

# THE ALABAMA LAWYER

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◀ **Says Who? Why Good Citation Matters  
(and Why It's Easier Than You Think)**

Page 224

◀ **Mixed Signals**

Page 230

◀ **Alabama Online Dispute  
Resolution**

Page 233

◀ **Birmingham School of Law –  
Prominent Female Graduates**

Page 237

◀ **Lessons of the Boll Weevil:  
A Story of Prosperity from  
Bugs to Flying Machines**

Page 240

◀ **Alabama Lawyers Hall of Fame**

Page 246

THE CITATION ISSUE



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## On The Cover

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## F E A T U R E A R T I C L E S

### THE CITATION ISSUE

#### Says Who? Why Good Citation Matters (and Why It's Easier Than You Think)

By Prof. Jeffrey M. Anderson

224

#### Mixed Signals

By Sydney H. Willmann and Anne Miles Golson

230

#### Alabama Online Dispute Resolution

By Christopher H. Colee

233

#### Birmingham School of Law – Prominent Female Graduates

By Brandy L. Robertson and Laura S. Winston

237

#### Lessons of the Boll Weevil: A Story of Prosperity from Bugs to Flying Machines

By M. Dale Marsh

240

#### Alabama Lawyers Hall of Fame

246

#### President's Page

212

#### Executive Director's Report

216

#### Editor's Corner

218

#### Important Notices

220

#### Memorials

222

#### Disciplinary Notices

243

#### About Members, Among Firms

250

#### The Appellate Corner

252

#### Legislative Wrap-Up

262

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# ADVERTISERS

ABA Retirement Funds .....213

Alabama Association of  
Paralegals, Inc.....219

Alabama Court Reporting, Inc.....207

Alabama Legal & Investigative  
Services, Inc.....261

Attorneys Insurance Mutual  
Of the South.....206

Cain & Associates Engineers.....227

Davis Direct.....265

J. Forrester DeBuys, III.....242

The Finklea Group, Inc.....270

Insurance Specialists, Inc.....272

LawPay.....208

McFerrin Mediation .....219

McMillan Associates.....221

National Academy of  
Distinguished Neutrals.....211

Schreiber Dispute  
Resolution Inc.....215

Veritext Legal Solutions.....271

  
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## P R E S I D E N T ' S   P A G E

*Tazewell T. Shepard, III*  
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One of the small ironies of writing an article for publication is that as you write, you take into consideration the circumstances at that time, whereas several months later, when someone reads your article, the circumstances may have changed.

For example, I am writing this article in May while I am still president of your Alabama State Bar. We recently completed a meeting of the board of bar commissioners in Huntsville (rather than Montgomery), later I spoke by Zoom to the Young Lawyers section during their annual meeting at the beach, and now we are making plans for the state bar's annual meeting at Destin in late June.

By the time you read this article in July, Gibson Vance will be president and Brannon Buck will be president-elect of

the state bar. Both are good men who will do a very good job as president over the next two years. But they will face different circumstances than I did and will have different priorities, as they should.

So, I will do my best in this last column of my presidency to tell you what I think we have accomplished since the last annual meeting and what challenges the state bar may face in the near future.

Before I get into details, I want to tell you how important it is to think about and to work on improving the culture and the guiding attitude of any organization. Many attorneys have told me that they now see this state bar as a more open and positive force in the lives of our members. We have appointed more female and minority



members to leadership positions; we have made extra efforts to keep the Alabama Supreme Court, the board of bar commissioners, and our members informed as to what the state bar is doing and why; and we have constantly looked for ways to improve member programs and benefits.

I will give you two concrete examples.

First, we had meetings with several groups within the state bar to ask the question “why does the state bar exist?” In other words, why did the legislature establish a state bar over 140 years ago and how is it relevant to our members and their clients today?

You can’t answer this question by just saying what the state bar does. You

have to define the core mission of the bar, and then it will become much easier to figure out what the bar should be doing to fulfill this core mission.

Second, we agreed that the state bar must become more transparent, responsive, and accountable. These are the three areas I heard over and over when I campaigned around the state as I was running for president. So, we adopted a number of new measures, including live-streaming meetings of the board of bar commissioners and posting public notices and agendas for our various committee meetings; bringing in special guest speakers for the BBC meetings, including Governor Ivy, House Speaker McCutcheon and

Chief Justice Parker; and keeping our members informed on the changes we were making at the state bar.

Now, I have to admit that I have been very fortunate during this bar year to be surrounded by talented and energetic people. Everything that we have accomplished has been not because of me alone but because of our teamwork. I must say that it starts with our executive director, Terri Lovell, who has dramatically improved the morale of our staff and has re-organized them to be more efficient and effective than in previous years. She has always been supportive of my goals as president and has never hesitated to work after hours or on the weekends.

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(Continued from page 213)

We also had excellent support of our goals by the members of our executive council and the leadership of many of our sections, committees, and task forces.

The president normally chooses one or two individuals for each of two awards that will be given out at the annual meeting. This year, however, I felt compelled to name a number of volunteer bar leaders to each award because of their hard work and significant contributions for the benefit of our members.

Getting back to Terri Lovell, she was hired as executive director of the bar a couple of months before I was sworn in as president. Consequently, we spent those couple of months talking by telephone almost every week about what we hoped to accomplish together.

We came up with about 40 goals, some of them quite extensive and complex and some of them smaller and straightforward. Now, as we prepare to finish this bar year, I am proud to say that we accomplished over 30 of those goals, and at least 10 more that came to light as we worked together.

I don't want to make this article longer than necessary, so I will only highlight a few of our achievements that should have long-term positive results for our members.

First, I am very pleased that we refurbished a department at the state bar for law practice management and hired Chris Colee as its coordinator. You may remember that Laura Calloway held this position some years ago and did a great job. Chris is already writing an article for *The Alabama Lawyer* and planning a CLE hour

at the annual meeting in Destin. He is also acting staff liaison for the member benefits committee and the task force on court technology. I expect that Chris's efforts will be helpful to our members, especially those in solo or small firm practices.

Second, we established a past presidents' advisory council, and I appointed Sam Irby, Lee Copeland, Anthony Joseph, and Dag Rowe as the initial members of the council. Because of Covid, we held several meetings by Zoom. While we might have felt more camaraderie in person, the Zoom meetings went quite well. The comments of and suggestions of these former presidents of the state bar were very helpful. I decided to designate Terri Lovell as secretary of the council because it occurred to me that she needed to hear the good ideas that were being discussed just as much as I did. Both Gibson Vance and Brannon Buck have indicated that they will continue using the council with other former presidents that they will appoint.

Third, we promoted the concept of inexpensive and useful continuing education for our members. It just doesn't seem right to require 12 hours to renew your law license and then allowed situations where it is difficult and expensive to get the necessary hours, especially for lawyers in rural areas. So, we established a theme for each month of this bar year, highlighting either an area of the law, such as alternate dispute resolution and human trafficking awareness, or types of lawyers who don't always get as much attention as they deserve, such as military lawyers and state and federal government lawyers. Next, we

promoted the use of ProLearn, which is a free CLE platform established by the bar to allow our members to obtain CLE credit for watching the sessions in our library, including ethics and diversity hours. Chris and I have talked about adding a number of CLE hours on law practice management to the service.

As to where we go from here, I believe that there will be further positive changes for the state bar based on a recent report by the Governance & Internal Operations task force that identified both internal and external issues and opportunities. The volunteer lawyers who worked on this report did a tremendous job.

I was very pleased to appoint the members of the long-range committee and to send this report to them so that they can turn the recommendations into meaningful steps over the next year or two. I also appointed a by-laws committee, which will research and draft bylaws for the state bar. It is amazing that our bar has existed for over 140 years without any bylaws, and I am confident that they will address lingering questions, such as what steps can the president take without approval by the board of bar commissioners, and to what extent can the executive council act on behalf of the board of bar commissioners.

I must emphasize that Gibson Vance and I conferred on these appointments, and Brannon Buck was one of the leaders of the task force that produced the report. So, I am confident that they will shepherd the long-range planning committee and the new by-laws task force during their years as president.

Also, Terri Lovell and the staff are working on a long-range overhaul of our database at the state bar to make the website more user-friendly and to reduce the number of long hours that some members of the staff have to add information on topics like individual members' CLE credits. I have encouraged Terri to look at the possibility of creating a phone app for all members of the state bar that you can use to call up your bar card, get contact information on a lawyer or judge in the state, or check on member benefits and discounts – all this without having to struggle with the little keyboard on your cell phone.

Finally, we all have seen that the news today often features political hatred, extreme social attitudes, and shootings and other violence. As lawyers, we can fight back by being positive role models. As I said in my acceptance speech last July, if you want to be a better lawyer or judge, start by being a better person.

As I close my last article, I'll remind you of three guidelines that will help you be that role model for your family, your clients and friends, and your community.

You can be a great advocate for your clients and still **be kind and courteous** to everyone you meet.

You will face many opportunities in life to **do the right thing**. Ultimately, you will find that your self-image and self-esteem will be linked to how you deal with these opportunities.

Statutes and court decisions are the framework that holds our society together. There really are no such things as alternate facts. Whenever you can, **stand up as a guardian of the truth**.

I believe in you. Please take these guidelines to heart, and believe in your own potential. You will do more good in this world than you can imagine just by being the best version of yourself. ▲

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## EXECUTIVE DIRECTOR'S REPORT

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



# A Shared Vision

Everyone faces challenges. Whether it is financial difficulties, a health crisis, or personal adversities, hardships are part of life. As lawyers, our first instinct is to problem-solve when faced with a crisis or issue. Lawyers tend to agree that problems are just a matter of perspective and that most problems are solvable. I am grateful that even during challenging days, I continue to find leaders who share the same vision: to improve our profession, to serve, and to help one another.

While we all have days that we struggle to find the strength and confidence to persevere, our Alabama legal community has remained committed to a

better tomorrow. You continue to bring hope through your service to your clients, service to the public, and service to the profession. That commitment reminds me why I am a lawyer. Even when we do not have a solution, we are still seeking one and doing our best to improve the ways we render service to clients and to the community.

The recent conclusion of the Seventh Annual Alabama Legal Food Frenzy was one of many examples of how our profession recognized a physical need and found a solution to that need, working together to feed more than 350,000 Alabama families across every county in the state. The motto "Lawyers Render

Service” takes on an entirely different meaning when we can experience the impact our efforts made to families from every corner of Alabama.

This time of year is always bittersweet as we say farewell to one president and welcome a new one. Serving as president requires an enormous commitment, and Gibson Vance is ready for the task. He will serve as our 147<sup>th</sup> Alabama State Bar president and will certainly make a positive impact with his initiatives. Fortunately for me, over the past year I have been able to work with President Vance and the members he selected for his executive council. What I have found is that although the presidential agenda may change slightly,

the shared vision does not. Whether it is the Alabama State Bar or one of the many sections, local bars, practice area associations, or affiliated legal organizations, our vision really is the same – to provide lawyers with opportunities for relationship building, skill development, wellness resources, practice management assistance, leadership, and service.

This is how we truly participate in the profession of law. The collective work of lawyers and judges beyond the walls of one’s own office is what makes our career more than just a job. The shared vision we all share fosters a sense of community, commitment, and purpose, and I look forward to what the new bar year has in store. ▲

### *Alabama Bankruptcy Assistance Project*

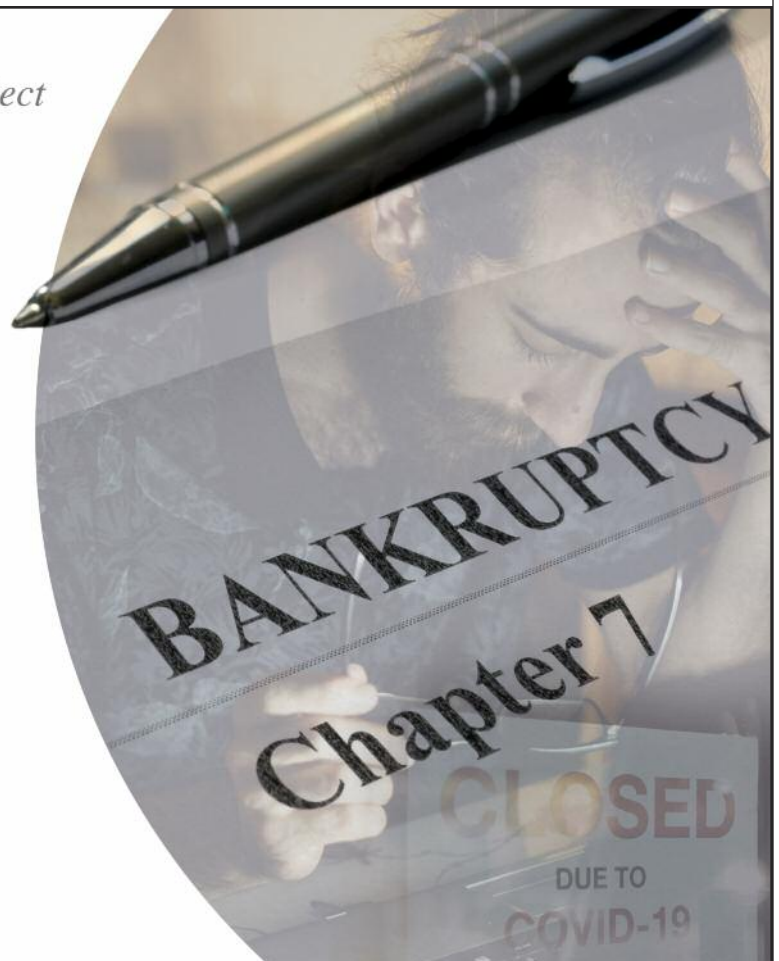
# Want to make a difference?

Covid-19 and its economic consequences have touched all of our communities.

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## EDITOR'S CORNER

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



Welcome to the citation edition of *The Alabama Lawyer*. I've wanted to talk about citation styles and forms and the use of *The Bluebook* and *The Redbook* (the two citation reference books we use at the magazine) for quite some time, but I couldn't find the right person to do the lead article. The person must not only understand legal writing, but they had to be able to write about it in an interesting way.

Enter Jeff Anderson, stage right. Jeff is a law professor at Cumberland, and he teaches this stuff. After a short chat about a hard topic, I thought I had the right person for the job. When he sent it in, I knew I'd made a good choice. Take a look at "Says Who? Why Good Citation Matters (and Why It's Easier Than You Think)" (page 224). He combines splendid writing with terrific suggestions.

Sydney Willmann and Anne Miles Golson followed that with "Mixed Signals" (page 230). You remember signals – those pesky little words that follow a pincite and explain it. The use of *see, e.g., see also*, and the like, are all there in an effort to explain why you cited that case to begin with. Did you know that inserting a signal has a specific meaning? You will soon. We spend hours every issue working on the way authors cite in submitted articles. From now on I'm going to ask our authors to take a look at this article before they submit. I know I will be referring back to it. See if you think it is worth your while.


We like to use our time with the magazine to keep you caught up. Did you know that some cases can now be resolved using a new thing in Alabama – online dispute resolution for small claims

cases? Chris Colee is the Alabama State Bar Law Practice Management Coordinator, and his article, aptly named "Alabama Online Dispute Resolution," gives us a terrific primer on how and where to begin (page 233). I can imagine someone reading the article, scratching their head, and realizing that this new process might just help them build a practice with an underserved category of litigants.

And, last but not least, we are happy to include the Birmingham School of Law's list of their prominent female graduates. Due to some problems at BSL, they could not submit their list in time to make the last issue. We proudly include it here (page 237).

So, enjoy the issue. We had a lot of fun putting this one together. Email me at [wgward@mindspring.com](mailto:wgward@mindspring.com) if you have questions, or comments, or want to write. We are always looking for our next group of excellent writers.

And just wait to see what we have for you in the next edition. ▲



**40<sup>TH</sup>  
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**Alabama Association  
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**Summer Conference and Annual Meeting**

**August 18-21, 2022**

**Island House Hotel**

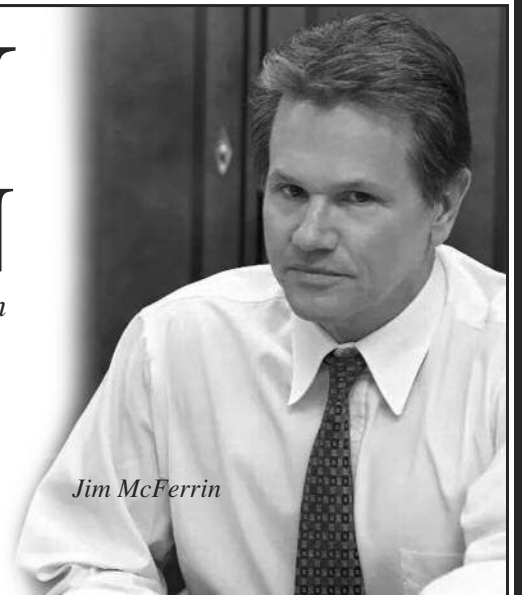
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## IMPORTANT NOTICES

### ▲ Harold Albritton Pro Bono Leadership Award

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

## Harold Albritton Pro Bono Leadership Award

The Harold Albritton Pro Bono Leadership Award seeks to identify and honor individual lawyers who through their leadership and commitment have enhanced the human dignity of others by improving pro bono legal services to our state's poor and disadvantaged. The award will be presented in October, which is officially designated Pro Bono Month.

To nominate an individual for this award, submit no more than two single-spaced pages that provide specific, concrete examples of the nominee's performance of as many of the following criteria as apply:

1. Demonstrated dedication to the development and delivery of legal services to persons of limited means or low-income communities through a pro bono program;
2. Contributed significant work toward developing innovative approaches to delivery of volunteer legal services;
3. Participated in an activity that resulted in satisfying previously unmet needs or in extending services to underserved segments of the population; *or*
4. Successfully achieved legislation or rule changes that contributed substantially to legal services to persons of limited means or low-income communities.

To the extent appropriate, include in the award criteria narrative a description of any bar activities applicable to the above criteria.

To be considered for the award, nominations must be submitted by August 1. For more information about the nomination process, contact Linda Lund at (334) 269-1515 or [linda.lund@alabar.org](mailto:linda.lund@alabar.org).

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

Pursuant to 28 U.S.C. § 2071(b), notice and opportunity for comment is hereby given of proposed amendments to the Rules of the United States Court of Appeals for the Eleventh Circuit. The public comment period is from Wednesday, August 3, 2022 to Friday, September 2, 2022.

A copy of the proposed amendments may be obtained on and after Wednesday, August 3, 2022 from the court's website at <http://www.ca11.uscourts.gov/rules/proposed-revisions>. A copy may also be obtained without charge from the Office of the Clerk, U.S. Court of Appeals for the Eleventh Circuit, 56 Forsyth St., NW, Atlanta 30303. Phone (404) 335-6100.

Comments on the proposed amendments may be submitted in writing to the Clerk at the above address or at <http://www.ca11.uscourts.gov/rules/proposed-revisions>, by 5:00 p.m. ET on Friday, September 2, 2022. ▲



# Put a Natural Mediator to Work for Your Clients



As a young judicial law clerk in the early 1970s, George McMillan often wondered why so many disputes ended up in the marble courtrooms of the U.S. Federal District Court, when a skilled mediator could produce an equitable settlement more efficiently.

