "paper" chase  
Soon changed to PDFs apace  
And all the while, with manner mild  
Our clerk reviewed the briefs e-filed*

*And to that work our clerk annexed  
The chore of jurisdiction checks –  
It would not serve the court to see  
A case that lacked finality.*

*Still more, she saw that law affords  
What precedent alone accords,  
And undertook to mediate  
Disputes to ends commensurate.*

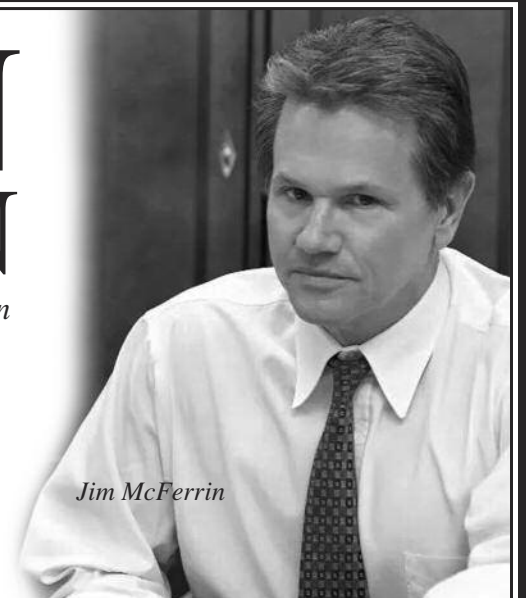
*Yet time's a flow that none can stop,  
And rest one's earned, none else can top.  
And now, with thanks, we say farewell –  
"Rebecca Oates: you did it well." ▲*

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## OPINIONS OF THE GENERAL COUNSEL

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



# Remembering the Lawyer's Creed and the Code of Professional Courtesy

Anyone who has heard me speak at a CLE over the last four years has listened to me state that it is my opinion that, "The Office of General Counsel's ability to give ethics advice under Rule 18, Alabama Rules of Disciplinary Procedure, is the best service we offer the membership of the Alabama State Bar." In answering the many requests for ethics opinions, I am often reminded how infrequently most lawyers review the professional conduct rules or are even familiar with how they are categorized. The Alabama Rules of Professional Conduct is an essentially straightforward, albeit lengthy, codification of the minimal standards that every lawyer should strive to learn. The professional rules

describe a lawyer's obligations to clients, to the courts, to the profession, and to society at large. These rules are promulgated by the Alabama Supreme Court and are binding on every member of the bar.

In April 1992 (a year after implementing the core version of the current professional conduct rules), the Alabama State Bar adopted a Lawyer's Creed and a Code of Professional Courtesy that summarize a lawyer's ethical and professional obligations. Both of these works are timeless and proven mores that are inspirational and illustrative of how lawyers should conduct themselves. Each of us would do ourselves a service by periodically revisiting these principles.



## Lawyers' Creed

To my clients,  
I offer faithfulness, competence, diligence and good judgment. I will strive to represent you as I would want to be represented and to be worthy of your trust.

To the opposing parties and their counsel, I offer fairness, integrity and civility. I will seek reconciliation and, if we fail, I will strive to make our dispute a dignified one.

To the courts, and other tribunals, and to those who assist them, I offer respect, candor and courtesy. I will strive to do honor to the search for justice.

To my colleagues in the practice of law, I offer concern for your welfare. I will strive to make our association a professional friendship.

To the profession, I offer assistance. I will strive to keep our business a profession and our profession a calling in the spirit of public service.

To the public and our systems of justice, I offer service. I will strive to improve the law and our legal system, to make the law and our legal system available to all, and to seek the common good through the representation of my clients.

## Code of Professional Courtesy

The Code of Professional Courtesy is intended as a guideline for lawyers in their dealings with their clients, opposing parties and their counsel, the courts and the general public. The Code is not intended as a disciplinary code nor is it to be construed as a legal standard of care in providing professional services.