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As the decades passed, George McMillan helped assemble the coalition that elected Birmingham's first African American mayor and created non-profit organizations that transformed the cultural life of his city.

For his efforts, Birmingham named George McMillan Citizen of the Year in 1990.

In 2002, McMillan helped bring together two dynamic groups of citizens to form The Black Belt Community Foundation, later serving it as a director and chairperson for more than a decade.

Today, working with his associate, William Hall, George McMillan is putting to work his fifty years of legal experience and his natural talent for bringing disparate parties together with a broadly-based mediation practice.

The firm's mission is to deliver to clients the many benefits mediation can provide:

- **Empowerment of Parties:** In mediation the parties have control of every decision made.
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- **Informal Process:** Less formal and intimidating than litigation, mediation can be adapted to meet the needs of those involved in the dispute.
- **Savings of Time and Money:** Mediation is not as time consuming as litigation might be, and it's typically much less expensive.
- **Preservation of Relationships:** Mediation can help preserve relationships by addressing the interests of all parties or make the termination of a relationship more amicable.

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*No representation is made that the quality of the legal services to be performed is greater than the quality of legal services performed by other lawyers.*



## MEMORIALS

### ▲ Palmer C. Hamilton

# Palmer C. Hamilton

Palmer Hamilton, a Mobile native, life-long student of its history, and advocate for the preservation of its historic buildings, died October 15, 2021.

Palmer descended, on both his father's side (Hamilton) and his mother's side (Pillans) from a long line of Mobile lawyers who created some of the earliest law firms practicing in Mobile. After graduating from the University of Alabama, Palmer attended law school at Duke University and then moved in 1974 to Washington, DC, serving as assistant to the Comptroller of the Currency and as chief of new bank chartering. In 1979, along with several other Mobilians who had worked in governmental positions related to banking, Palmer was a founding member of the firm Miller, Hamilton, Snider & Odom. There Palmer practiced for many years in both banking law as well as governmental relations. After that firm merged with Jones Walker LLP, headquartered out of New Orleans, Palmer became the head of its Washington, DC office, splitting his time between Mobile and Washington.

Palmer was a zealous advocate for his clients but always a gentlemen and courteous adversary to all. He had wide interests and a razor-sharp sense of humor, each of which he deployed to great effectiveness during his legal engagements. He actively represented clients in Congress and advised numerous elected and appointed officials across the country. He made and maintained contacts helpful to his clients not only throughout the U.S. but also internationally, handling sensitive matters in Canada, South America, and Europe, among others. Active in the political realm in support of various candidacies, Palmer served as chair of the Reelection Committee for U.S. Senator Richard Shelby and other prominent elected officials. Senator Shelby, in particular, regarded Palmer as a close friend and adviser.



*Hamilton*

Palmer was deeply committed to preserving historic Mobile architecture and headed revolving funds that successfully restored dozens of historic properties with a value in the tens of millions of dollars. In 2019, he received the Preservationist of Distinction Award from the Historic Mobile Preservation Society recognizing his outstanding work in historic preservation.

With family roots in South Carolina starting as early as the 1680s, Palmer was a member of the South Carolina Society of the Cincinnati and authored several papers for the South Carolina Huguenot Society. He also spent a decade writing a book, *The Threads of Liberty, The Pursuit of the Society of the Cincinnati of the State of South Carolina*, that was published in 2020. Palmer was adamant that the purpose of this book was to “bring alive again these men as three-dimensional people, not just names and dates.”

A highlight of Palmer’s many achievements was in 2014, when Queen Elizabeth II of England named him a Knight of the Order of St. John, and he became the Prior for the Order in the United States. Recently, he was named to the Board of the Turquoise Mountain Foundation. This is a group originally created by the Prince of Wales and Rory Stewart, the British MP, member of the British Cabinet, and best-selling author. The foundation has done incredible work in Afghanistan, Jordan, Myanmar, and Saudi Arabia.

While practicing law, Palmer was a regular newspaper columnist reporting on public affairs and financial issues. He served as a reporter for *Business Alabama* and as a regular weekly columnist for *The Mobile Press-Register* from 1979 to 2005. All those who practiced with, and against Palmer, mourn his loss. Palmer is survived by his wife, Amy St. John Hamilton, and daughter Margaret Langdon Hamilton. ▲

**Beno, Robert McIntyre**

Montgomery

Admitted: January 1, 1977

Died: May 11, 2022

**Means, Tyrone Carlton**

Montgomery

Admitted: April 18, 1977

Died: March 26, 2022

**Page, Lewis Wendell, Jr.**

Scottsboro

Admitted: September 24, 1973

Died: May 5, 2022

**Blair, Gould Harrison Kitchens**

Birmingham

Admitted: October 9, 1975

Died: March 22, 2022

**Morton, Bruce Edward**

Falls Church, VA

Admitted: September 4, 1969

Died: May 1, 2022

**Sullivan, Charles James, III**

Birmingham

Admitted: September 24, 1973

Died: May 4, 2022

**Lasseer, Col. Earle Forrest (ret.)**

Columbus, GA

Admitted: September 7, 1966

Died: April 28, 2022

**Moss, Walter Ernest**

Odenville

Admitted: September 24, 1973

Died: May 8, 2022

**Weaver, James Houston, Jr.**

Birmingham

Admitted: August 29, 1962

Died: April 11, 2022

**Lineberry, William Dice**

Birmingham

Admitted: September 25, 1992

Died: April 12, 2022

**Olney, Patricia Kathleen**

Merritt Island, FL

Admitted: April 28, 1978

Died: March 27, 2022



# Says Who? Why Good Citation Matters

## (and Why It's Easier Than You Think)

*By Prof. Jeffrey M. Anderson*

**A lawyer is a professional writer,**

but a lawyer's purpose is not self-expression. A lawyer speaks (and writes) for someone else, to achieve a certain outcome, in a system governed by rules upon rules upon rules. It is technical, detailed work. Its hallmarks are clarity and precision. The purpose of legal writing is not principally

to stir the soul but to satisfy a skeptical mind. A lawyer hoping to persuade another lawyer or judge to accept some position must write in a way that answers obvious questions. Because good citations help answer obvious questions, they are important to good advocacy. And because the most commonly used rules of citation are easily accessible and easy to follow, deploying good citations is easier than you might think.

## Good Citations Are Important to Good Advocacy

Lawyers – and especially the lawyers who become judges – are more skeptical than most audiences. Lawyers don’t take much of anything at face value, we parse words that ordinary people think are plain, and our ears are attuned to hedging, qualification, and rhetorical sleight of hand. If one sentence (or even one word) doesn’t sound quite right, we read it again – because we’re looking for a loophole (or maybe a trap). That’s not cynicism or paranoia; it’s just due diligence. Lawyers must have *reasons* for the things we say and write; we must *prove* everything, even the details. We do that through citations to legal authorities (for legal assertions) and evidence (for factual assertions). Indeed, courts often require that we provide citations to adequately present an issue for decision.<sup>1</sup>

The quality of the proof consists mostly in the sources cited. There are better and worse sources, more relevant and less relevant sources, binding and merely persuasive sources. Some sources prove a particular proposition better than others do; some sources have more weight than others in a particular forum. That is why lawyers must pay close attention to the sources we rely on. But the form of the citation matters, too, because it (1) helps the law-trained reader find the proof in the source, (2) shows the reader how the

source proves the assertion, and (3) demonstrates the lawyer’s proficiency and care in communicating legal analysis and argument. Citation is not an afterthought; it is essential to good legal writing.

### Good Citations Show the Law-Trained Reader Where To Find Proof for Specific Assertions of Law and Fact

Good citations help your reader – usually another lawyer or a judge – find the proof that supports your assertions. Your reader is a professional skeptic, so you want to show, not just tell. And you show your reader that what you’re saying is true, or at least reasonable, by pointing to sources that matter. In our business, the sources that matter are legal texts – constitutions, statutes, regulations, rules, cases – and evidentiary materials.

For every assertion of law, give an accurate, specific citation to a legal authority. That will satisfy your reader that (1) you have done some research to find the applicable legal rules, and (2) your description of legal rules conforms to the legal authorities that will control your case. Likewise, for every assertion of fact, give an accurate, specific citation to some evidentiary source. Don’t just say that the parties executed the contract; point the reader to the document. Don’t just say that the defendant was aware of the dangerous condition in the store; show the reader the passage of deposition testimony where the defendant admitted that she saw

the wet floor. (Better yet, quote the critical language from the deposition, *and* give an accurate citation.)

You may write a paragraph that is entirely accurate in its description of legal rules and facts. But leave out the citations and your law-trained reader will ask, “Says who?” Give the reader an easy way to check your work. If the reader doesn’t actually check the work, the reader at least will see that there are sources to check – and you aren’t afraid of them. If the reader does check the work, then (presumably) the reader will confirm that your assertions are true. That will be good for your argument and good for your credibility as well.

### Good Citations Can Advance Your Substantive Arguments

Not only do good citations show your reader where and how to confirm your legal and factual assertions, but they can also advance the substantive points of law and fact that are important to your analysis.

Citations are part and parcel of any substantive legal argument – because *legal argument is all about authority*. Lawyers do not analyze their clients’ problems as matters of first principles; rather, they find the settled rules and the similar (and dissimilar) precedents, and apply those rules and precedents to their clients’ problems. (That should give hope to new lawyers, who may lack deep knowledge of first principles, but have access to all the relevant rules and precedents.) Similarly,

judges typically do not decide cases on blank slates; rather, they find applicable texts (constitutional provisions, statutes, regulations, or rules) and binding precedents applying those texts to make sense of a particular situation. Most of the time, lawyers and judges do not ask, “What is the best resolution of this issue?” but instead, “What does the relevant authority require?” As Professor Frederick Schauer explained, “[i]n other decision-making environments, authority may play some role, but first-order substantive considerations typically dominate. In law, however, *authority is dominant*, and only rarely do judges engage in the kind of all-things-considered decision-making that is so pervasive outside of the legal system.”<sup>2</sup>

This unusually dominant role of authority in legal reasoning means that objective legal analysis and persuasive legal argument both depend on properly identifying and describing the texts and precedents that govern a legal issue. If the goal of objective analysis is to predict how an issue will be decided if it ever appears in litigation, then the lawyer must understand – and communicate – the import of the authorities that bear on the issue in a particular court. And if the goal of advocacy is to persuade a judge to do something favorable to the client’s position, then the lawyer must explain to the judge that the favorable action is not only right but *right (or at least permissible) under the relevant authorities*.<sup>3</sup> It is not enough to present a logically coherent argument based on first principles of fairness; a lawyer must present a logically coherent argument that makes sense in light of the relevant texts and precedents.<sup>4</sup> That is why citations matter.



**If you don’t cite a case (or a statute or at least some rule), the rest of us think you’re probably just making it up; if there were good authority supporting your position, we assume you would show your cards.**

Most arguments, including legal arguments, present some kind of syllogism.<sup>5</sup> A syllogism starts with a major premise, a general principle that governs a category of circumstances. Then follows the minor premise, which shows how specific facts or circumstances “fit” (or do not “fit”) the general rule. And then comes the conclusion, which logically follows from the major premise and the minor premise. “If the major premise (the controlling rule) and the minor premise (the facts invoking that rule) are true . . . the conclusion follows inevitably.”<sup>6</sup>

The critical thing is that the major premise and the minor premise are *true*, and “you must establish that

they’re true.”<sup>7</sup> In a legal argument, the major premise ordinarily is some legal rule (or collection of related rules). Lawyers prove the truth of the major premise by identifying legal authorities that establish the general rules – for example, constitutional provisions, statutes, cases, or (when all else fails) some kind of secondary authority. Because we are more skeptical than most ordinary folk, most lawyers instinctively doubt an unsupported assertion. How often have you read a case in which the court said that a party made some argument “without citation to authority?” The court almost certainly *rejected* that argument.<sup>8</sup> If you don’t cite a case (or a statute or at least some rule), the rest of us think you’re probably just making it up; if there were good authority supporting your position, we assume you would show your cards.

In the same way, lawyers must prove the truth of the minor premise. In a legal argument, the minor premise is an application of the legal rules to specific facts. Lawyers learn early in practice that the only facts that matter are the ones that we can prove with evidence. In written motions and briefs, lawyers prove facts by citing acceptable sources, usually witness testimony and written documents.

Because lawyers must prove that the premises of their arguments are true, and because the quality of the proof depends on the quality of the sources, citations are critical to the substantive legal arguments that lawyers make in memos, motions, oppositions, and briefs. The arguments are only as sound as the authorities you cite. That is why you learned in law school that you must provide a citation for every assertion of law or fact – to show

the law-trained reader that your position is supported by legal authorities and evidence (or facts that could become evidence).

But providing citations is not enough; the citations must be correct in substance and in form. Correct citations convey useful information in a form that is easy to understand quickly. In other words, the form of the citation reflects the common language of lawyers who write – and read – legal analyses and arguments. It is a kind of shorthand that itself communicates important information about the nature and quality of the authorities that support legal and factual propositions.

Think about case citations: Every full case cite tells the reader (1) the name of the case, (2) the volume and first page of the reporter in which the case may be found, (3) the specific page that supports your proposition, (4) the court that decided the case, and (5) the year of the decision. All of that is critical information, both for locating the case and for determining its importance in the analysis or argument that you are presenting. Leave out any of those elements and suddenly the reader has more work to do – work that any reader expects the writer to have done. The same is true for statutory citations: Every full cite tells the reader (1) the code in which the statute may be found, (2) the volume of the code, and (3) the specific section (and subsection or other subdivision) that supports your analysis or argument. Leave out any of those elements and your reader will waste time and breath cursing your name rather than trying to understand your point. Make your legal analyses and arguments easier to understand by showing which au-

thorities support your positions, in a form that any law-trained reader will recognize and understand.

If the point of legal writing is to make it easy for a law-trained reader to accept your analysis or argument, and if, as Nathaniel Hawthorne said, “[e]asy reading is damn hard writing,” then you will have to work hard at making your writing easy to read and understand. There’s no way around that. Good citations help make your legal analysis easier to understand by showing the reader (1) how to confirm your legal and factual assertions, (2) what kinds of authorities support your assertions, and (3) the ways in which those authorities relate to your case. But citations only do that if they are given in a form that is easily understood by the reader – in other words, if they are given in the shorthand language that most lawyers have learned.

### Good Citations Help Establish Your Credibility as An Advocate

Not only are good citations critical to making sound, persuasive substantive arguments, but good citations also help establish your credibility as a diligent, professional, and reliable advocate.<sup>9</sup> Perhaps the first indicator of a lawyer’s *ethos* – his or her credibility as an advocate – is the lawyer’s compliance with applicable rules. That includes all kinds of rules – the rules of procedure, local court rules, the judge’s initial order, and even citation rules. Judges and other law-trained readers have certain expectations – the rules tell us what those are – and we demonstrate our respect for our readers by respecting their rules.<sup>10</sup> Failing to follow those rules suggests

either a lack of competence or a lack of care, neither of which is a good look for a lawyer.

Of course, there is more to establishing credibility than just following rules. An advocate shows himself or herself to be a reliable source of information by identifying and describing the applicable legal rules thoroughly and accurately; by identifying all the facts that are material to the issue that the judge must decide; and by presenting a logically coherent application of legal rules to material facts.<sup>11</sup> Moreover, an advocate establishes credibility by avoiding overstatement; focusing on the specific issues that the judge must decide (not extraneous matters); and making necessary concessions. But

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following the rules comes first. Falter out of that gate, and you give the judge a reason not to trust you on these other (usually more difficult) matters.<sup>12</sup>

If you want the judge to trust you on the hard things, then show the judge that you are careful and reliable by getting the easy things right. Among other things, that means getting citations right. You can't always have the better argument, but you can always produce a clean, technically proficient product. Doing that again and again will help build a reputation for competence and diligence, and that should be important to any lawyer.

## Good Citation Is Easier Than You Think

You should be convinced by now that there are good reasons to think hard about the authorities you cite and to work hard at producing correct citations. But you remember from law school that you're supposed to hate everything about *The Bluebook* and thus everything about citation.

The typical complaints about *The Bluebook* usually boil down to the fact that it is a collection of very specific, very technical rules that seem like a foreign language. But that describes all of law school, and most substantive law, too. Using *The Bluebook* is just a special application of ordinary lawyering; the task is not appreciably harder than the rest of the job. If you have ever had to learn some part of immigration law to solve a client's problem, or if you have ever had to give tax advice, or if you have ever studied Medicare or Social Security regulations enough to answer a specific

**If you have ever had to learn some part of immigration law to solve a client's problem, or if you have ever had to give tax advice, or if you have ever studied Medicare or Social Security regulations enough to answer a specific question, then you can learn *The Bluebook* enough to have at least a "conversational" understanding of good citation.**

question, then you can learn *The Bluebook* enough to have at least a "conversational" understanding of good citation.

I don't mean that mastering *The Bluebook* in its entirety is easy. I wouldn't know; I've never tried. *The Bluebook* is now in its 21<sup>st</sup> edition. The editors make minor changes regularly. The good news is that *most* of the aspects of citation that *most* lawyers need to know for *most* of the motions, oppositions, and briefs they write have remained fairly consistent. And most of those

*Bluebook* rules (amply illustrated by the editors) are not hard to follow.

Where I depart from *The Bluebook*, I have specific reasons for doing so – reasons based on concerns for clarity, readability, and comprehension. Everything I write is for a reader, not a *Bluebook* editor. And the purpose of everything I write is to explain something, or argue something, that I want the reader to understand in one relatively painless reading. If a *Bluebook* rule does not advance the goals of clarity, readability, and comprehension, then it is a bad rule (for my purposes) and I choose not to follow it. That test leaves me applying *Bluebook* rules *almost* all the time.

Fortunately, applying *Bluebook* rules isn't such a hard thing to do, for two reasons. *First*, the rules that apply in most situations for most lawyers are found in the first 59 pages of the book – the so-called Bluepages. Pages 61-226 provide additional information relating to basic rules and special rules for sources that may appear in law reviews, but a lawyer drafting a motion, opposition, or brief rarely needs to know the information contained in those pages. Know the Bluepages, and you will know almost everything you need to know to do your work. There is no reason for a lawyer to master everything in *The Bluebook*, and so it would almost certainly be a waste of time to try. Learn what you need to know. Most (if not all) of that information can be found in the first 59 pages.

*Second*, after law school, citation is always an open-book test. That means you can always find the answer to your question before finalizing the text. It also means



that you have no excuse for answering the question wrong. If you don't have a *Bluebook*, get one. If you have a *Bluebook*, use it.

As explained above, most of the rules that you need to know are contained in the Bluepages. But the index and the tables are useful as well. The index is very specific; if you have a question about a specific aspect of a citation, your first move should be to look for a reference in the index. Suppose you weren't sure whether you had used the signal "see generally" correctly, and you wanted to know whether you should revise the citation. The index has an entry for "signals" – with 19 separate sub-entries. But the index also has separate entries for "see," "see also," "see generally," and "see, e.g." With all the information provided there, you will almost certainly be able to find an answer to your question and relatively quickly. For all its faults, *The Bluebook* has a useful index. Use it.

The tables are helpful, too. For any case citation, the tables provide abbreviations for party names, reporters, court names, and states. You don't have to memorize those abbreviations; the tables keep them for you. Go ahead and tab tables T1 (United States Jurisdictions), T6 (Common Words in Case Names, Institutional Author Names, and Periodical Titles), T7 (Court Names), and T10 (Geographical Terms) – because you will need the information contained in those tables most frequently. The more you cite certain authorities, the more you will remember. But you won't always be familiar with the names of sources available in other jurisdictions,

and the tables will answer those questions for you.

Read through the Bluepages, skim over the index, and skim through the tables. Know what's available to you. And then use those parts of *The Bluebook* as you are drafting (and revising) any motion, opposition, or brief you write. A little investment will produce a return. You will remember more of the rules that you need to use most frequently, and you will work more efficiently while improving the quality and professionalism of your written work. ▲

## Endnotes

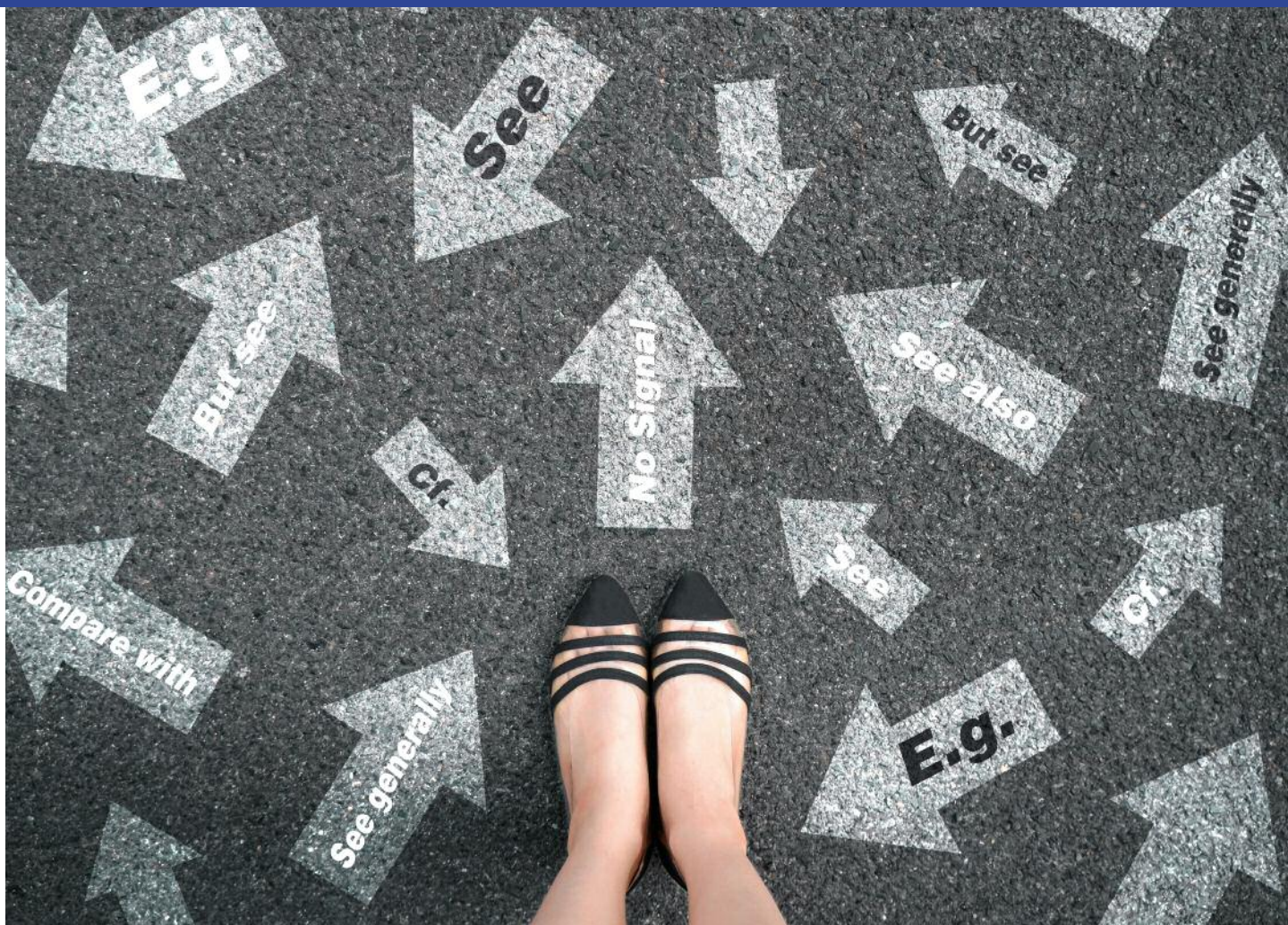
1. Fed. R. App. P. 28(a)(8) requires that a principal brief in a federal appeal must include an argument that contains the party's "contentions and the reasons for them, with citations to the authorities and parts of the record on which the [party] relies." (Emphasis added). Failure to provide the required citations may be reason enough for the court of appeals to disregard an issue or argument. See *Sapuppo v. Allstate Floridian Ins. Co.*, 739 F.3d 678, 681-82 (11th Cir. 2014); *United States v. Cuchet*, 197 F.3d 1318, 1321 n.6 (11th Cir. 1999); *Continental Tech. Servs., Inc. v. Rockwell Int'l Corp.*, 927 F.2d 1198, 1199 (11th Cir. 1991) (per curiam); *Ordover v. Feldman*, 826 F.2d 1569, 1576 (7th Cir. 1987). In the same way, Ala. R. App. P. 28(a)(10) requires that a principal brief must contain an argument setting forth "the contentions of the [party] with respect to the issues presented, and the reasons therefore, with citations to the cases, statutes, other authorities, and parts of the record relief on." And Ala. R. App. P. 21, which governs mandamus petitions, requires a petitioner to state "the reasons why the writ should issue, with citations to the authorities and the statutes relied on." An Alabama appellate court may affirm a judgment, or deny requested relief, where the party seeking reversal or other relief fails to provide necessary citations to authority. See *Ex parte Showers*, 812 So. 2d 277, 281 (Ala. 2001); *Connerly v. Connerly*, 523 So. 2d 461, 462 (Ala. Civ. App. 1988).
2. Frederick Schauer, *Thinking Like a Lawyer: A New Introduction to Legal Reasoning* 67 (2009) (emphasis added).
3. See *id.* at 66 ("The good lawyer will encourage the judge to see the substantive justice of his client's position, but he relies on the authority of rules and precedents as a way of saying to the judge that she should rule in his client's favor even if she disagrees what is the right substantive outcome.").
4. See Michael D. Murray & Christy H. DeSanctis, *Legal Writing and Analysis* 281 (3d ed. 2021) ("That authorities support your legal analysis and conclusions is of utmost importance to a legal audience.").
5. See Antonin Scalia & Bryan A. Garner, *Making Your Case: The Art of Persuading Judges* 41 (2008).
6. *Id.* at 42.
7. *Id.* at 41-42.
8. See *Butts v. DGCP Warden*, 850 F.3d 1201, 1231 n.29 (11th Cir. 2017); *United States v. Siegel*, 153 F.3d 1256, 1263 (11th Cir. 1998); *Henderson v. U.S. Fid. & Guar. Co.*, 620 F.2d 530, 534 (5th Cir. 1980); *Fitch v. Unum Life Ins. Co. of Am.*, 913 F. Supp. 2d 1253, 1262 (N.D. Ala. 2012); *Ex parte Abrams*, 3 So. 3d 819, 824 (Ala. 2008). Sometimes higher courts say the same thing about assertions in lower courts' opinions. See, e.g., *Schlesinger v. Reservists Comm. to Stop the War*, 418 U.S. 208, (1974) (rejecting the position stated by a district court that "[i]n recent years the Supreme Court has greatly expanded the concept of standing" and observing that the district court made that characterization "without citation to authority") (quotations omitted).
9. See Bryan A. Garner, *The Redbook: A Manual on Legal Style* 169 (4th ed. 2018); Michael D. Murray & Christy H. DeSanctis, *Legal Writing and Analysis* 281 (3d ed. 2021) ("If you cite [authorities] correctly, no one will think twice about your competency. Incorrect citations, however, can cause significant harm . . .").
10. The Eleventh Circuit, for example, has adopted a court rule requiring that citations to authority conform to the rules set forth in *The Bluebook* or the Association of Legal Writing Directors' *Guide to Legal Citation*. See 11th Cir. R. 28-1(k). The Federal Circuit has a similar rule. See Fed. Cir. R. IOP 11(1) (stating that "[t]he latest edition of the 'Bluebook' ([A Uniform System of Citation](#)) will ordinarily be followed").
11. See Scalia & Garner, *supra* note \_\_\_, at 123 ("Persuasive briefing induces the court to draw favorable conclusions from accurate descriptions of your authorities. The impression you want to make on the court – that you're knowledgeable and even expert – will be compromised by any misdescription that opposing counsel brings to the court's attention.").
12. See Scalia & Garner, *supra* note \_\_\_, at 124 ("Remember the evidentiary maxim, which pretty well describes the way people (including judges) generally react to intentional or even careless distortion: *falsus in uno, falsus in omnibus*. False in one respect, false in all.").

## Prof. Jeffrey M. Anderson



Prof. Jeff Anderson is an assistant professor of law and the director of the Lawyering and Legal Reasoning Program at Samford University Cumberland

School of Law. Anderson earned a bachelor of arts from Furman University and a juris doctor/master's degree from the University of Virginia School of Law.



# Mixed Signals

By Sydney H. Willmann and Anne Miles Golson

Introductory signals, according to *The Bluebook*, help legal writers

“organiz[e] authorities and show how authorities support or relate to a proposition given in the text.” In a perfect world, *The Bluebook* would be easy to follow, all lawyers would use it uniformly, and there would always be a case on point. But the practice of law is rarely perfect.

Consider *The Bluebook*. Generations of lawyers use signals differently because the 21 editions of *The Bluebook* have given ever-changing direction. For example, one change affecting many lawyers was the Sixteenth Edition’s alteration of the “no signal.” *The Bluebook* historically stated that no signal is required where the cited authority directly supports the in-text proposition. But the Sixteenth Edition of *The Bluebook* took that

clear rule and muddied it. Instead of directing writers to use no signal where the cited authority explicitly states the proposition, the Sixteenth Edition stated that writers could use no signal *only* where the cited source was named in the preceding sentence. This ill-advised change lasted only four years; it was rescinded in the Seventeenth Edition. But the damage was done.

Understanding and using signals accurately may seem trivially bookish, but signals play a critical role in legal writing – for good or for ill. Good signals lead a reader to the best and most important cases, save the reader’s time, answer latent objections, and show how the issue being discussed fits into the sweep of cases around the country and through time. Bad signals, on the other hand, leave the reader chasing down trivialities or, at worst, feeling misled. Stating that a citation unequivocally supports a proposition versus a citation that logically follows from the stated proposition can make or break a case or a lawyer’s reputation. Using signals correctly is key for legal writing. According to *The Bluebook*, there are four types<sup>1</sup> of introductory signals: (1) signals that indicate support; (2) a signal that indicates a useful comparison; (3) signals that indicate contradiction; and (4) signals that indicate background material. Examples of commonly used introductory signals from each category are outlined below.

Signals have fallen out of fashion with some writers, but the practice of omitting signals is risky. Using no signal is the strongest signal of all. Readers may judge harshly if they come across a citation that does



not support the proposition they cite it for, yet the writer does not favor the reader with a signal to explain what they meant. That reader might conclude that the writer lacks either candor or understanding of the law. Moreover, because signals help a reader understand why a case matters, omitting signals puts that burden back on the skeptical and busy reader.

Of course, there is a ditch on the other side of the road as well. Strive for *helpful* and *accurate* signals, not *more* signals.

Signals – and the parentheticals that must often accompany them – can make briefs long and your paragraphs unwieldy. A brief full of “cf,” “but see,” and “see generally” signals probably has too many cites in the first place. Just as a brief with good signals tells the reader the importance of the cited cases, the practice of adding accurate signals should help a writer focus on the most important points.

## Supporting Signals

*No Signal:* No signal is the strongest signal of all. The use of no signal indicates to the reader that the citation explicitly supports the cited text. Using no signal is most often appropriate when a brief quotes the case or its holding.

*See:* Use “see” when the cited authority clearly supports the proposition, but the proposition is not directly stated by the cited authority. Stated differently, use “see” when the reader must make an inferential step between the cited authority and the proposition it supports.

*E.g.:* The signal “e.g.” is short for the Latin phrase *exempli gratia*, which means “for example.” Use this



signal if a host of authority directly supports the proposition but citations to all of them would not be helpful or necessary. Although not strictly required by *The Bluebook*, a good rule is to explain the relevance of the cases in a parenthetical.

*See also*: “See also” directs the reader to authorities that provide additional support for a proposition when citations to authorities that directly support the proposition have already been discussed. *The Bluebook* encourages the use of a parenthetical to augment the reader’s understanding of the additional source material.

*Cf.*: “Cf.” is the least-used signal. Use it when the authority cited supports a different, but corresponding, proposition from the one set forth in the sentence preceding the citation. The signal literally means “compare,” but most readers will not know that fact. Because the signal is rare and because the citation’s relevance may not be clear without an explanation, a parenthetical is all but mandatory (even if *The Bluebook* merely “strongly” recommends one).

## Signal That Suggests a Useful Comparison

*Compare [and] with [and]*: This signal offers helpful support for, or illustrates the differences between, two propositions. Again, parenthetical explanations following each citation are “strongly recommended.”

## Signals That Indicate Contradiction

*But see*: The opposite of “see,” this citation is used when the cited source supports a proposition contrary to the main proposition.

*But cf.*: The source indirectly contradicts your position by analogy. *The Bluebook* recommends the use of a parenthetical to explain the source’s relevance.

Just as a brief with good signals tells the reader the importance of the cited cases, the practice of adding accurate signals should help a writer focus on the most important points.

## Signals for Background Information

*See generally*: The cited source contains helpful background material. Although *The Bluebook* merely encourages a parenthetical following “see generally,” readers will benefit from the background material. In truth, this signal tells a reader that the individual cases are not particularly important, and if the cases are not worth describing in a parenthetical, they may not be worth citing in the first place. ▲

### Endnote

1. *The Bluebook* does include a fifth category for signals as verbs. However, this category merely discusses that signals may be used in footnotes as verbs in textual sentence. This category does not introduce any new signals.

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### Sydney H. Willmann



Sydney Willmann is an associate in Bradley’s healthcare practice group. She represents healthcare providers in regulatory matters and in the litigation of healthcare-related matters. Willmann served as a law clerk for the Hon. R. David Proctor on the U.S. District Court for the Northern District of Alabama.

She received her juris doctor *cum laude* from the Cumberland School of Law at Samford University and a bachelor of arts degree from Indiana University-Purdue University Indianapolis.

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### Anne Miles Golson



Anne Miles Golson is an associate in Bradley’s healthcare practice group. Golson served as a judicial law clerk for the Hon. Andrew L. Brasher on the U.S. Court of Appeals for the Eleventh Circuit. She received her juris doctor *summa cum laude* from the University of Alabama School of Law and a bachelor of arts degree from the University of Alabama.



# Alabama Online Dispute Resolution

*By Christopher H. Colee*

On January 18, 2022, the Supreme Court of Alabama issued an order

establishing the Online Dispute Resolution for Small Claims Cases pilot project and included the Rules Regarding the Online Dispute Resolution for Small Claims Cases.<sup>1</sup> Morgan County will be the first pilot county.<sup>2</sup> Other counties that want to be added to the pilot project may be at the discretion of the Administrative Director of Courts.<sup>3</sup> As of May 2022, it is also live in Autauga, Baldwin, Bibb, Blount, Calhoun, Cherokee, Colbert, Etowah, Geneva, Greene, Lee,

Madison, Montgomery, Perry, Pike, Shelby, Talladega, Tuscaloosa, and Washington counties.

What is Online Dispute Resolution (ODR)? A good working definition is that it is the use of technology and the Internet to settle a dispute. ODR began as far back as the early 1990s. The World Wide Web was still in its infancy, and people were thinking about how to use it – including resolving real-world conflicts.<sup>4</sup>

Early on, eBay used ODR. The online shopping site, known for its consumer-to-consumer auctions, asked the National Center for Technology and Dispute Resolution to conduct a pilot project in

1990 to see if disputes between buyers and sellers could be mediated online.<sup>5</sup> By 2010, eBay was handling over 60 million disputes each year using ODR, and it continues to do so today.<sup>6</sup>

And now, over the last few years, a handful of court systems have implemented ODR systems.

Alabama's pilot project includes all electronically-filed small claim cases seeking monetary damages in the pilot counties.<sup>7</sup> To limit the initial amount of cases in the pilot project, the decision was made to allow the defendant in a small claims case that was electronically filed by the plaintiff to elect whether or not to participate in ODR.

When a plaintiff e-files a small claims case in Morgan County, a summons and a copy of the complaint must be served on the defendant as described in Rule 4 of the Alabama Rules of Civil Procedure, as referenced in Rule D of the Alabama Small Claims Rules.<sup>8</sup>

The plaintiff will receive a notice informing him that the case has been assigned to ODR and explaining what options are available to the defendant, as well as what the plaintiff's options are, depending on the defendant's response.

The defendant also receives an information sheet about ODR. The information explains that ODR is simply a way to resolve the matter online without going to court. The material explains how the party can use ODR to try to settle the matter on their own schedule, without the hassles of taking time off work, dealing with traveling to and parking near the courthouse, and, perhaps most importantly, possibly avoiding having a judgment issued against the defendant.



If the defendant decides to opt in, he can go to the ODR website, or simply scan the QR code using a smart device. Otherwise, the defendant may complete the included defendant's answer form, return it to the circuit clerk, and the case will proceed as usual.

The decision to restrict ODR to electronically-filed cases in which the defendant elects to proceed in ODR was made to ensure that the Morgan County court system is not initially overwhelmed with too many ODR cases. It also allowed them to monitor and evaluate the process.

Eventually the ODR process will become mandatory, but there are ways to opt out. The rules provide that a defendant may file a motion requesting an exemption from ODR because of an undue hardship<sup>9</sup> defined as "when a party cannot access the online system or participate in the online process without substantial difficulty or expense."<sup>10</sup> In addition, there are no

rules in place mandating how much negotiating must take place. At any point, if either party desires to end negotiations, he may simply select an option to end negotiations and have the matter set for trial.

Once the defendant has followed the instructions on the ODR website to register, the defendant is directed to answer the complaint by selecting from options that are similar to those options found on the standard defendant's answer.

The defendant can answer that he does not live in the jurisdiction in which the complaint was filed and that the complaint is not for work performed in that county. The judge is notified, and the matter is set for a hearing.

The defendant may also admit to everything in the claim and consent to a judgment, admit that he owes some money, but not the total amount, or answer that he is not responsible at all. In addition, the defendant can admit to everything in the claim and either pay

then or propose to make payments to avoid a judgment.