*A lawyer should never knowingly deceive another lawyer.*

*A lawyer must honor promises and commitments made to another lawyer.*

*A lawyer should make all reasonable efforts to schedule matters with opposing counsel by agreement.*

*A lawyer should maintain a cordial and respectful relationship with opposing counsel.*

*A lawyer should seek sanctions against opposing counsel only where required for the protection of the client and not for mere tactical advantage.*

*A lawyer should not make unfounded accusations of unethical conduct about opposing counsel.*

*A lawyer should never intentionally embarrass another lawyer and should avoid personal criticism of another lawyer.*

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(Continued from page 193)

*A lawyer should always be punctual.*

*A lawyer should seek informal agreement on procedural and preliminary matters.*

*When each adversary proceeding ends, a lawyer should shake hands with the fellow lawyer who is the adversary; and the losing lawyer should refrain from engaging in any conduct which engenders disrespect for the court, the adversary or the parties.*

*A lawyer should recognize that adversaries should communicate to avoid litigation and remember their obligation to be courteous to each other.*

*A lawyer should recognize that advocacy does not include harassment.*

*A lawyer should recognize that advocacy does not include needless delay.*

*A lawyer should be ever mindful that any motion, trial, court appearance, deposition, pleading or legal technicality costs someone time and money.*

*A lawyer should believe that only attorneys, and not secretaries, paralegals, investigators or other non-lawyers, should communicate with a judge or appear before the judge on substantive matters. These non-lawyers should not place themselves inside the bar in the courtroom unless permission to do so is granted by the judge then presiding.*

*A lawyer should stand to address the court, be courteous and not engage in recrimination with the court.*

*During any court proceeding, whether in the courtroom or chambers, a lawyer should dress in proper attire to show proper respect for the court and the law.*

*A lawyer should not become too closely associated with a client's activities, or emotionally involved with a client.*

*A lawyer should always remember that the purpose of the practice of law is neither an opportunity to make outrageous demands upon vulnerable opponents nor blind resistance to a just claim; being stubbornly litigious for a plaintiff or a defendant is not professional.*

If you have any questions about this article or your professional obligations under the Alabama Rules of Professional Conduct, please contact us at (334) 269-1515 or [ethics@alabar.org](mailto:ethics@alabar.org).

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### About Members

**Donald C. Radcliff** announces the opening of **Radcliff Law Firm LLC** at 113 Ridgelawn Dr. E, Mobile 36608. Phone (251) 751-5532.

**Lindsay C. Ronilo** announces the opening of **Ronilo Law LLC** at 800 Corporate Pkwy., Ste 100., Birmingham 35242. Phone (205) 201-0794.

### Among Firms

The **Office of Governor Kay Ivey** announces that **Justin A. Barkley** joined as deputy general counsel.

**Bradley Arant Boulton Cummings LLP** of Birmingham announces that **B. Shane Clanton** joined as counsel; **Gregory H. Suess** joined as a senior advisor; and **Beryl N. Billings, Joe FitzGerald, Nicholas Fordice, Anne M. Golson, Elizabeth R. Hobbs, Lillie A. Hobson, Anna A. Hornsby, Stephanie A. Johnson, Morgan C. Kain, Ginny Light, Mason Rollins, Gabrielle A. Sprio, Carmen Weite, Britney M. Williams, and Virginia C. Wright** joined as associates.

**Browne House Law Group LLC** of Tuscaloosa announces that **Laura S. Fikes** joined the group.

**Compton Jones Drescher LLP** of Birmingham announces that **Vaughn McWilliams** is a partner.

**Dentons Sirote** announces that **J. Winston Busby** and **Crystal H. Walls** re-joined as shareholders, **Trey Bolling** and **Ryan R. Moore** are shareholders, and **J.R. Davidson** and **Trey Perdue** joined as associates, all in the Birmingham office. The firm also announces that **Timothy P. Pittman** and **Sarah Ray** joined as of counsel in the Huntsville office.

**Lightfoot, Franklin & White LLC** of Birmingham announces that **Mary Parish McCracken** joined as an associate.

**Norman, Wood, Kendrick & Turner** of Birmingham announces that **Christopher Weaver** joined as an associate.

**Rubin Lublin LLC** announces that **Douglas A. Baymiller** joined as an associate, and the Alabama office moved from Huntsville to 11 N. Water St., Ste. 10290, Mobile 36602.

**Sessions Fishman Nathan LLC** of New Orleans announces that **Joel A. Mendler** joined as senior counsel in the Birmingham office.

**Starnes Davis Florie LLP** of Birmingham announces that **Kirby Howard** joined as a partner in the Mobile office.

**Wilmer & Lee PA** of Huntsville announces that **Britni T. Garcia** and **Elena G. Moats** are shareholders. ▲



NOTICE

## DISCIPLINARY NOTICES

- ▲ Notice
- ▲ Reinstatement
- ▲ Transfer to Inactive Status
- ▲ Disbarment

### Notice

- **Michael Lee Weimorts**, who practiced in Santa Rosa Beach, Florida, is licensed in Alabama, and whose whereabouts are unknown, must answer the Disciplinary Board's show cause order within 28 days of the date of March 31, 2022 or, thereafter, the reciprocal discipline shall be imposed in Rule 25(a), Pet. No. 2020-811 before the Disciplinary Board of the Alabama State Bar. [Rule 25(a), Pet. No. 2020-811]  
–Disciplinary Board, Alabama State Bar

### Reinstatement

- Hoover attorney **Rachael Hall Taylor**, who is licensed in Alabama, was reinstated with conditions to the active practice of law in Alabama by order of the Supreme Court of Alabama, effective February 11, 2022. Taylor was previously suspended from the active practice of law on December 16, 2016 for failing to comply with the 2015 Mandatory Continuing Legal Education requirements of the Alabama State Bar. [Rule 28, Pet. No. 2021-1066]

### Transfer to Inactive Status

- Pike Road attorney **Robert Lyndieth Humphries** was transferred to inactive status, effective January 24, 2022, by order of the Supreme Court of Alabama. The Supreme Court of Alabama entered its order based upon the January 24, 2022 order of Panel II of the Disciplinary Board of the Alabama State Bar in response to Humphries's petition filed with the Office of General Counsel requesting he be transferred to inactive status. [Rule 27(c), Pet. No. 2022-179]

### Disbarment

- Huntsville attorney **Patrick Allen Jones** was disbarred from the practice of law in Alabama by order of the Alabama Supreme Court, effective January 10, 2022. The Alabama Supreme Court entered its order based on the Disciplinary Board's order accepting Jones's consent to disbarment, wherein Jones consented to disbarment based on allegations he commingled personal and client funds. Moreover, Jones assisted a client in creating sham transactions to hide assets. [Rule 23(a), Pet. No. 2021-1153; ASB Nos. 2021-1137, 2019-1044, and 2019-737] ▲

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## THE APPELLATE CORNER

### **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 CRIMINAL DECISIONS**

## From the United States Supreme Court

### **Armed Career Criminal Act**

#### **Wooden v. United States, No. 20-5279 (U.S. Mar. 7, 2022)**

The defendant's 10 prior burglary convictions arising from a single criminal episode counted as only one prior burglary conviction for purposes of mandatory minimum sentencing under the Armed Career Criminal Act, 18 U.S.C.A. § 924. The statute's provision providing an enhanced minimum sentence for a defendant who has been previously convicted of three violent felony offenses "committed on occasions different from one another" was not implicated by the defendant's "one-after-another-after-another burglary of 10 units in a single storage facility" because the offenses "occurred on one 'occasion[.]'"

## From the Eleventh Circuit Court of Appeals

### **Federal Health Care Program Fraud**

#### **United States v. Howard, No. 18-11602 (11<sup>th</sup> Cir. Mar. 7, 2022)**

Observing that white collar criminals, like "bears to honey," "are drawn to billion-dollar government programs[,] " the Eleventh Circuit Court of Appeals affirmed the defendants' convictions of conspiracy, paying/receiving federal health care program kickbacks, and money laundering under 18 U.S.C. §§ 371, 1320, and 1957. The evidence showed that the defendants were engaged in prescribing, creating, and distributing compounded cream prescriptions for illegal payments under the Tricare military health insurance program. The court also vacated the defendant physician's probation sentence and remanded for further sentencing proceedings, declaring the sentence substantively unreasonable.