If the defendant answers that he only owes some money, wants to propose payments, or some combination of the two, the defendant can enter a proposal of some kind into the system.

The defendant may choose to upload documents or pictures to support his arguments. The system then generates an email to the plaintiff with the defendant's proposal and a link back to the system for the plaintiff to respond.

Likewise, the plaintiff may respond with another proposal and attachments, or the plaintiff may accept the defendant's offer. The parties are not communicating with programmed responses. They are responding to each other in an open text format. This exchange continues until the parties agree on a settlement or until one party requests the matter be set for trial.

If the parties agree to a settlement, the system generates an agreement, which the parties can sign electronically and is then sent to the judge for review. The settlement becomes a part of the judge's order in the case, but the communications between the parties do not, and the court does not have access to the communications at any point.<sup>11</sup>

There are some important timelines in ODR that the parties must keep in mind. Both parties have 14 days to register with the ODR system once the case is assigned to ODR.<sup>12</sup> If the plaintiff fails to register with the ODR website within 14 days after notice that the case has been assigned to ODR, the case may be dismissed at the discretion of the judge.<sup>13</sup> If the defendant fails

to register with the ODR system within 14 days after the receipt of the summons and a copy of the complaint, the case will be set for trial.<sup>14</sup> Once the ODR process has started, a party has 72 hours to respond to the other party's last submission.<sup>15</sup> The system sends the parties email reminders as the deadline approaches.

The ODR project in Alabama was not created overnight. The project was planned by a group that included representatives from the Administrative Office of Courts; online information systems; Chris Priest, circuit clerk of Morgan County, and members of his staff; and District Judge Brent Craig of Morgan County, who also serves as chair of the Unified Judicial System's (UJS) Technology Commission.

The ODR pilot project went live in Morgan County on March 21, 2022.

ODR not only helps parties in small claims cases by providing a potential way to settle the case without going to court, but it may also help the parties in finding legal help. Most of the litigants in small claims cases are pro se, and attorneys may be reluctant to represent these litigants because the amount in controversy may be too low to justify the expense and time spent on such a matter.

With ODR and the ability to limit the scope of the representation, attorneys may be in a better position to guide litigants through the ODR process without leaving their offices. Other court systems that have implemented ODR in civil cases have seen decreases in default judgments, likely due the accessibility of ODR to the defendants who may not want to miss

work or are otherwise unable to appear in person at a set time.

AOC looks to expanding ODR to more counties and evaluating feedback from everyone involved in the pilot project while planning for possible changes and expansion. "Our programmers are already at work on a next phase of ODR to have a payment module so the defendant can pay the agreed upon amount into the system from her smartphone, computer, or tablet, and the plaintiff can be paid promptly. We also plan to bring in facilitators or mediators to help in the settlement process as the system grows," said Judge Craig.

Depending on how well ODR performs, AOC is studying the potential of expanding ODR into other divisions, such as family court and minor misdemeanor cases. "Minor misdemeanor cases, which 98% to 99% settle at the courthouse before trial, is another potential expansion area for ODR. An assistant district attorney can use an online dispute resolution system from her desk or even her smartphone to communicate with the defendant to settle a case," said Judge Craig. "It saves the DA's office valuable court time, keeps law enforcement officers on the road instead of at the courthouse, and saves the defendant from having to take off work to come to the courthouse."

When businesses started closing in response to the COVID-19 pandemic, the courts began suspending operations as well. However, the circuit clerks' offices stayed open. The circuit clerks were looking for ways to reduce the spread of COVID-19 among the people

conducting necessary and timely business in their offices, but also to prevent their staff from getting it. Although the UJS had ways defendants could handle some types of traffic tickets, many defendants were still having to appear in person at the circuit clerks' offices if they wanted to enter a guilty plea or they had rectified the issue that was the cause of the citation. The UJS team that had already begun planning the ODR system saw that there was an opportunity to make a few modifications to the model for ODR and form a system to help defendants for certain traffic infractions to dispose of their cases through an online system. This ODR system for traffic tickets is called Online Traffic Resolution (OTR).

Under Rule 19(E) of the Alabama Rules of Judicial Administration, judges, clerks, and magistrates are authorized to utilize an electronic filing system approved by the ADC to accept guilty pleas and to enter orders in a traffic case. Further, Rule 20(A) of the Alabama Rules of Judicial Administration allows a defendant in a district court case to plead guilty before a magistrate to certain traffic offenses. Although there are traffic tickets that require the defendant to appear in court, OTR allows for some to resolve their cases without appearing in court or before a magistrate at the circuit clerk's office.

If a ticket is issued in a participating county, the deputy or ALEA officer issuing the ticket gives the defendant an informational sheet, in English and Spanish, along with the ticket. This information directs the defendant to a website that explains the diverse ways he may be able to resolve his ticket without traveling to the courthouse. The defendant

is directed to enter his traffic ticket number, as well as the month and year of his birth, for verification. The system will let the user know if his ticket is eligible.

There are a number of options that may be available online to the defendant. The defendant may choose to plead guilty and pay the ticket in full, or he may plead guilty and ask for additional time to pay the balance due or ask for a payment plan. If the ticket was issued for an equipment violation, the system will provide instructions on how the defendant can have the vehicle inspected after the problem has been remedied and then upload the proof to the system to have the fine reduced or the charge dismissed, depending on the judge's review. Drivers with tickets for failure to show proof of insurance can upload proof of insurance for the judge or magistrate to review. In some jurisdictions, you may be eligible to request to attend driving school. The options vary depending on the jurisdiction, but the goal is to save time, not just for the defendants, but also for the judges, circuit clerks, and their staff.

Chris Priest, circuit clerk of Morgan County, stated, "There are two main benefits that the Clerk's Office has noticed regarding OTR: (1) the public is able to use this system to dispose of their traffic citation on their time schedule, and (2) the clerk's office can handle the OTR requests that come in throughout the day at scheduled times in an effort to maximize work time. Therefore, OTR has been a 'win-win' for the public and the court system regarding use of time. In Morgan County, where we are underfunded in court specialists, it is vital for the clerk's office to remain as efficient as possible."

"OTR, if anything, has exceeded our expectations," said Judge Brent Craig. "It is working well. With only about a third of the counties currently onboard statewide, we are already in the five figures in terms of cases that have been disposed without the person getting the ticket ever having to go to the courthouse. OTR should soon be available statewide to all district courts that want it. We are even looking into making it available to municipal courts as well that want to be part of our unified court system technology." ▲

## Endnotes

1. Order In re: Online Dispute Resolution for Small Claims Cases Pilot Project, 21-22/012, Jan. 18, 2022.
2. *Id.* at APPENDIX, Para. 1(b).
3. *Id.*
4. Ethan Katsh, "ODR: A Look at History, A Few Thoughts About the Present and Some Speculation About the Future," <https://www.mediate.com/pdf/katsh.pdf>.
5. The National Center for Technology and Dispute Resolution, <https://odr.info/history/> (last visited May 2, 2022).
6. *Id.*
7. *Id.* at APPENDIX, Para. 1(a).
8. Ala. Small Cl. R.
9. Order 21-22/012, para. 4(b).
10. *Id.*
11. *Id.* at para. 6(a)-(c).
12. *Id.* at para. 2(b) and 4(a).
13. *Id.* at para. 2(b).
14. *Id.* at para. 4(a).
15. *Id.* at para. 5(a).

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## Christopher H. Colee



Chris Colee is the coordinator of the Law Practice Management Program for the Alabama State Bar.





BIRMINGHAM SCHOOL OF LAW –

# Prominent Female Graduates

**By Brandy L. Robertson and Laura S. Winston**

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*Birmingham School of Law extends our appreciation to the Alabama State Bar, Allison Skinner, and the editor of The Alabama Lawyer, Greg Ward, for allowing our submission in this issue of the Lawyer. Due to unforeseen circumstances, a submission was not able to be provided in time for publication in the March 2022 issue.*

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In 1915, Judge Hugh A. Locke had a vision for a non-traditional law school that would serve men and women who wanted to pursue a legal education, but had neither the time nor money that a full-time law school required. Birmingham School of Law was born out of that vision with classes originally being held at Birmingham-Southern College.

During World War II, the school lost many male students to the war effort, and the classes were mostly women seeking a legal education. Judge Locke was proud of the school's female students and supported them in founding Alabama's first chapter of Phi Delta Delta legal fraternity during the 1950s. In 2019, a group of women created the Birmingham School of

Law Women's Association to provide guidance and support to students from within the school and from the legal community by building a mentorship program, hosting monthly meetings with students, and bringing in attorneys, professors, and judges from across the state. Today, 63 percent of the Birmingham School of Law student body is female, and below are just a few of these distinguished graduates.

## Judge Marshall J. Hatcher

Judge Marshall Hatcher, a Birmingham native, is a circuit judge for the Tenth Judicial Circuit. She was elected to the bench in November 2018 and began her judicial duties on January 15, 2019, serving in the civil division.

Prior to joining the bench, Judge Hatcher served as a deputy sheriff with the Jefferson County Sheriff's Department; was a solo practitioner twice, focusing on family law, probate, bankruptcy, housing law, criminal law, and general civil litigation; and practiced housing law, real property law, employment law, and contracts as associate counsel for the Housing Authority of the Birmingham District.

She taught criminal justice and paralegal studies at Virginia College and real property, contracts, and constitutional law at Miles Law School, receiving the 2017 Bridge the Gap Award.

During the 2017 legislative session, Judge Hatcher worked as a legislative analyst with the Alabama Law Institute, assisting members of the Alabama House of Representatives in establishing new legislation.



Judge Hatcher volunteers extensively and is a member of many judicial and legal organizations. She received the Beatrice C. Foster Award, Community Worker of the Year Award, Sunday School Servant's Award, Distinguished Professional Award, and Wonderful Outstanding Women (WOW) Award (Law).

## Jacquelyn H. Wesson

Jackie Wesson is a partner at Wesson & Wesson LLC with offices in Birmingham and Warrior. Her practice includes litigation in state and federal court. Jackie received undergraduate degrees from UAB and Samford before graduating from the Birmingham School of Law in 2004. Her primary practice areas include domestic relations and family law practice, contested probate matters, civil litigation, bankruptcy, extensive appellate work, and civil rights litigation.

In addition to her law practice, Wesson was elected to the Warrior City Council in 2012 and then twice re-elected. She is now mayor pro tempore. Her mother, Rena Hudson, served for 24 years as mayor of the City of Warrior.

Wesson has taught at the Birmingham School of Law since 2005 and is a registered mediator with the Alabama Center for Dispute Resolution. Before practicing law, she worked as a registered nurse, and she maintains this licensure. She has written for post-secondary textbooks, most recently being *Legal Issues and Responsibilities*, *ACSM's Resources for the Personal Trainer*, 5<sup>th</sup> ed.



## Robin S. Drake

Robin Drake is a native of Huntsville. She attended Auburn University and graduated with a degree in psychology. Drake was first introduced to the legal world when she was employed as a student summer hire at the U.S. Army Space and Missile Defense Command at Redstone Arsenal, under the supervision of Chief Counsel John Cady. Later in her career, she worked full-time at Northrop Grumman while attending law school in the evenings at the Birmingham School of Law, graduating in 2011.



Her 10-year career began when she opened her law office in Madison County. Drake was in private practice for a few years before accepting a position as an assistant district attorney with the Madison County District Attorney's office. While there, she was assigned to the National Child Advocacy Center, prosecuting cases involving child abuse and sex crimes. She is now back in private practice and enjoys working in family law, criminal law, education law, and general business.

Drake enjoys volunteering her time as a board member with the Winning Foundation, the J.E.E.P program, and the National Coalition of 100 Black Women-Greater Huntsville Area Chapter, where she serves as the parliamentarian.

She is married to Mark Drake, Sr., and they have three sons, Jordan, Mark, Jr., and Julius, and attend First Missionary Baptist Church in Huntsville. ▲



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## Brandy L. Robertson



Brandy Robertson is a partner at Heninger Garrison Davis LLC, where she practices personal injury law. She has a bachelor of science degree from the University of Alabama at Birmingham and a juris doctor from the Birmingham School of Law.

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## Laura S. Winston



Laura Winston is the chair of the Women Lawyers Section of the Birmingham Bar Association. She has a bachelor of arts degree from the University of Alabama and a juris doctor from the Birmingham School of Law and is employed by Alabama Power Company.



Aviator mural in downtown Enterprise that visually tells the story of the Army installation from its beginnings in 1942 as Camp Rucker to today with Fort Rucker as the Army Aviation Center of Excellence

# LESSONS OF THE BOLL WEEVIL: A Story of Prosperity from Bugs to Flying Machines

By M. Dale Marsh



Piper “The Pilot” Weevil greets visitors to the Enterprise Municipal Airport.

Note: This is the follow-up article from “Lessons of the Boll Weevil: A Story of Prosperity” published in the July 2017 issue of *The Alabama Lawyer*.

This article discusses the founding and development of Fort Rucker, Alabama and its contribution to the prosperity of Enterprise and the entire Wiregrass region. It recognizes the vision of local, state, and national leaders who championed the development of a military base in southeast Alabama, which is now known as the

United States Army Aviation Center of Excellence at Fort Rucker.

The diversification from cotton land to peanut production was a great economic boom for Enterprise and the Wiregrass from 1917 to the present; however, the second chapter of her growth is the story of events which occurred “over the farms” and has since



helped to provide for the national security of the United States. Large flying machines, which looked much like giant grasshoppers, began to fill the skies above Enterprise and the Wiregrass area in 1954, and thankfully this recent piece of military technology, called the helicopter, brought a new kind of prosperity to the region. Army Aviation began its flight training program at Fort Rucker in 1954, and later all Army helicopter and Warrant Officer training was moved to Fort Rucker.

Prior to 1935, the cities of Enterprise and Ozark jointly worked on a program to promote the taking of “sub-marginal agricultural lands” out of production, and the program called for the federal government to buy out large tracts of poor farming land. The program was eventually funded and some 35,000 acres were selected West of Ozark – which was nicknamed the “Bear Farm” by locals because

they jokingly said that the U.S. was going to “grow bears” on the sub-marginal lands. This was the first step in acquiring the lands which would later become known as Camp Rucker during World War II. In 1941, the War Department approved the project and built an infantry training camp on the “Bear Farm” property. The project called for the acquisition of 30,000 more acres to be purchased in Coffee County near Enterprise and Elba. On May 1, 1942, the camp was accepted, and Camp Rucker began operations as a U.S. Army installation. Thousands of soldiers were trained there prior to heading to Europe to fight in World War II. Following the end of World War II, Camp Rucker closed and all soldiers were transferred to Ft. Benning or to other posts, and the facilities were “moth-balled.”

When the Korean War broke out, Camp Rucker was reactivated in August 1950. When it ended,


Army personnel were transferred out, and the camp was again moth-balled.

Local leaders continued to seek War Department support for a permanent military post at Camp Rucker, and in June 1954, a group of Army aviators selected Camp Rucker as the new home of the Army Aviation School.<sup>1</sup> In 1955, Camp Rucker was renamed Fort Rucker.<sup>2</sup> All Army and Air Force helicopter pilots are now trained at Fort Rucker, and the post serves as a training facility for helicopter pilots for many of our NATO, South American, and Middle East allies. The helicopter has played an integral role in the United States’ efforts in the war on terrorism, ushering in a new era of battlefield technology and military tactics.

Fort Rucker, named the U.S. Army Aviation Center of Excellence in 2008, serves as headquarters for U.S. Army Aviation and develops, coordinates, and deploys Aviation Operations, training, and



Restored Huey helicopter and Wall of Freedom at Johnny Henderson Park in Enterprise



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THE ALABAMA LAWYER

doctrine. Fort Rucker is composed of 63,000 acres of land, mainly in Dale and Coffee counties. Fort Rucker has provided Enterprise and the Wiregrass<sup>3</sup> with economic stability and growth. Upwards of 23,146 Enterprise and Wiregrass area residents work on Fort Rucker as flight instructors, helicopter maintenance technicians, in other Department of the Army positions, or in positions working for government contractors conducting business with the Army at Fort Rucker.

Are there Fort Rucker aviation lessons for lawyers? Yes, lawyers, like the pioneer aviators of Enterprise, must have the insight to be aware of the need for change in their everyday practice in order to obtain a more prosperous legal career future. Lawyers must continue to be visionaries, hardworking, courageous, creative, willing to reconsider our viewpoints, willing to take calculated risks, demonstrate the continued will to win and succeed, and above all, persevere. ▲

## Endnotes

1. *Claybank Memories, A History of Dale County, Alabama* by Judge Val McGee, pages 111, 130-134, 142, 146-147.
2. The DOD congressional commission, charged to develop a plan for renaming military bases, has recently recommended that the name of Fort Rucker be changed to Fort Novosel, after former Enterprise resident and Chief Warrant Officer Michael Novosel, a Medal of Honor recipient who served in both WWII and Vietnam.
3. The Wiregrass is loosely composed of Barbour, Coffee, Covington, Dale, Geneva, Henry, and Houston counties. Its name is derived from wiregrass, a native grass that grew among the tall longleaf pines covering the area and is peculiar to this region.

## M. Dale Marsh



Dale Marsh, a 1974 graduate of the University of Alabama School of Law, is a civil trial lawyer in his 48<sup>th</sup> year of practice in Enterprise, where he has practiced since 1974. Marsh is licensed in Alabama and admitted to practice in the Northern and Middle District Courts of Alabama, the 11<sup>th</sup> Circuit, and the United States Supreme Court.