### **Ex Post Facto Clause**

#### **United States v. Maurya, 25 F. 4<sup>th</sup> 829 (11<sup>th</sup> Cir. 2022)**

The defendant's sentence on her conviction of conspiracy to commit wire fraud violated the Ex Post Facto Clause, U.S. Const. art. I, § 9, because she was sentenced under the 2018

federal sentencing guidelines. Those guidelines included a financial hardship enhancement that was added after her August 2014 offense and was therefore inapplicable to her offense.

### Civil Contempt; Privately-Run Prison Facilities

**United States v. Mayer, No. 20-10231 (11<sup>th</sup> Cir. Jan. 24, 2022)**

The district court did not abuse its discretion in denying the federal inmate's motions for civil contempt arising from his incarceration in a privately-run prison facility. 18 U.S. 3621 permits the United States Bureau of Prisons to hold inmates in any "correctional facility that meets minimum standards of health and habitability established by the board of prisons, whether maintained by the Federal Government or otherwise[.]" thus the inmate could be housed in a privately-run facility. The inmate's criminal judgment did not specify the conditions of his confinement, and his allegations of constitutional violations at the facility did not establish a violation of the judgment.

### Search and Seizure

**United States v. Nicholson, 24 F. 4<sup>th</sup> 1341 (11<sup>th</sup> Cir. 2022)**

In affirming the defendant's child pornography and sex abuse convictions, the Eleventh Circuit Court of Appeals held that the failure to follow a search warrant's time requirement did not render the search of the defendant's laptop unreasonable. The law enforcement officers' noncompliance with the time requirement did not result in prejudice to the defendant and was not intentional. The court also found that a Fourth Amendment violation in the Federal Bureau of Investigation's delay in obtaining a warrant for items taken from the defendant's truck did not require suppression of those items. The delay, resulting from a negligent mistake, was insufficient to suppress the evidence.

## From the Alabama Supreme Court

### Solicitation to Commit Murder

**Lang v. Alabama, No. 1191027 (Ala. Jan. 21, 2022)**

The Alabama Supreme Court quashed without opinion the state's petition for a writ of certiorari after the court of criminal appeals reversed the defendant's conviction of solicitation to commit murder, a violation of Ala. Code § 13A-4-1. However, Justices Shaw and Mitchell each specially concurred to explained their decisions. Justice Shaw noted that, because the indictment specifically referenced an intended victim of the solicitation, the state was required to prove that specific person was the subject of the solicitation offense. Noting that the defendant has the right to move for a more definite statement, Justice Mitchell observed that Alabama caselaw and its Rules of Criminal Procedure do not require the state to specifically identify the intended victim in an indictment for solicitation to commit murder. ▲



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*Director, Legislative Services Agency*  
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**Karen M. Smith**  
*Senior Legislative Attorney,  
Legislative Services Agency*

## LEGISLATIVE WRAP-UP

# Annual Sunset Review

As the deadline for submitting this article approaches, or passes, the Alabama Legislature has completed about half of the 2022 Regular Legislative Session and is ready to begin the annual sunset review process. This is how the Alabama Legislature, through the legislative Sunset Committee, directly fulfills its duty of overseeing executive branch administrative agencies, including occupational licensing boards and agencies.

The Alabama Sunset Law,<sup>1</sup> originally enacted in 1976, provides for the periodic review and evaluation of administrative agency operations by the Sunset Committee, a joint legislative committee created to conduct the reviews. Enumerated agencies are required by statute to be reviewed every four years, may be reviewed more often at the discretion of the committee, and will automatically terminate unless the legislature passes legislation to continue their operation every four years. Non-enumerated agencies have no statutory requirement for review, will not automatically terminate, and may be reviewed at the discretion of the committee at any time.