NOTICE

## DISCIPLINARY NOTICES

- ▲ Disbarments
- ▲ Suspension
- ▲ Public Reprimands

### Disbarments

- Mobile attorney **Kevin Darrell Graham** was disbarred from the practice of law in Alabama by order of the Supreme Court of Alabama, effective April 15, 2022. The Supreme Court of Alabama entered its order based on the Disciplinary Board's order of February 18, 2022, wherein Graham was found guilty of violating Rules 1.15 [Safekeeping Property], 8.1(b) [Bar Admission and Disciplinary Matters], and 8.4(d) and 8.4(g) [Misconduct], Alabama Rules of Professional Conduct. In ASB No. 2019-1038, formal charges were filed against Graham on or about August 14, 2020. Graham did not file an answer. On March 10, 2021, the Disciplinary Board issued an order finding the formal charges admitted as a matter of law pursuant to Rule 12(e)(1), Alabama Rules of Disciplinary Procedure. The Office of General Counsel received two separate insufficient funds notices from Regions Bank regarding Graham's IOLTA on August 19, 2019. On September 3, 2019, Graham stated the first overdraft was caused by an unspecified electronic debit that was made in error on his IOLTA account. The second overdraft involved the deposit of earned funds that he mistakenly believed had been previously deposited in the account. On September 11, 2019, the Office of General Counsel ordered Graham to provide bank statements, a general ledger, and other trust account documents from June 2019 to August 2019. On September 30, 2019, Graham provided an additional written response, but did not provide the requested IOLTA records. In his additional response, Graham indicated that contrary to his first response, both overdrafts were caused by electronic debits to his IOLTA account. However, Graham failed to identify the electronic debits that were allegedly made in error. On October 7, 2019, the Office of General Counsel again ordered Graham to provide the previously requested IOLTA records. Graham did not respond. After failing to produce the records, Graham was summarily suspended from the practice of law on March 11, 2020. [ASB No. 2019-1038]

(Continued from page 243)

- Cullman attorney **Michael Allen Stewart, Sr.** was disbarred from the practice of law in Alabama by order of the Supreme Court of Alabama, effective February 17, 2022. The Supreme Court of Alabama entered its order based upon the February 17, 2022 order of Panel II of the Disciplinary Board of the Alabama State Bar. The Supreme Court of Alabama entered its order based on the Disciplinary Board's acceptance of Stewart's consent to disbarment, wherein Stewart admitted to inappropriate conduct with a client. [Rule 23(a), Pet. No. 2022-272; ASB No. 2022-144]
- **Robert Terry Wilson, Jr.** was disbarred from the practice of law in Alabama by order of the Supreme Court of Alabama, effective April 20, 2022. The Supreme Court of Alabama entered its order based on the Disciplinary Board's order of March 10, 2022. The Disciplinary Board's order was based on the acceptance of Wilson's consent to disbarment, wherein he acknowledged an investigation into his mishandling of client funds. [Rule 23(a) Pet. No. 2022-325; ASB No. 2021-1149]
- **Curtis Lee Whitmore** was disbarred from the practice of law in Alabama by order of the Supreme Court of Alabama, effective April 15, 2022. The Supreme Court of Alabama entered its order based on the Disciplinary Board's order of February 18, 2022. In ASB No. 2021-355, the Disciplinary Board found Whitmore guilty of violating Rules 5.5(a)(1) [Unauthorized Practice of Law], 8.1(b) [Bar Admission and Disciplinary Matters], and 8.4 (c), (d) and (g) [Misconduct], Alabama Rules of Professional Conduct. On January 1, 2021, Whitmore was suspended from the practice of law for three years in another matter. After the effective date of his suspension, Whitmore continued to hold himself out a licensed attorney and engaged in the private practice of law. In ASB No. 2021-901, the Disciplinary Board found Whitmore guilty of violating Rules 1.4 [Communication], 1.16 [Declining or Termination Representation], 8.1(b) [Bar Admission and Disciplinary Matters], and 8.4(c), (d) and (g) [Misconduct], Alabama Rules of Professional Conduct. In a previous matter, Whitmore had previously submitted a consent to discipline on October 8, 2020, in which he agreed to a three-year suspension to become effective January 1, 2021. In his consent to discipline, Whitmore agreed to refrain from taking on any new clients whose legal matter could not be completed prior to the effective date of his suspension. Despite Whitmore's agreement, a

client retained Whitmore on or about October 30, 2020 to probate and/or contest the estate of his father for a fee of \$3,000. Whitmore filed a petition to contest the will on December 17, 2020. Whitmore later withdrew from the matter, prior to any court hearings, on January 26, 2021, as a result of his three-year suspension. Whitmore knew or should have known that he would not be able to complete the representation prior to his suspension from the practice of law. Moreover, Whitmore accepted the representation without informing the client of his looming suspension. Whitmore also failed to refund any of the fee to the client. [ASB Nos. 2021-355 and 2021-901]

## Suspension

- McCalla attorney **Samuel Mark Hill** was previously suspended from the practice of law in Alabama, effective April 8, 2020, for 180 days, of which he was ordered to serve 90 days and placed on probation for two years. On May 14, 2020, the Alabama Supreme Court issued an order suspending Hill from the practice of law in Alabama for 90 days. On November 30, 2021, Hill consented to the revocation of his probation. The Disciplinary Commission subsequently issued an order on January 26, 2022, revoking Hill's probation and imposing the 90-day suspension. The bar's petition to revoke probation was based on Hill's violating the terms of his probation by committing additional violations of the Alabama Rules of Professional Conduct. The Alabama Supreme Court ordered that Hill's probation be revoked and ordered that Hill serve the remaining 90 days of his 180-day suspension, effective February 25, 2022. [ASB No. 2017-1223]

## Public Reprimands

Birmingham attorney **Samuel Ray Holmes** received a public reprimand with general publication for violating Rules 1.2 [Scope of Representation], 1.4 [Communication], 1.5 [Fees], and 1.15(e) [Safekeeping Property], Alabama Rules of Professional Conduct. The pertinent facts are Holmes was hired to represent a client, executed an employment agreement, and received a \$20,000 retainer.



Holmes's client executed an Alabama Durable Power of Attorney giving Holmes the authority to conduct transactions on his client's behalf. Holmes disbursed the funds according to his client's verbal request, but failed to keep a record of said transactions. Holmes is also required pay any costs taxed against him pursuant to Rule 33, Alabama Rules of Disciplinary Procedure, including but not limited to a \$1,000 administrative fee. [ASB No. 2012-1546]

Birmingham attorney **Samuel Ray Holmes** received a public reprimand with general publication for violating Rules 1.2 [Scope of Representation], 1.4 [Communication], and 1.15 [Safekeeping Property], Alabama Rules of Professional Conduct. The pertinent facts are Holmes was paid for legal services and filing fees by his client, and he cashed both checks. Holmes failed to file a civil action for his client. The client terminated Holmes's services and requested a refund. Holmes failed to return the money his client paid him for the filing fees. Holmes is also required pay any costs taxed against him pursuant to Rule 33, Alabama Rules of Disciplinary Procedure, including but not limited to a \$1,000 administrative fee. [ASB No. 2013-1799]

Birmingham attorney **Davis Lawson Middlemas** received a public reprimand with general publication on March 11, 2022 for violating Rules 1.3 [Diligence], 1.15 [Safekeeping Property], Alabama Rules of Professional Conduct. The pertinent facts are Middlemas failed to timely forward his client's share of the proceeds regarding a personal injury matter. Middlemas admitted this was due to his oversight and neglect. Moreover, Middlemas failed to properly monitor his trust account. [ASB No. 2018-1332]

Birmingham attorney **Gary Alan Smith** received a public reprimand without general publication on March 11, 2022 for violating Rules 1.2(a) [Scope of Representation], 1.8(f)(1) [Conflict of Interest: Prohibited Transactions], 1.15(a), (b), and (c) [Safekeeping Property], and 8.4(a), (c), and (g) [Misconduct], Alabama Rules of Professional Conduct. The attorney collected outstanding fees totaling \$5,206.36 on behalf of his former client, but failed to deliver the funds to his former client. Instead, the attorney applied the funds to an outstanding bill owed to him by his former client without first obtaining their permission. The attorney is also required to pay any and all costs taxed against him pursuant to Rule 33, Alabama Rules of Disciplinary Procedure, including but not limited to a \$1,000 administrative fee. [ASB No. 2019-248] ▲

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# 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.

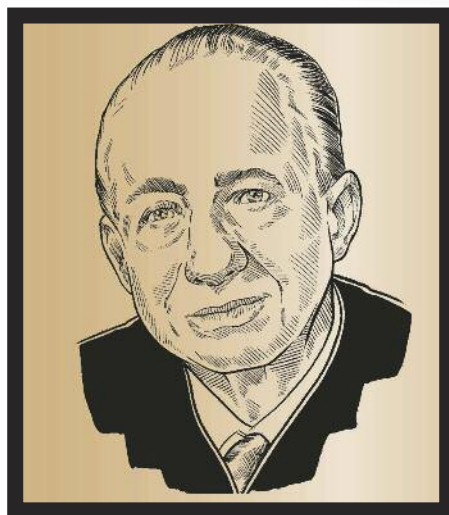
The 12-member selection committee consists of the immediate past president of the Alabama State Bar, a member

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 2020 Hall of Fame induction ceremony scheduled for May 2021 at the Supreme Court of Alabama was postponed to May 13, 2022. The ceremony took place at the Cooper House in Huntsville and honored five new selectees who represent the finest exemplars of the Alabama legal profession. We hope that all of their stories will serve to inspire the present and future citizens of Alabama.*



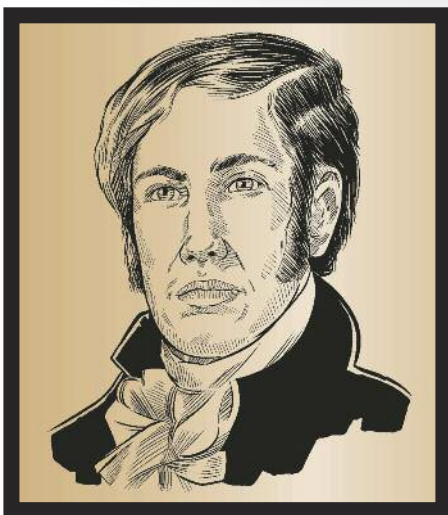
**CECIL HOWARD STRAWBRIDGE  
(1906-1999)**

Born in Vernon, Alabama, one of nine children of a Lamar County farming family; attended the University of Alabama for undergraduate studies and law school; 24<sup>th</sup> Judicial Circuit District Attorney; left to serve in the Air Force during WWII; twice re-elected District Attorney after the war; in 1952 elected Circuit Judge for 24<sup>th</sup> Judicial Circuit; elected to four terms; President of Circuit Judges Association; public servant for over 45 years and known for his compassion for underserved people and his commitment for equal justice for all.



**HELEN SHORES LEE  
(1941-2018)**

Born in Birmingham, Alabama, daughter of 2004 HOF inductee and Civil Rights Lawyer Arthur Davis Shores; attended Fisk University and received a B.A.; earned an M.A. in clinical psychology from Pepperdine University; obtained J.D. from Cumberland School of Law; author; civic leader serving on numerous community boards; member of the Alabama Ethics Commission; first African-American female to serve in the Civil Division of Circuit Court of Jefferson County.



**HENRY MINOR**  
(1783-1838)

Born in Virginia, Minor moved to Huntsville, Alabama, to practice law in 1816; handled numerous land transactions; elected as a delegate to the Alabama Constitutional Convention of 1819; served as member of the first Board of Trustees of the University of Alabama; a member of the Alabama Supreme Court from 1823 to 1825; appointed Clerk of the Court and also Reporter of Decisions; his Minor's Reports are considered a significant contribution to jurisprudence as the first organized publications of Alabama Supreme Court decisions.



**JANE KIMBROUGH DISHUCK**  
(1923-2009)

Born in Selma, Alabama, daughter of attorney Roy Kimbrough; 1947 University of Alabama Law School graduate; married Frank Dishuck, fellow lawyer who she met in law school when he was looking for a personal reader due to his blindness; became the first woman to practice law in Tuscaloosa; member of ASB for over 60 years, practicing law with her husband and then her daughter Anne; pioneer in Bankruptcy Law; Chapter 13 Bankruptcy Trustee for over four decades; President of the Tuscaloosa Bar, a Maud McClure Kelly honoree; mentor to many lawyers, and a community leader.



**WILLIAM BURTON HAIRSTON, JR.**  
(1924-2015)

Birmingham native, graduate of University of Alabama School of Law in 1950; Sam W. Pipes Award as the school's distinguished alumnus; a Bronze Star and Combat Infantryman Badge recipient in WWII; teacher, servant, mentor and role model; American College of Trial Lawyers; ABA and Alabama Law Foundation Fellow; Birmingham Bar President and Lifetime Achievement Award recipient; 65-year member of the Alabama State Bar serving as ASB president; respected servant leader. ▲

# ALABAMA LAWYERS HALL OF FAME PAST INDUCTEES

## 2019

Clifford J. Durr (1899-1975)  
Broox G. Garrett (1915-1991)  
Henry W. Hilliard (1808-1892)  
Richard T. Rives (1895-1982)  
Ellene G. Winn (1911-1986)

## 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)

The Alabama Lawyers Hall of Fame is located on the ground floor of the Heflin-Torbert Judicial Building,  
300 Dexter Avenue, Montgomery, Alabama



## ABOUT MEMBERS, AMONG FIRMS

Please email announcements to  
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### About Members

**Mary Katherine Alemany** announces the opening of **Mary Katherine Alemany, Attorney at Law LLC** at 950 Highway 431, Ste. 1A, Roanoke 36274. Phone (334) 219-3580.

**Katherine W. Haynes** announces the opening of **Haynes Law Firm LLC** at 2001 Park Place N, Ste. 252, Birmingham 35203. Phone (205) 201-0222.

**Patrick C. Marshall** announces the opening of **Patrick Marshall Law LLC** at 2100 Southbridge Parkway, Ste. 650, Birmingham 35209. Phone (205) 718-7714.

**Al Vance** announces the opening of **Vance Dispute Resolution PC**. Phone (205) 541-7688).

**Douglas M. Vogel** announces the opening of **Vogel Law Firm LLC** at 41 Cambridge Ct., Wetumpka 36093. Phone (334) 409-0088.

### Among Firms

**Baker Donelson** announces that **Allen Blow** and **Sharonda C. Fancher** are shareholders in the Birmingham office.

**Chamberlain Hrdlicka** announces that **Steven M. Wyatt** is a shareholder in the Atlanta office.

**Compton Jones Drescher LLP** of Birmingham announces that **Eli Lightner** joined as counsel.

**Hall Booth Smith PC** announces that **C. Peter Bolvig**, **K. Phillip Luke**, and **Jud C. Stanford** joined as partners; **William A. Mudd** joined as counsel; and **Harrison C. Wagner** joined as an associate, all in the Birmingham office.

**Hare Wynn Newell & Newton LLP** announces that **Ashley Reitz Peinhardt**, **Christopher Randolph**, and **Tempe Smith** are partners in the Birmingham office.

# Need more clients?

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**Holtsford Gilliland Higgins Hitson & Howard PC** announces that **Jeffry N. Gale** joined as counsel in the Gulf Coast office, and **Christopher H. Murray** joined as counsel in the Gulfport office.

**Legal Services Alabama** announces that **Rachelle Greczyn** is the managing attorney of the Dothan office, **Christopher McCary** is the managing attorney of the Anniston office, and **Laurie McFalls** is the director of operations.

**Lewis Brisbois** announces that **Chris Collier** joined the Atlanta office as a partner.

**Lyle Johnson LLC** of Fairhope announces that **Thomas R. Finley** joined as an associate.

**Maynard Cooper & Gale** announces that **Helen Kathryn Downs** joined as a shareholder in the Birmingham office.

**Porterfield, Harper, Mills, Motlow & Ireland PA** of Birmingham announces that **E. Martin Bloom** and **Chris L. Albright** joined the firm.

**Speegle, Hoffman, Holman & Holifield LLC** of Mobile announces that **Rudolph W. Munnerlyn** joined as an associate.

**James L. Spinks** announces the opening of the **Spinks Law Group** at 600 Vestavia Parkway, Ste. 121, Vestavia 35216 and that **Allison Hanby** joined as an associate. Phone (205) 709-2011.

**The Vance Law Firm PC** of Montgomery announces a change of address to 7079 University Ct., Montgomery 36117 and that **Elise Mimms** and **Devin C. Harrison** joined the firm. ▲

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**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.*



**J. Thomas Richie**

*J. Thomas Richie is a partner at Bradley Arant Boult Cummings LLP, where he co-chairs the class action team. He litigates procedurally-complex and high-stakes matters in Alabama and across the country. Richie is a 2007 summa cum laude graduate of the Cumberland School of Law and former law clerk to the Hon. R. David Proctor of the United States District Court for the Northern District of Alabama.*

*INTRODUCTORY NOTE: Wilson Green has served the Alabama bar for years by faithfully and carefully providing a digest of the important civil appellate decisions in this state and circuit. Wilson is a brilliant lawyer, a worthy and gracious adversary (from first-hand experience), an engaging mind, and a friend. As he takes his well-deserved leave from writing this column, my way of showing him gratitude is to continue what he started by summarizing the civil decisions.*

–J. Thomas Richie

## RECENT CIVIL DECISIONS

# From the Alabama Supreme Court

### State Agent Immunity

#### **Burton v. Hawkins, No. 1200825 (Ala. Mar. 11, 2022)**

Students were not “workers” under the terms of the Manual on Uniform Traffic Control Devices, and Alabama Code Section 32-5A-215(b) gave discretion to a defendant in determining how close to stand to the road, so Auburn University employees who sued in their individual capacities were entitled to summary judgment on state-agent immunity for injuries and a death arising from a traffic accident involving the students. Also, Alabama Rule of Civil Procedure 56(f) did not require delaying summary judgment until the plaintiffs could depose the driver involved in the accident because that deposition could have no relevance to the immunity issues on which the court granted summary judgment.

#### **Ex parte Runnels, No. 1200647 (Ala. Mar. 11, 2022)**

The principal of a public school was entitled to state-agent immunity with respect to a claim that she spoliated evidence because the storage of the evidence – a piece of allegedly defective playground equipment – was a matter within the principal’s discretion. The court issued a writ of mandamus requiring the entry of summary judgment on the spoliation claim for the defendant.

#### **Hawkins v. Ivey, No. 1200847 (Ala. Mar. 18, 2022)**

The governor and other state officials were entitled to state-agent immunity against claims asserting that the defendants had a duty to participate in unemployment compensation programs offered by the federal government in connection with the COVID-19 pandemic. Neither Alabama Code §§ 36-13-8 nor 25-4-118 affirmatively required the defendants to continue Alabama’s participation in the federal unemployment programs. As a result, the supreme court affirmed the trial court’s decision to dismiss the action under Section 14 of the Alabama Constitution.



## Probate Jurisdiction

***Dill v. Dill*, No. 1200814 (Ala. Mar. 18, 2022)**

Even though a will contest proceeding was filed in the probate court and not in the circuit court (as required by Alabama Code § 43-8-199), the supreme court held that the circuit court had jurisdiction over the will contest because Alabama Acts 1971, Act. No. 1144, § 1 gives the probate court concurrent equitable jurisdiction over states with the circuit court. As a result, the filing of a petition to remove the administration of the estate in the circuit court effectively gave the circuit court jurisdiction over the administration of the estate under Alabama Code § 12-11-41. The supreme court also affirmed the circuit court's entry of judgment in the will contest.

## Res Judicata

***Trussville v. Personnel Board of Jefferson County*, No. 1200629 (Ala. March 18, 2022)**

A city's 2019 declaratory judgment claim regarding its alleged independence from the personnel board was barred by res judicata because of a 1991 case brought by the city. The 2019 and 1991 cases arose from the same broad dispute and presented the same rights to be determined. The supreme court also found that the factual basis for the 2019 lawsuit was known before the 1991 lawsuit.

# From the Alabama Court of Civil Appeals

## Appellate Jurisdiction

***S.B. v. M.B.T.*, Nos. 2200607 and 220647 (Ala. Civ. App. Mar. 11, 2022)**

The court lacked jurisdiction over appeal that terminated parental rights, but did not determine all claims of all parties to the action.