Additionally, either house may instruct the committee, by resolution, to conduct an additional review on an enumerated agency or conduct a review on a non-enumerated agency at any time. The committee, based on the annual review process, is tasked with submitting recommendations for the continuation, modification, or termination of each reviewed agency to the legislature, in the form of a separate sunset bill for each agency, during the regular session occurring after review. Virtually every state occupational licensing board, commission, or agency is subject to review under this statutory scheme.<sup>2</sup>

The Sunset Committee, which is reconstituted at the beginning of each quadrennium, consists of the president pro tempore of the senate, the speaker pro tempore of the house of representatives, three elected members of the house, three elected members of the senate, two members of the house appointed by the speaker, and two members of the senate appointed by the president of the senate. The co-chairs of the committee are a house member and a senate member elected from among the members of the committee, who serve in that position for the duration of the quadrennium and alternate annually as presiding co-chair.

The bulk of the work of the Sunset Committee begins shortly after sine die of each regular legislative session, continues through the summer months, and concludes before the beginning of the next ensuing regular legislative session. Recommendations of the committee for agency continuation, modification, or termination, and



any accompanying legislation must be submitted to the speaker of the house of representatives and the president of the senate for distribution to legislators and the governor on or before the first legislative day of the ensuing regular legislative session. Sunset bills originate in the house of the co-chair who presided over the committee during the preceding summer and alternate houses annually with the service of the co-chairs.

The comprehensive periodic review and evaluation of administrative agency operations by the Sunset Committee is made possible, in part, through the publication of sunset reports prepared for each agency based on continuing audits conducted by the Department of Examiners of Public Accounts.<sup>3</sup> These reports provide detailed information on the purpose and authority of the agency; agency operations, finances, and governance; statutory authority relating to licensure and regulation of licensees; completed board member and licensee questionnaires; and other information as deemed necessary by the committee or the department.

The Sunset Committee reviews and discusses each sunset report at length, conducts public hearings with the attendance and contribution of agency governing boards, chief executive officers, and staff, and evaluates each agency based on the statutory process and criteria set forth in § 41-20-6, Code of Alabama 1975. Generally, an agency under review bears the burden of establishing that sufficient public need is present to justify its continued existence. The following criteria are considered by the committee to determine whether continuance is warranted:

“(1) The extent to which any information required to be furnished to the reviewing committee pursuant to Section 41-20-6 has been omitted, misstated or refused and the extent to which conclusions reasonably drawn from said information is adverse to the legislative intent inherent in the powers, duties and functions as established in the enabling legislation creating said agency or is inconsistent with present or projected public demands or needs;

“(2) The extent to which statutory changes have been recommended which would benefit the public in general as opposed to benefitting the agency;

“(3) The extent to which operation has been efficient and responsive to public needs;

“(4) The extent to which it has been encouraged that persons regulated, report to the agency concerning the impact of rules and decisions regarding improved service, economy of service or availability of service to the public;

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(Continued from page 201)

“(5) The extent to which the public has been encouraged to participate in rule and decision making as opposed to participation solely by persons regulated;

“(6) The extent to which complaints have been expeditiously processed to completion in the public interest;

“(7) The extent to which the division, agency or board has permitted qualified applicants to serve the public;

“(8) The extent to which affirmative action requirements of state and federal statutes and constitutions have been complied with by the agency or the industry it regulates; and

“(9) Any other relevant criteria which the reviewing committee, in its discretion, deems necessary and proper in reviewing and evaluating the sufficient public need for continuance of the respective agency.”<sup>4</sup>

During each regular legislative session, the legislature is required to begin voting on sunset bills, in the originating

house, on the 10<sup>th</sup> legislative day of that regular session and continue, as the first order of business each day, until all of the sunset bills have passed that house. Five days after passage by the originating house, the other house is required to begin voting on the sunset bills. Debate is limited to a maximum of one hour on each agency considered.<sup>5</sup>

While the agencies subject to sunset perform important executive branch functions, the sunset process is critical to the legislative branch fulfilling its obligation to provide oversight and accountability. ▲

### Endnotes

1. Chapter 20 of Title 41, Code of Alabama 1975.
2. Enumerated agencies and their normal cycle for review are set forth in § 41-20-3, Code of Alabama 1975, or in the enabling law for the agency.
3. These reports can be found on the Department of Examiners of Public Accounts’ website, [www.examiners.alabama.gov](http://www.examiners.alabama.gov).
4. Section 41-20-7, Code of Alabama 1975.
5. Section 41-20-10, Code of Alabama 1975.

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