***Kornegay v. Kornegay* (Nos. 2200503, 220504, 220505, and 220506 (Ala. Civ. App. Apr. 8, 2022)**

Four appeals relating to a divorce dispute were dismissed. Two resulted from actions in which no final judgment had even purported to be entered. An appeal filed in a divorce action was premature because no judgment relating to that claim appeared in the State Judicial Information System. Lastly, the court dismissed an appeal from a contempt action because the notice of appeal was filed too late. The appellant filed a post judgment motion in the divorce action, but not the contempt action. That motion did not toll the time to appeal. In any event, the court considered the merits



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(Continued from page 253)

of the appeal from the contempt action and found no basis to reverse the trial court's judgment.

## Custody

### **Wood v. Gibson, No. 2210060 (Ala. Civ. App. Apr. 8, 2022)**

A custody order in favor of a father was reversed. On appeal, the court could not find adequate record evidence that the father had met his evidentiary burden of establishing the *McClendon* factors that govern changing custody. Particularly in the absence of a trial transcript, the court of civil appeals concluded that the trial court's modification of custody was not supported by sufficient evidence. The court also considered whether the father's failure to pay a filing fee for his counterclaim deprived the trial court of jurisdiction over that claim and concluded that a filing fee is not jurisdictional.

# From the Eleventh Circuit Court of Appeals

## Insurance

### **McNamara v. Government Employees Insurance Company, No. 20-12351 (11<sup>th</sup> Cir. Apr. 5, 2022)**

Under Florida law, a consent judgment for an amount above policy limits counts as an excess judgment for purposes of establishing causation in a third-party bad faith claim. However, the district court relied on an unpublished Eleventh Circuit case for the proposition that an excess judgment requires a verdict. In *McNamara*, the Eleventh Circuit reversed and noted that its unpublished opinions are not binding.

## First Amendment

### **SpeechFirst, Inc. v. Cartwright, No. 21-12583 (11<sup>th</sup> Cir. Apr. 21, 2022)**

A voluntary association had standing to challenge a public university's policies relating to discriminatory harassment and bias-related incidents because the court found that both policies objectively chilled speech. The Eleventh Circuit reversed the district court's decision to deny a preliminary injunction against the discriminatory harassment policy to the plaintiff, reasoning that the plaintiff was likely to succeed on the merits because the policy was overly broad and likely involved viewpoint discrimination.

### **O'Laughlin v. Palm Beach County, No. 20-14676 (11<sup>th</sup> Cir. Apr. 1, 2022)**

A fire department's social media policy violated the First Amendment rights of firefighters who were disciplined for making online comments regarding an upcoming union election. Under the *Pickering Connick* standard, the content, form, and context of the speech showed that the speech addressed a matter of public concern. The policy was also found to be overbroad, as the Eleventh Circuit found that the policy's prohibition on speech that could harm firefighters' morale, cohesion, or public image (among other things) could cover "just about anything." The Eleventh Circuit rejected the firefighters' free association challenge, as the policy punished speaking, not associating, and the court found the vagueness challenge to be insufficiently briefed. The vagueness argument received one sentence in the appellants' opening brief, which effectively abandoned the argument.

### **Keister v. Bell, No. 20-12152 (11<sup>th</sup> Cir. Mar. 25, 2022)**

A city-owned sidewalk was a limited public forum because it functioned as a part of the University of Alabama and was maintained by the university. Given the lower scrutiny that applies to regulations of speech in a limited public forum, the university's permit requirement did not violate the First Amendment. The permit policy required a person wishing to pass out leaflets to obtain a university sponsor (either a student or employee), and the Eleventh Circuit found this restriction to be content neutral and reasonable, given that the university had a large number (roughly 45,000) of potential sponsors. The permit policy's exception for "casual recreational or social activities" was found not to be unconstitutionally vague because a person of ordinary intelligence could determine the kinds of activities that qualified, especially considering what kinds of activities might interfere with the university's education setting. Lastly, the court found the permit policy's advance notice requirement to be reasonable. A 10-business-day period would likely be too long, the court noted, but a three-day period was reasonable.

## Arbitration

### **Gulfstream Aerospace Corp. v. Oceltip Aviation 1 Pty Ltd., No. 20-11080 (11<sup>th</sup> Cir. Apr. 18, 2022)**

The Convention on the Recognition and Enforcement of Foreign Arbitral Awards (also known as the New York Convention) is incorporated into the Federal Arbitration Act and gives federal district courts jurisdiction over all arbitral awards not entirely between United States citizens. Because one party to this arbitration was an Australian company, federal jurisdiction

existed, and the parties' choice of law provision did not negate that jurisdiction. Neither did the choice of law clause require applying state law to the review of the arbitral award because the parties' contract did not evidence a clear intent for apply state law instead of federal law.

***Reiterman v. Abid*, No. 20-11025 (11<sup>th</sup> Cir. Mar. 3, 2022)**

A district court did not err in declining to compel arbitration after it held an evidentiary hearing and determined that the parties had mutually rescinded the contract containing the arbitration provision. The existence of a contract including an arbitration is generally a question for the court, not the arbitrator. The district court was also within its authority to weigh evidence and not use a "summary judgment-like standard" in deciding whether to compel arbitration.

***Warrior Met Coal Mining, LLC v. United Mine Workers of America*, No. 21-10523 (11<sup>th</sup> Cir. Mar. 4, 2022)**

The court reversed the district court's decision to vacate an arbitrator's award because the district court was bound to defer to the arbitrator's interpretation of the collective bargaining agreement at issue. The arbitrator arguably interpreted the agreement, the court found, because it construed the meaning of certain phrases in the contract that referred to discharging employees for attendance issues with reference to other provisions in the agreement relating to discharging employees and post-discharge remedies. Under the extremely deferential standard that applies to review of arbitrator's decisions, this analysis was enough to require upholding the arbitrator's decision and reversing the district court's vacatur.

## Statutory Interpretation

***Heyman v. Cooper*, No. 21-10259 (11<sup>th</sup> Cir. Apr. 18, 2022)**

Property owners who let their properties for short-term rentals sought a declaration that a previous version of a county development code allowed them do so. After finding canons of construction to be unhelpful in determining the plain meaning of the development code, the Eleventh Circuit interpreted the code to bar short-term rentals and affirmed the district court's order dismissing the property owners' complaint.

***Thayer v. Randy Marion Chevrolet Buick Cadillac, LLC*, No. 21-10744 (11<sup>th</sup> Cir. Apr. 13, 2022)**

The Graves Amendment – a federal law that shields people who rent cars from liability arising from harm occurring during the rental – applied to a car dealership that gave a "loaner car" to customers to use while their normal vehicle was at the dealership for servicing. Even though the loaner car was provided without separate charge and even though the dealership did not refer to the vehicle as a rental vehicle, the Eleventh Circuit affirmed summary judgment for the

dealership that the Graves Amendment preempted Florida's dangerous instrumentality doctrine.

***Dotson v. United States*, No. 21-10401 (11<sup>th</sup> Cir. Apr. 12, 2022)**

A final administrative denial letter sent by the postal service to counsel who had appeared in the administrative proceeding started the plaintiffs' six-month period to file a lawsuit, rendering the plaintiffs' FTCA claims untimely. Even though other counsel had appeared for plaintiffs in litigation before the final denial letter was sent, the postal service was entitled to notify the counsel who had appeared in the administrative proceeding and had not withdrawn. The Eleventh Circuit also affirmed the district court's decision not to apply equitable tolling to the plaintiffs' claims because the plaintiffs' attorneys' actions, while sufficient to establish excusable neglect, did not constitute the extraordinary circumstances required for equitable tolling.

## Excessive Force

***Ingram v. Kubik*, No. 20-11310 (11<sup>th</sup> Cir. Apr. 7, 2022)**

The Eleventh Circuit affirmed the dismissal of an unlawful seizure claim brought by a person injured in the course of being arrested while he was exhibiting suicidal behavior, but it reversed the dismissal of the excessive force and supervisory liability claims. Allegations that the arresting officer slammed the plaintiff, who was not resisting arrest, into the ground stated a claim for relief, as did allegations that the supervisor ignored and failed to investigate previous documented uses of excessive force by subordinates. The district court's dismissal of a vicarious liability claim under Title II of the Americans with Disabilities Act was also affirmed because the court concluded that vicarious liability is not available under Title II.

## Real Property

***Pingora Loan Servicing, LLC v. Scarver*, No. 20-13615 (11<sup>th</sup> Cir. Apr. 7, 2022)**

A property deed was missing the required official attestation, putting its validity in question. A Georgia statute, O.C.G.A. § 44-2-18, provides that a deed can be recorded upon the affidavit of a subscribing witness, and the loan company argued that a person could become a subscribing witness by certifying a deed's acknowledgment. The Eleventh Circuit, reversing the district court, held that subscribing witness must attest a deed and thus found the deed voidable by a bankruptcy trustee.

## Consent Judgments and Preclusion

***Consumer Financial Protection Bureau v. Ocwen Financial Corp.*, No. 21-11314 (11<sup>th</sup> Cir. Apr. 6, 2022)**

The Eleventh Circuit reversed the district court's determination that an action by the CFPB was barred by preclusion

(Continued from page 255)

arising from a 2013 action that resulted in a settlement agreement and consent judgment. The Eleventh Circuit ruled that the preclusive effect of the 2013 action is measured by the consent judgment, not the broader original complaint, so the action was not precluded as a whole. Instead, the consent judgment barred claims during a certain time. The court remanded the case to determine which specific counts were barred.

## Employment Discrimination

### **Jenkins v. Nell, No. 20-13869 (11<sup>th</sup> Cir. Mar. 3, 2022)**

The Eleventh Circuit reversed summary judgment for the employer. It held that the district court was correct in granting summary judgment for the employer because the employee failed to show discrimination under the *McDonnell Douglas* framework, but it found that the employee provided a convincing mosaic of discrimination. The court relied principally on the need for credibility determinations among various witnesses who gave different accounts of events and racially-charged comments from the supervisor that were corroborated by other employees.

## Standing

### **The Glynn Environmental Coalition, Inc. v. Sea Island Acquisition, LLC, No. 21-10676 (11<sup>th</sup> Cir. Mar. 3, 2022)**

The impairment of a plaintiff's aesthetic interest in viewing wetlands was sufficient to confer standing. The court found that the plaintiff had derived aesthetic pleasure from viewing the wetlands and that her interest in viewing the wetlands did not require her to have the right to physically enter the private wetlands at issue, which were private property. The court also concluded that the filled-in wetlands caused a continuing impairment of the plaintiff's aesthetic interests sufficient to confer standing.

## Immigration

### **Said v. United States Attorney General, No. 21-12917 (11<sup>th</sup> Cir. Mar. 24, 2022)**

Because Florida defines marijuana more broadly than the federal law, a conviction under Florida Statute Section 893.13(6) did not relate to a controlled substance as defined in 21 U.S.C. § 802. Specifically, Florida law counts the stalk of the mature plant as marijuana; federal law does not. As a result, the petitioner's Florida conviction did not affect his ability to accrue the seven years of residence required to cancel a removal.

### **Brasil v. Secretary, Department of Homeland Security, No. 21-11984 (11<sup>th</sup> Cir. Mar. 18, 2022)**

The denial of national interest waiver under 8 U.S.C. § 1153(b)(2)(B)(i) is not subject to judicial review. Under 8 U.S.C. § 1252(a)(2)(B)(ii), no court has jurisdiction to review discretionary decisions by the Attorney General, and § 1153(b)(2)(B)(i) specifically grants the Attorney General discretion to grant or deny national interest waivers. The court specifically did not decide whether judicial review of decisions under § 1252(b)(2)(B)(i) may be had when the allegation is that the USCIS failed to apply the *Dhanasar* test or follow applicable agency procedures.

### **Lauture v. United States Attorney General, No. 19-13165 (11<sup>th</sup> Cir. Mar. 17, 2022)**

As interpreted by one Florida appellate court, entry into a dwelling that has never been occupied can give rise to a burglary conviction under the applicable Florida statute. The question in this appeal is whether a conviction under that statute for entry into an unoccupied dwelling is a crime involving moral turpitude such that a lawful permanent resident is subject to removal under 8 U.S.C. § 1227(a)(2)(A)(i). The court vacated the removal order and remanded to the BIA to determine whether there was a realistic probability that Florida would apply its statute to conduct that falls outside the definition of a crime involving moral turpitude.

## Title IX

### **Doe v. Samford University, Nos. 21-12592, 21-12840 (11<sup>th</sup> Cir. Mar. 24, 2022)**

The court affirmed the district court's decision to dismiss Title IX claims brought by a student who was suspended for five years as a result of a university hearing panel's determination that the student engaged in prohibited conduct in an off-campus sexual encounter. He alleged that the university violated Title IX by selective enforcement and gender bias. The Eleventh Circuit first decided the standard applicable to Title IX complaints is "whether the alleged facts, if true, permit a reasonable inference that the university discriminated against [the plaintiff] on the basis of sex." Under this standard – and two other standards applicable in other circuits – the Eleventh Circuit affirmed dismissal.

## FLSA

### **Compere v. Nusret Miami, LLC, No. 20-12422 (11<sup>th</sup> Cir. Mar. 18, 2022)**

An 18 percent mandatory service charge included on a restaurant bill qualified as a service charge and not a tip, meaning that the charges were properly included in tipped employee plaintiffs' regular rate of pay and that the restaurant

could use the charges to offset its wage obligations. Because tips must be determined solely by the customer and the service charges were mandatory and set by the restaurant, the service charges did not qualify as tips.

***Brown v. Nexus Business Solutions, LLC, No. 20-13909 (11<sup>th</sup> Cir. Apr. 1, 2022)***

Business development managers were not entitled to overtime compensation because their discretion over matters of significance in how they performed their job tasks. The court rejected the distinction drawn in some other circuits between discretion that impacts or affects a matter of significance, and exercising discretion with respect to a matter of significance.

## **Removal, Class Action Fairness Act**

***Rhulen v. Holiday Haven Homeowners, Inc., No. 21-90022 (11<sup>th</sup> Cir. Mar. 9, 2022)***

Because the district court remanded a case on its own initiative and not in response to a motion to remand, the Eleventh Circuit held that the remand order was not subject to appellate review under 28 U.S.C. § 1453(c)(1). That section limits appellate review to orders granting or denying a motion to remand, and the Eleventh Circuit determined that a court's decision to remand without a motion from a party does not qualify as such an order.

## **Class Action Fairness Act, Local Controversy Exception**

***Simring v. GreenSky, LLC, No. 21-11913 (11<sup>th</sup> Cir. Mar. 28, 2022)***

The Eleventh Circuit had jurisdiction to consider a remand under the Class Action Fairness Act's local controversy exception because that exception does not go to a procedural "defect" in the removal, but instead is more akin to abstention. As a result, it does not fall within the jurisdiction stripping statute 28 U.S.C. § 1447(d). The Eleventh Circuit also reversed the district court's determination that the local controversy exception applied, reasoning that, while the complaint as a whole made reference to limiting the scope of the case to residents of Florida, the class definition contained no such limitation. The face of the class definition is dispositive. Moreover, the references to Florida residents in the complaint could not have carried the plaintiff's burden of establishing the local controversy exception because citizenship, not residence, matters for that exception – and it emphasized that the residence/citizenship distinction is particularly important in Florida, where many people live in the state for less than the whole year.

## **False Claims Act**

***Cho v. Surgery Partners, Inc., No. 20-14109 (11<sup>th</sup> Cir. Apr. 1, 2022)***

The date of the original complaint, not an amended complaint, is the critical date for applying the first-to-file bar applicable in a False Claims Act case under 31 U.S.C. § 3730(b)(5). The bar applies, if at all, if there is a related action pending at the time the original complaint is filed in the potentially barred action, even if the original action is later dismissed or settled. The Eleventh Circuit next adopted the "same essential elements" test to determine whether the two FCA actions were related and concluded that they were.

## **Appellate Jurisdiction, Declaratory Judgment**

***Nationwide Mutual Insurance Company v. A.B., No. 21-11221 (11<sup>th</sup> Cir. Mar. 29, 2022)***

A tort claimant lacks standing to appeal a declaratory judgment concluding that an insurer does not owe a duty to defend the defendant in the claimant's action. The Eleventh Circuit concluded that the declaratory judgment does not affect the claimant's rights nor does it have a preclusive effect on the claimant. As a result, the claimant was not injured by the declaratory judgment and had no standing to appeal it.

## **Contracts**

***Southern Coal Corporation v. Drummond Coal Sales, Inc., No. 20-14560 (11<sup>th</sup> Cir. Mar. 28, 2022)***

The Eleventh Circuit affirmed the district court's judgment against Southern Coal, but reversed so that Drummond could obtain reasonable attorneys' fees. The contract's reference to a benchmark price was deemed ambiguous by reference to extrinsic evidence, and the Eleventh Circuit affirmed the decision to look at extrinsic evidence of industry usage and custom before determining that the contract term was ambiguous. The Eleventh Circuit rejected the argument for equitable reformation on the basis of mutual mistake, noting that the sophisticated parties appeared not to have drafted the contract in the manner to accomplish what they sought on appeal. However, the Eleventh Circuit reversed the district court's decision not to award attorneys' fees to Drummond, finding that New York law – which applied to the contract – defined the prevailing party as the one that prevailed on the central claims advanced and received substantial relief. Thus, even though Drummond's victory was not total, it was still the prevailing party. The Eleventh Circuit affirmed the district court's determination that Drummond's conduct in sending invoices above an amount Southern Coal thought justified by the contract did not amount to either anticipatory repudiation or material breach.

(Continued from page 257)

# From the United States Supreme Court

## Intervention

***Cameron v. EMW Women's Surgical Center*, No. 20-601, (U.S. Mar. 3, 2022)**

The Sixth Circuit should have allowed Kentucky's attorney general to intervene on appeal to defend a state law after another state official declined to do so, even though the attorney general's motion to intervene came after the Sixth Circuit had struck down the law. Because the attorney general has a strong interest in defending the constitutionality of state law in federal court, the lower court should have allowed the attorney general to do so, especially after another state official declined.

## Arbitration

***Badgerow v. Walters*, No. 20-1143 (U.S. Mar. 31, 2022)**

Federal jurisdiction over attempts to confirm or vacate an award in arbitration under Section 9 or 10 of the Federal Arbitration Act is narrower than federal jurisdiction over attempts to compel arbitration under Section 4. Section 4 authorizes a court to "look through" to the underlying dispute in arbitration: if the dispute to be arbitrated could be brought in federal court, then federal jurisdiction exists over the action to compel arbitration. But, the Supreme Court held the look-through approach cannot be used to determine federal jurisdiction for Section 9 and 10.

## First Amendment

***Houston Community College System v. Wilson*, No. 20-804 (U.S. Mar. 24, 2022)**

A community college board's verbal censure of one its trustees did not violate the First Amendment. The censure did not carry any consequence against the trustee, and the Supreme Court found that the censure amounted to nothing more than speech.

***City of Austin, Texas v. Reagan National Advertising of Austin, LLC*, No. 20-1029 (U.S. Apr. 21, 2022)**

The Supreme Court held that an ordinance prohibiting new signs that advertise for businesses or activities not connected

to the location of the sign was facially content neutral. As a result, the ordinance should be subjected to intermediate scrutiny, not the strict scrutiny applied to invalidate the ordinance in the Fifth Circuit.

## Social Security, United States Territories

***United States v. Vaello-Madero*, No. 20-303 (U.S. Apr. 21, 2022)**

The Constitution does not require Congress to grant Supplemental Security Income benefits to residents of Puerto Rico or other territories. The Territories Clause of the Constitution gives Congress wide discretion in determining the application of federal tax and benefit programs in the Territories, and the Equal Protection Clause of the Fifth Amendment will not constrain Congress's authority under the Territories Clause as long as Congress's judgment is supported by a rational basis.

## Affordable Care Act – Private Enforcement

***Cummings v. Premier Rehab Keller, P.L.L.C.*, No. 20-219 (U.S. Apr. 28, 2022)**

Emotional distress damages are not available to a plaintiff suing to enforce the Rehabilitation Act of 1973 or the Affordable Care Act. Remedies under those acts, passed under Congress's spending power, are often analogized to the remedies that would be available in a contract action, and emotional damages are not commonly available in contract.

## Tax Litigation

***Boechler, P.C. v. Commissioner of Internal Revenue*, No. 20-1472 (U.S. Apr. 21, 2022)**

Section 6330(d)(1) of the Internal Revenue Code establishes a 30-day period to seek Tax Court review of a collection due process case. The Supreme Court held that this period is not jurisdictional and is thus subject to equitable tolling. The language of the statute is unclear, and the Supreme Court requires a clear statement from Congress before determining that a particular deadline is jurisdictional.

## Foreign Sovereign Immunities Act, Choice Of Law

***Cassirer v. Thyssen-Bornemisza Collection Foundation*, No. 20-1566 (U.S. Apr. 21, 2022)**

In a suit under the Foreign Sovereign Immunities Act raising non-federal claims against a foreign state or instrumentality, a court should use the same choice-of-law rule to determine the substantive law as it would in a similar suit against a private party.

# RECENT CRIMINAL DECISIONS

## From the United States Supreme Court

### Federal Habeas Corpus; Ineffective Assistance of Counsel

***Shinn v. Ramirez*, No. 20-1009 (U.S. May 23, 2022)**

The federal court reviewing a habeas challenge to a state court conviction may not conduct an evidentiary hearing or otherwise consider evidence outside of the state court record in considering an ineffective assistance of trial counsel claim, regardless of whether postconviction counsel failed to develop the record in state court.

### Federal Habeas Corpus; AEDPA

***Brown v. Davenport*, 142 S. Ct. 1510 (2022)**

In *Brecht v. Abrahamson*, 507 U.S. 619 (1993), the United States Supreme Court held that a federal habeas petitioner seeking relief due to an alleged state court error must show that the error had a “substantial and injurious effect or influence” on the trial’s outcome. Here, the Court held that a federal habeas petitioner may obtain relief only if he satisfies both the *Brecht* standard and the heavy burden placed on him by the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). It concluded that the federal court “cannot grant habeas relief unless a state prisoner...satisfies both this Court’s equitable precedents and Congress’s statute.”

## From the Eleventh Circuit Court of Appeals

### Second Amendment

***United States v. Jimenez-Shilon*, No. 20-13139 (11<sup>th</sup> Cir. May 23, 2022)**

As a matter of first impression, the Eleventh Circuit Court of Appeals held that 18 U.S.C. § 922(g)(5)(A), which prohibits the possession of a firearm by an illegal alien, does not violate the Second Amendment. Construing the amendment’s phrase “the people” (“...the right of the people to keep and bear Arms, shall not be infringed[]”), the Court of Appeals held: “[e]ven if [the defendant] can lay a legitimate claim to

being among ‘the people’ as a general matter, he – as an illegal alien – may be forbidden from bearing arms while living within our borders.”

### Armed Career Criminal Act

***United States vs. Gardner*, No. 20-13645 (11<sup>th</sup> Cir. May 27, 2022)**

The defendant’s prior Alabama convictions of first-degree unlawful possession of marijuana for other than personal use and unlawful distribution of a controlled substance qualified as “serious drug offenses” for sentence enhancement under the Armed Career Criminal Act, 18 U.S.C. § 924(e).

### Sentencing Variance

***United States v. Shaw*, No. 21-11229 (11<sup>th</sup> Cir. May 23, 2022)**

The district court did not abuse its discretion in imposing an upward sentencing variance under 18 U.S.C. § 3553(a) in light of the defendant’s 17 previous convictions, many arrests, and several incidents of beating and choking women.

## From the Alabama Court of Criminal Appeals

### Pretrial Dismissal of Indictment

***State v. Starks*, CR-21-0048 (Ala. Crim. App. May 6, 2022)**

The circuit court acted outside the scope of its authority under Ala. R. Crim. P. 13.5 when it dismissed an indictment before trial for lack of sufficient evidence. Noting that Rule 13.5(c)(1) provides that a motion to dismiss an indictment may be based only on objections to the venire, the lack of a grand juror’s qualifications, the legal insufficiency of the indictment, or the failure of the indictment to charge an offense, the Alabama Court of Criminal Appeals concluded that “there is no pretrial means to dismiss the charges against a defendant based on the insufficiency of the evidence.”

### Motion to Correct Judgment; Tolling of Appeal Period

***P.B. v. State*, CR-20-0795 (Ala. Crim. App. May 6, 2022)**

A motion to correct or amend a judgment under Ala. R. Crim. P. 29 does not toll the time for filing a notice of appeal. Accordingly, the juvenile’s post-judgment motion seeking to correct a delinquency judgment to reflect that he had reserved an issue for appellate review before pleading “true” to

(Continued from page 259)

his offense did not extend the time for appealing from that judgment. The Alabama Court of Criminal Appeals, without authority to extend the time for filing a notice of appeal, dismissed the juvenile's appeal. It also clarified that there is no requirement that the trial court's judgment reflect that an issue is reserved and preserved at a plea hearing as long as the record otherwise reflects it.

### Ineffective Assistance; Mitigation Evidence

#### **State v. Lewis, CR-20-0372 (Ala. Crim. App. May 6, 2022)**

Rejecting claims of error from both the state and the capital murder defendant on various issues, the Alabama Court of Criminal Appeals affirmed the circuit court's finding that trial counsel rendered ineffective assistance in his investigation and presentation of mitigation evidence. The defendant's counsel hired a mitigation expert only five weeks before trial, and the expert was not provided school, medical, or Department of Human Resources records. Because "[o]nly a perfunctory investigation of mitigation evidence was performed and only a meager portion of mitigation evidence was presented at sentencing[,] the circuit court's granting of Ala. R. Crim. P. 32 relief regarding the trial's penalty phase was not clearly erroneous.

### Speedy Trial

#### **State v. Crandle, CR-20-0148 (Ala. Crim. App. May 6, 2022)**

The circuit court erred in dismissing the defendant's assault charge on the ground that he was denied a speedy trial. More than four years passed between the defendant's arrest and his filing of the motion to dismiss, and the lengthy delay in the prosecution of the case was not deliberate; the case had been reset several times awaiting a determination of the defendant's competency in another case. Further, there was insufficient evidence that he had been prejudiced by the delay. The defendant therefore failed to show that his right to a speedy trial was violated under *Barker v. Wingo*, 407 U.S. 514 (1972) and its progeny.

### Brady; Suppression of Evidence

#### **Johnson v. State, CR-05-1805 (Ala. Crim. App. May 6, 2022)**

The circuit court did not err in denying the capital murder defendant's Ala. R. Crim. P. 32 petition alleging that the state violated *Brady v. Maryland*, 373 U.S. 83 (1963) by suppressing evidence that a trial witness testified in hope of a reward. It found that the state did not pay the witness a reward until years after the trial and that the state thus could not have

disclosed the reward payment before trial. The circuit court also concluded that the witness did not testify in the hope of a reward and that the state thus could not have suppressed that information.

### Competency to Stand Trial

#### **State v. Glass, CR-20-0989 (Ala. Crim. App. May 6, 2022)**

The circuit court erred in granting the defendant's Ala. R. Crim. P. 32 petition on the basis that he was incompetent to stand trial when he pleaded guilty. The evidence presented at the Rule 32 hearing showed that the defendant was diagnosed with a neurological disorder several years after his plea and that he suffered from symptoms possibly related to the disorder at the time of the plea. However, those symptoms were known to the parties and the circuit court at the time he pleaded guilty. Further, one of two mental evaluations conducted before the plea concluded that he was competent to stand trial; a second evaluation reflected concerns for his ability to communicate but stopped short of finding him incompetent. Proof of incompetency to stand trial "involves more than simply showing that the accused has mental problems or psychological difficulties[,] and the defendant failed to meet his burden to warrant postconviction relief.

### Sodomy; Video Evidence

#### **J.S. v. State, CR-20-0674 (Ala. Crim. App. May 6, 2022)**

Recognizing that an act of sodomy against a person lacking capacity to consent is "an incredibly invasive physical act" exploitive of the victim's helplessness and carrying "the risk – if not the certainty – of 'severe emotional and psychological harm' to the victim[,] the Alabama Court of Criminal Appeals held that the offense of sodomy of an incapacitated person under Ala. Code § 13A-6-63(a)(2) is a violent crime not subject to the statute of limitations. In reviewing video evidence presented at trial, the court also found that the defendant's admissions to filming several "scenes" on a VHS recording were sufficient to authenticate the recording under the pictorial-communication theory.

### Appeal Bond

#### **Ex Parte Smith, CR-22-0530 (Ala. Crim. App. Apr. 15, 2022)**

A defendant who appeals from his conviction may not remain free on an appeal bond beyond the Alabama Court of Criminal Appeals' affirmance or dismissal of his conviction, regardless of whether he applies for rehearing in that court or seeks certiorari review in the Alabama Supreme Court.



## “One-Man Show-Up” Identification; Double Jeopardy

**Watkins v. State, CR-20-0670 (Ala. Crim. App. Mar. 11, 2022)**

The circuit court did not err in refusing to suppress evidence of the robbery defendant’s pretrial identification by his victim at a “one-man show-up” conducted by officers. The “one-man show-up” was not impermissibly suggestive because the officers quickly apprehended the defendant after the robbery and conducted the identification procedure before taking him to police headquarters. The Alabama Court of Criminal Appeals affirmed one robbery conviction, but ordered the circuit court to vacate a second robbery conviction; the convictions arose from one continuous act against one victim and thus constituted double jeopardy.

## Restitution

**Love v. State, CR-20-0423 (Ala. Crim. App. Mar. 11, 2022)**

The Alabama Court of Criminal Appeals dismissed the defendant’s appeal from a restitution order arising from his guilty plea convictions and sentences because he waived his right to appeal, did not seek to withdraw his plea, and did not preserve issues for appellate review. Because restitution is part of a criminal sentence, the defendant’s waiver of his right to appeal or to collaterally attack his convictions and sentences encompassed the restitution order.

## Probation Revocation Hearing

**Bailey v. State, CR-21-0245 (Ala. Crim. App. May 27, 2022)**

The circuit court’s brief hearing regarding the defendant’s delinquency charge, with no testimony or other evidence presented, did not constitute a probation revocation hearing as required by Ala. Code § 15-22-54.

## Community Corrections Revocation Hearing

**Wilkerson v. State, CR-20-0504.70 (Ala. Crim. App. May 27, 2022)**

The Alabama Court of Criminal Appeals reversed the defendant’s Community Corrections revocation and remanded for a hearing on the issue. The circuit court’s proceeding did not include a presentation of evidence or an admission by the defendant that he failed to abide by the Community Corrections program’s rules.

## Ala. R. Crim. P. 32; Amendments to Petition

**Jefferson v. State, CR-16-1084.60 (Ala. Crim. App. May 27, 2022)**

The circuit court erred in allowing the defendant a certain period (here, 10 days) within which to amend his Rule 32 petition, but summarily dismissing the original petition before the period expired.

## Expungement

**Ex parte Curran, CR-19-1082 (Ala. Crim. App. May 27, 2022)**

The circuit court erred in granting the petitioner’s motion to expunge records of one of his five dismissed charges without expunging all five of them, for each charge arose from the same incident and thus constituted one “case.” Though the expungement motions on each of the charges were filed before the enactment of Ala. Code § 15-27-2.1, the Alabama Court of Criminal Appeals noted that the statute, effective July 1, 2021, provides that “one expungement shall include all charges or convictions stemming from the same arrest or incident.”

## Ex Post Facto Sentence

**L.M.L. v. State, CR-20-0157 (Ala. Crim. App. May 27, 2022)**

The Alabama Court of Criminal Appeals affirmed the defendant’s rape, sodomy, sexual abuse, and sexual torture convictions, but it remanded for the circuit court to vacate portions of its sentences that required a period of post-release supervision under Ala. Code § 13A-5-6(c). It concluded that the statute’s requirement that “not less than 10 years of post-release supervision” be served upon release from incarceration on certain sex offenses would constitute an ex post facto law if retroactively applied to the defendant’s offenses. ▲



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## LEGISLATIVE WRAP-UP

# 2022 Legislative Recap

This column will cover noteworthy legislation that passed during the 2022 Regular Legislative Session. During this session, there were 719 general bills, 105 local bills, and 49 proposed constitutional amendments introduced, for a total of 873 bills. At the end of the session, there were 298 total bills that were enacted, including 210 general bills, 71 local bills, and 17 proposed constitutional amendments. Given the volume of acts adopted, this column will only highlight select bills most likely to be encountered by practitioners around the state. Practice areas highlighted here include education, taxation, criminal law and procedure, courts, firearms, elections, and health. Summaries of every general act can be found on the website of the Alabama Legislature at <https://alison.legislature.state.al.us/> under the Legislative Services Agency (LSA) Legal Division Publications.

### **Taxation – Income Tax (Act 2022-37, HB231; Act 2022-75, SB152)**

#### **Representative Jim Carns and Senator Dan Roberts**

This act provides that an individual's tax deduction for federal income tax paid or accrued within the tax year ending December 31, 2021 will be determined without considering the reduction in federal tax attributable to any additional federal child tax credit, federal income tax credit, or federal child and dependent care tax credit received pursuant to the American Rescue Plan Act of 2021. Effective March 1, 2022

### **Taxation – Small Business Relief and Revitalization Act of 2022 (Act 2022-53, HB82)**

#### **Representative Danny Garrett**

This act (1) provides that, effective for the tax years ending after the enactment of the federal American Rescue Plan Act of 2021 (ARPA), any amount of cancellation of indebtedness income resulting from a loan foreign under Section 1005 of ARPA shall be exempt from income taxes imposed by Chapter 18 of Title 40, Code of Alabama 1975; (2) provides a one-month extension of the due date for financial institution excise tax and corporate income tax taxpayers for the tax years beginning on or after January 1, 2021; (3) exempts up to \$40,000 of the market value of business tangible personal property from the state ad valorem tax and allows any county or municipality to adopt the same exemption for local ad valorem taxes; (4) allows a deposit of

certified funds in lieu of a one-time surety bond; and (5) increases the average monthly state sales tax liability threshold to \$5,000 or greater, during the preceding calendar year for required estimated payments. Effective: Section 4 of the act, exempting certain business tangible personal property from ad valorem taxes, is effective October 1, 2023. Section 5 of the act, allowing for a deposit of certified funds and increasing the average monthly state sales tax liability, is effective May 1, 2023. The remaining sections are effective February 28, 2022.

### Taxation – Collection of Delinquent Property Taxes (Act 2022-208, HB371)

#### Representative Corley Ellis

This act authorizes local tax-collecting officials to use an online public auction for the collection of delinquent property taxes and provides for the procedures of the online public auction. Effective April 4, 2022

### Taxation – Elimination of Business Privilege Tax (Act 2022-252, HB391)

#### Representative Steve Clouse

This act (1) provides that taxpayers who would otherwise be subject to the minimum tax business privilege tax due of \$100 would be required to pay only \$50 for taxable years beginning January 1, 2023; and (2) provides that for tax years beginning January 1, 2024, those taxpayers would be exempt from the payment of the business privilege tax. Effective July 1, 2022

### Taxation – Sweet Grown Alabama Act (Act 2022-291, SB274)

#### Senator Steve Livingston

This act provides that for the period beginning October 1, 2022 and ending September 30, 2027, the gross receipts derived from the sale of producer value-added agricultural products are exempt from the state sales tax when the sale is made by the producer, a family member, or an employee thereof. Effective April 11, 2022

### Taxation – State Income Tax (Act 2022-292, SB19; Act 2022-297, HB163)

#### Representative Lynn Greer and Senator Arthur Orr

This act (1) increases the threshold for the maximum dependent income tax exemption from \$20,000 to \$50,000; (2) increases the adjusted gross income floor for the optional standard deduction for taxpayers who are married filing jointly, head of family, and single from \$23,000 to \$25,500 and from \$10,500 to \$12,750 for taxpayers who are married filing separately; and (3) increases the standard deduction amount from \$4,000 to \$5,000 for taxpayers who are married

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*(Continued from page 263)*

filing jointly and from \$2,000 to \$2,500 for taxpayers who are married filing separately, head of family, or single. Effective April 11, 2022

### **Alcoholic Beverages – Dispensing Table Wine for Off-Premises Consumption (Act 2022-39, SB22)**

#### **Senator Randy Price**

This act provides that a retail table wine licensee may dispense wine for off-premises consumption in containers approved by the Alcoholic Beverage Control Board. Effective February 23, 2022

### **Alcoholic Beverages – Dispensing Alcoholic Beverages (Act 2022-383, HB176)**

#### **Representative Kyle South**

This act (1) authorizes individuals between 18 and 20 years of age to serve alcoholic beverages when employed as a server or busser by a restaurant licensed by the Alcoholic Beverage Control Board, provided, the employee may not work as a bartender and may not pour alcoholic beverages; (2) authorizes individuals under 21 years of age who are employed by a wholesale licensee or an off-premises retail licensee of the Alcoholic Beverage Control Board to handle, transport, or sell alcoholic beverages; and (3) increases the authorized civil penalty the board may assess against a licensee for a violation. Effective July 1, 2022

### **Occupational Licensing Boards – Reciprocity For Military Spouses (Act 2022-92, SB141)**

#### **Senator Tom Butler**

This act (1) revises requirements for occupational licensing boards to adopt rules that provide for reciprocal occupational licenses for military spouses under certain circumstances; and (2) expands the definition of an eligible individual to include employees of the United States Department of Justice and the National Aeronautics and Space Administration. Effective June 1, 2022

### **Corporations – Stock Issuance (Act 2022-124, SB104)**

#### **Senator Sam Givhan**

This act (1) revises the manner in which a corporation may issue a share of stock by allowing scrip to be issued in certificated or uncertificated form and prohibits a corporation from issuing a certificate representing scrip in bearer form; and (2) requires corporations that issue or transfer scrip in

uncertificated form to comply with certain notice requirements. Effective June 1, 2022

### **Constitution of Alabama of 2022 – Powers of the Code of Commissioner (Act 2022-177, HB319)**

#### **Representative Merika Coleman**

This act proposes an amendment to the Constitution of Alabama of 1901 to provide that upon the ratification of an official Constitution of Alabama of 2022, the code commissioner may (1) renumber and place existing ratified constitutional amendments into the Constitution of Alabama of 2022 based on a logical sequence and the particular subject or topic of the amendment; and (2) transfer existing annotations to any section of the Constitution of Alabama of 1901 to the section as it is numbered or renumbered in the Constitution of Alabama of 2022.

### **Constitution of Alabama of 2022 – Proposed for Ratification (Act 2022-111, HJR88)**

#### **Representative Merika Coleman**

This House Joint Resolution (1) certifies that the proposed Constitution of Alabama of 2022 meets the requirements of Amendment 951 of the Constitution of Alabama of 1901; (2) certifies that the draft of the proposed Constitution of Alabama of 2022 is adopted by the legislature in accordance with Amendment 951; (3) requires the proposed Constitution of Alabama of 2022 to be submitted to the qualified electors of the state for ratification; and (4) provides that if it is ratified, the Constitution of Alabama of 2022 shall succeed the Constitution of Alabama of 1901.

### **Labor and Employment – Independent Contractors (Act 2022-197, SB150)**

#### **Senator Arthur Orr**

This act provides that for purposes of wage reporting and taxation, marketplace contractors who work for certain marketplace platforms, such as Uber, Grubhub, Lyft, and Waitr, are not classified as employees, but, instead, operate as independent contractors. Effective July 1, 2022

### **Education – Alabama Numeracy Act (Act 2022-249, SB171)**

#### **Senator Arthur Orr**

This act: (1) prohibits the use of the Common Core State Standards in public K-12 schools; (2) implements steps to im-

prove mathematics proficiency of public school grades K-5 students to ensure proficiency in mathematics at or above grade level at the end of fifth grade; (3) requires public K-5 schools to employ mathematics coaches, subject to appropriations; (4) requires the state superintendent of education to convene an elementary mathematics task force to make recommendations for high-quality, evidence-based mathematics curricula for core instruction and mathematics intervention programs and provides for the membership and duties of the task force; (5) requires the state department of education to identify full-support and limited-support schools based on student proficiency and require additional support to schools in need; (6) requires the state superintendent of education to convene a postsecondary mathematics task force to develop guidelines to train mathematics teachers; and (7) beginning January 1, 2023, requires the department of education to lead

a working group to develop a school turnaround academy to train school principals and teacher-leaders in evidence-based school turnaround strategies. Effective April 5, 2022

## Education – Public Education Employee Salary Increase (Act 2022-285, HB136)

### Representative Danny Garrett

This act provides for a four-percent salary increase for public education employees of the several local boards of education, the Alabama Institute for Deaf and Blind, the Department of Youth Services School District, the Alabama School of Fine Arts, the Alabama School of Mathematics and Science, the Alabama School of Cyber Technology and Engineering, and the two-year postsecondary institutions under the Board of Trustees of the Alabama Community College System for fiscal year 2023. Effective April 7, 2022

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(Continued from page 265)

## Education – State Board of Education (Act 2022-290, HB322)

### Representative Scott Stadthagen

This act (1) requires each multiple occupancy restroom or changing area designated for student use in a public K-12 school to be designated for such use by individuals based on their biological sex; and (2) prohibits classroom discussion or instruction to students in grades K-5 regarding sexual orientation or gender identity in a manner that is not age or developmentally appropriate, as further specified by standards established by the state board of education. Effective July 1, 2022

## Education – Alabama Literacy Act (Act 2022-392, HB220)

### Representative Terri Collins

This act (1) revises the membership of the Alabama Literacy Task Force to include, in addition to the current membership, a national expert in literacy, four members appointed by the governor, and three members appointed by the state superintendent of education; (2) requires assessments approved by the task force to measure oral language, including letter-naming, letter sound, and sound letter correspondences; (3) provides that continued funding expended from the Alabama Reading Initiative shall be contingent on measurable performance growth, as determined by the Alabama Committee on Grade Level Reading; (4) provides that each elementary school among the lowest performing five percent in reading be assigned an Alabama Reading Initiative regional literacy specialist and that the specialist shall provide support until that school is no longer among the lowest-performing five percent; (5) authorizes the state superintendent of education to specify the number of teachers, administrators, and other personnel who shall complete an approved training program in the science of reading; (6) commencing with the 2022-2023 school year, provides that the comprehensive core reading program offered by each local education agency be approved by the task force; (7) lowers the minimum number of required hours of scientifically-based reading instruction and intervention at summer reading camps from 70 to 60 hours; and (8) provides that the Alabama Summer Achievement Program be available to all K-3 students in public elementary schools that are among the lowest-performing five percent in reading of elementary schools. The act also revises good-cause exemptions from retention to include (1) students with disabilities whose

Individualized Education Plan indicates that participation in the statewide program is not appropriate; (2) students identified as English language learners who have had less than three years of English instruction; and (3) students who were previously retained in the third grade. Effective April 13, 2022

## Education – Feminine Hygiene Products (Act 2022-380, HB50)

### Representative Rolanda Hollis

This act establishes a grant program to award funds to local boards of education to provide, at certain qualifying schools, feminine hygiene products to female students in grades five through 12 through a female school counselor, female nurse, or female teacher at no cost to the student. Effective August 1, 2022

## Education – Name, Image, and Likeness Compensation for Student Athletes (Act 2022-2, HB76)

### Representative Kyle South

This act repeals Act 2021-227 (2021 Regular Session) and certain other provisions relating to the establishment of a procedure for the compensation of a student athlete for the use of his or her name, image, or likeness. Effective February 3, 2022

## Education – Mental Health Coordinator (Act 2022-442, HB123)

### Representative Nathaniel Ledbetter

This act (1) provides that, subject to appropriations by the legislature, commencing with the 2023-2024 school year, each local board of education in the state is required to employ a mental health service coordinator; (2) provides for the qualifications and responsibilities of mental health coordinators; and (3) provides for the provision of mental health services and a parent opt-in policy. Effective July 1, 2022

## Health – Alabama Vulnerable Child Compassion and Protection Act (Act 2022-289, SB184)

### Senator Shay Shelnett

This act (1) prohibits the performance of a medical procedure or the prescription of medication upon or to a minor child that is intended to alter the minor child's gender or delay puberty; (2) provides for exceptions; (3) provides for disclosure of certain information concerning students to

parents by schools; and (4) establishes criminal penalties for violations. Effective May 8, 2022

## **Health – Telemedicine (Act 2022-302, SB272)**

### **Senator Dan Roberts**

This act (1) provides for the practice and regulation of telemedicine in the state by the Alabama Medical Licensure Commission; (2) requires physicians engaged in the provision of telehealth medical services to possess a full and active license to practice medicine or osteopathy in this state, with certain exceptions for limited or infrequent telehealth services; (3) provides that telehealth medical services may only be provided following the patient's initiation of a physician-patient relationship or pursuant to a referral made by a patient's licensed physician with whom the patient has an established physician-patient relationship, provided the physician-patient relationship may be formed without a prior in-person examination; (4) provides requirements for a physician to verify the identity of the patient prior to the provision of telehealth medical services; (5) provides limits on the number of times a physician or practice group may provide telehealth medical services to the same patient within a 12-month period; and (6) authorizes physicians engaged in telemedicine to prescribe legend drugs, medical supplies, and controlled substances, but requires additional conditions to be met prior to the prescription of a controlled substance, including a prior in-person encounter with the patient within the preceding 12-month period. Effective July 11, 2022

## **Elections – Campaign Finance (Act 2022-321, HB194)**

### **Representative Wes Allen**

This act (1) prohibits certain public officials responsible for the conduct of an election, and their employees, from soliciting, accepting, or using certain donations for the purpose of funding certain election-related expenses, including salaries and bonuses for election employees and poll workers and expenses related to ballots and the mailing thereof; (2) provides that during a state of emergency, donations of items for the preservation or protection of public health, such as masks to be used by voters or election officials, may be accepted by the Office of the Governor and distributed to each judge of probate, under certain conditions; and (3) provides that a violation of the act is a Class B misdemeanor. Effective July 1, 2022

## **Firearms – Permitless Carry of Pistols (Act 2022-133, HB272)**

### **Representative Shane Stringer**

This act: (1) authorizes the permitless carrying of a concealed pistol in any unrestricted public area; (2) adds the primary office

of any elected public official to the existing list of restricted places; (3) authorizes an employee without a pistol permit to possess a pistol in his or her car in an employer's parking lot under certain conditions; (4) provides that concealed carry does not include brandishing a weapon; (5) requires a person possessing a firearm in a vehicle to disclose that possession to a law enforcement officer, if asked by the officer; (6) creates a grant program within the Alabama Department of Economic and Community Affairs to replace revenue lost by counties due to a decrease in pistol permit fees; (7) authorizes the governing body of institutions of higher education to adopt policies related to firearms on campus, provided private possession in a motor vehicle is not prohibited; (8) authorizes a law enforcement officer to temporarily take a firearm into custody if the officer believes the individual is or is about to be engaged in criminal conduct or taking the firearm is necessary for the protection of the officer, individual, or others, and requires the officer to return the firearm if the officer determines the individual is not an immediate threat and has not committed a violation. Effective January 1, 2023

## **Firearms – Alabama Second Amendment Protection Act (Act 2022-323, SB2)**

### **Senator Gerald Allen**

This act (1) prohibits any state or local official, officer, employee, or agent, when acting in an official capacity, from enforcing or administering any executive order issued by the President of the United States which limits or restricts the ownership, use, or possession of firearms, ammunition, or firearm accessories by law-abiding residents of the state; (2) prohibits the expenditure of state or local public funds for the enforcement or administration of any such order; and (3) authorizes the attorney general to issue guidance to state and local officials to ensure uniform compliance with the act.

## **Criminal Law and Procedure – Virtual Proceedings (Act 2022-375, SB233)**

### **Senator Will Barfoot**

This act (1) allows for virtual hearings in bail hearings, arraignments, and other pre-trial, bench trial, or post-trial proceedings; (2) requires the judge or magistrate to be able to see and converse simultaneously with all parties and allow the defendant and his or her counsel to communicate privately; and (3) requires an in-person hearing if any party objects to a pre-trial, bench trial, or post-trial hearing. Effective July 1, 2022

## **Criminal Law and Procedure – Drug-Testing Equipment (Act 2022-154, SB168)**

### **Senator Jim McClendon**

This act authorizes the possession, delivery, and sale of testing equipment designed to detect the presence of fentanyl or

(Continued from page 267)

any synthetic controlled substance fentanyl analogue. Effective June 1, 2022

### **Criminal Law and Procedure – Shirley’s Law – (Elder Abuse) (Act 2022-161, HB105)**

#### **Representative Victor Gaston**

This act (1) provides that if a physician or other caregiver knowingly violates his or her duty to file a report when the physician or other caregiver has reasonable cause to believe that any protected person in the physician or caregiver’s care has been subjected to physical abuse, neglect, exploitation, sexual abuse, or emotional abuse, the physician or other caregiver is guilty of a Class C misdemeanor; (2) requires the Department of Human Resources to establish the Alabama Elder and Adult in Need of Protective Services Abuse Registry, to include the names of individuals convicted of certain crimes relating to elder abuse and neglect and the names of individuals against whom a protection from abuse order has been issued; (3) provides requirements for the administration of the registry; (4) requires the Administrative Office of Courts to notify the Department of Human Resources when an individual is convicted of an elder abuse crime or when an individual is the subject of a protection from abuse order; and (5) requires certain service providers, including assisted living communities, home health agencies, hospice programs, hospitals, nursing homes, and rehabilitation facilities, to query the registry for employees and prospective employees. Effective June 1, 2022

### **Criminal Law and Procedure – Serious Physical Injury (Act 2022-401, HB403)**

#### **Representative Tashina Morris**

This act expands the Alabama Criminal Code’s definition of the term “serious physical injury” to include a penetrating gunshot wound inflicted by a firearm. Effective July 1, 2022

### **Criminal Law and Procedure – Video Depositions and Testimony (Act 2022-436, HB434)**

#### **Representative Merika Coleman**

This act authorizes the use of video equipment and closed-circuit equipment to obtain video depositions and testimony by victims of human trafficking. Effective July 1, 2022

### **Criminal Law and Procedure – Sentencing (Act 2022-381, HB52)**

#### **Representative Jim Hill**

This act (1) provides that if a defendant’s probation is revoked, and the defendant was sentenced pursuant to Section 15-18-8, Code of Alabama 1975, a sentencing judge may determine the length of the revocation sentence, including the ability to resplit the remainder of the original sentence; and (2) provides that if the revocation sentence imposed is less than the length of time remaining on the original sentence, the remainder of the sentence shall be suspended, and the defendant may be placed on probation. Effective April 14, 2022

### **Criminal Law and Procedure – Protected Persons (Act 2022-201, HB68)**

#### **Representative Matt Simpson**

This act (1) defines the term “protected person” as a person who has a developmental disability attributable to an intellectual disability, autism, cerebral palsy, epilepsy, or other disabling neurological condition in certain circumstances; (2) allows a protected person to be offered certain protections in criminal prosecutions for physical offenses, sexual offenses, and violent offenses; (3) allows out-of-court statements to be admissible if the witness or victim is a protected person; (4) makes it unlawful for a school employee to engage in a sex act or have sexual contact with a student who is a protected person; and (5) allows the use of leading questions at trial when the witness is a protected person. Effective July 1, 2022

### **Criminal Law and Procedure – Agent Billy Clardy III Act – Interception of Wireless Communications (Act 2022-236, HB17)**

#### **Representative Rex Reynolds**

This act (1) authorizes the attorney general to apply to intercept any wire or electronic communication when there is probable cause to believe an individual is committing, has committed, or is about to commit a felony drug offense; (2) specifies procedures for obtaining an intercept order; (3) provides for when a court may enter or extend an intercept order, the information that must be included in the intercept order, the limitations of an intercept order, and the means by which the communication is to be intercepted; (4) specifies under what conditions recorded communications may be disclosed; (5) prohibits the destruction of recorded communications for a specified time frame; (6) provides penalties for unauthorized disclosures; (7) provides for civil and criminal penalties for violations of the act; and (8) provides that the act will be repealed on February 1, 2026, unless extended by an act of the legislature. Effective February 1, 2023



## **State and Local Government – Issuance of Bonds (Proposed Constitutional Amendment) (Act 2022-286, HB458)**

### **Representative Jeff Sorrells**

This act proposes an amendment to Amendment 772 of the Constitution of Alabama of 1901 to (1) revise requirements for a county or municipality to incur indebtedness for economic development purposes; (2) revise the requirement for publication of notices for economic and industrial purposes; and (3) ratify actions taken and agreements made under Amendment 772 prior to the ratification of this amendment. Effective contingent upon ratification

## **State and Local Government – Release of Inmates (Act 2022-386, HB95)**

### **Representative Jeremy Gray**

This act (1) provides that after an inmate is released from the physical custody of the Alabama Department of Corrections, the inmate may not be required to pay outstanding court-assessed fines, fees, or costs, excluding restitution owed to a victim or supervision fees assessed as a condition of release, during the 180 days immediately following his or her release; (2) requires an inmate to contact the clerk of the court within 30 days of his or her release from physical custody in order to enter into a repayment agreement; and (3) provides that a person in physical custody of the Alabama Department of Corrections is not required to pay outstanding court-assessed fees. Effective July 1, 2022

## **State and Local Government – Retirement Benefits – Surviving Spouse (Act 2022-184, HB155)**

### **Representative Corley Ellis**

This act provides that when a member of the Teachers' Retirement System, the Employees' Retirement System, or the Judicial Retirement Fund, covering the District Attorneys' Plan and the Judges' and Clerks' Plan, dies in active service, the member's surviving spouse, when designated as the sole beneficiary, may choose the retirement benefit that provides a lifetime benefit of 100 percent of the amount the member and surviving spouse would have received upon retirement, known as "Option 2." Effective January 1, 2021

## **State and Local Government – Municipal Audit Clarification Act (Act 2022-345, HB256)**

### **Representative Prince Chestnut**

This act requires each municipality to conduct an audit of its financial affairs as follows: (1) in a municipality with annual expenditures of \$300,000 or more, the municipality must conduct an annual audit; (2) in a municipality with annual

expenditures less than \$300,000, the municipality must conduct a biennial audit; and (3) in a municipality with annual expenditures less than \$100,000, the municipality must conduct a biennial audit or an annual audit report based on certain requirements of the Department of Examiners of Public Accounts. Effective July 1, 2022

## **State and Local Government – Municipal Delivery License (Act 2022-372, SB321)**

### **Senator Donnie Chesteen**

This act clarifies that a municipality may require a business that provides rental and leasing services in the municipality to purchase a delivery license for delivering rental equipment or property, even if the business has no other physical presence in the municipality. Effective April 14, 2022

## **State and Local Government – Open Meetings Act (Act 2022-421, SB147)**

### **Senator Arthur Orr**

This act (1) provides that members of a governing body participating in a meeting of that body by electronic means are present for all purposes so long as a certain number of members are physically present at the meeting location; (2) removes a prohibition on participation in executive sessions through electronic means; (3) provides that members of the public be allowed to hear meetings of a governmental body; (4) provides that the failure or interruption of electronic communications is not grounds to challenge any action taken during a meeting of a governmental body; and (5) further provides procedures related to meetings of governmental bodies of a county or municipality held by electronic means. Effective July 1, 2022

## **State and Local Government – Cost-of-Living Raise for State Employees (Act 2022-160, SB110)**

### **Senator Greg Albritton**

This act provides a cost-of-living increase for state employees in the amount of four percent for the fiscal year beginning October 1, 2022. Effective March 24, 2022

## **State and Local Government – Uniform Certificate of Title for Vessels Act (Act 2022-144, SB211)**

### **Senator Chris Elliott**

This act (1) requires owners of vessels to obtain a certificate of title; (2) provides for the procedure for the owner of a vessel to apply for a certificate of title with the Alabama Law Enforcement Agency; (3) provides for the issuance of the certificate of title and an issuance fee; and (4) specifies the process for perfecting a security interest on a vessel and

(Continued from page 269)

provide for the maintenance of records and files regarding the security agreement. Effective January 1, 2024

**Courts – Sergeant Nick Risner Act – Limitations on Correctional Incentive Time (Act 2022-322, HB143)**

**Representative Phillip Pettus**

This act provides that a prisoner may not receive correctional incentive time, or “good time,” if the prisoner was convicted of any crime that caused the death of another person by means of a deadly weapon. Effective July 1, 2022

**Courts – Probate of Wills (Act 2022-427, SB256)**

**Senator Will Barfoot**

This act (1) provides that for wills filed for probate on or after January 1, 2023, probate courts have jurisdiction over

the contest of the validity of the will; (2) provides for procedures to contest a will; and (3) provides for the removal of a will contest from a probate court without equity jurisdiction to a circuit court in certain situations. Effective April 14, 2022

**Courts – Probate Court Jurisdiction (Act 2022-123, SB75)**

**Senator Will Barfoot**

This act (1) further provides probate courts with jurisdiction over the change of name of certain minors; (2) provides probate courts with concurrent and general jurisdiction over proceedings under the Adult Protective Services Act of 1976; and (3) authorizes judges of probate who are in good standing with the Alabama State Bar to issue elder abuse protection orders, when given permission by a written standing order from the presiding circuit court judge. Effective June 1, 2022 ▲

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