



## 2023-2024 ASB President Brannon J. Buck and Family



**An Overview of the 2023  
Amendments to the  
Alabama Rules of Evidence**

Page 276



**"Throw Me a Lifeline!"  
The Survivor Benefit Plan  
Open Season**

Page 282



**Alabama State Bar 146<sup>th</sup>  
Annual Meeting Award  
Recipients and Photo Highlights**

Page 289



**Alabama Law Foundation  
2023 Fellows**

Page 300



**AIM Board of Directors - All Lawyers**



**KNOW WHO MANAGES YOUR INSURANCE COMPANY.**



**AIM Staff Members - Local, Experienced**



**WHEN YOU'RE INSURED WITH AIM, YOU KNOW WHO IS ON YOUR TEAM.**

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



**ATTORNEYS  
INSURANCE  
MUTUAL  
of the South®**

**GET A QUOTE TODAY: 205.980.0009**

[www.attorneysinsurancemutual.com](http://www.attorneysinsurancemutual.com)



**SCAN ME**



# ALABAMA COURT REPORTING®

LOCALLY OWNED. NATIONWIDE COVERAGE.

UNBEATABLE CUSTOMER SERVICE.

**OFFICES IN**  
HUNTSVILLE  
BIRMINGHAM  
MONTGOMERY  
MOBILE  
TUSCALOOSA  
FLORENCE  
GADSDEN



Bringing the experience  
**YOU NEED**  
*for your next*  
**BIG CASE.**

**SERVICES:**  
COURT REPORTERS  
VIDEOGRAPHERS  
REALTIME  
VIDEOCONFERENCING  
DAILY COPY  
NATIONWIDE SCHEDULING  
CONFERENCE ROOMS

**877.478.3376**

WHERE VOICE BECOMES VISIBLE.®



Alabama  
State Bar

# WE ARE PAPERLESS!

**ALL REGULATORY COMMUNICATIONS (EXCLUDING OFFICE OF GENERAL COUNSEL) ARE SENT ELECTRONICALLY VIA EMAIL.**









*Please verify that the email address that you have on file is an updated and regularly monitored email. Be sure to check your email for the renewal notices for payment of licenses!*

For all questions or trouble logging in to update email:

[ms@alabar.org](mailto:ms@alabar.org)  
(334) 269-1515

**YOUR MEMBER DASHBOARD IS UPGRADED TO AN ENHANCED MEMBER PORTAL THAT MAKES IT EASY FOR YOU TO...**



-  Print your Certificate of Good Standing, MCLE Transcript, and Bar Card.
-  Renew your license and pay your dues.
-  Customize your public-facing profile for marketing purposes.
-  Track your compliance status.
-  Stay up to date with bar news.
-  Interact with your committees and sections.

Don't worry! The ASB staff is available to help you navigate the new portal.



## On The Cover

Alabama State Bar President Brannon Buck and his wife, Dr. Mollie deShazo Buck, with their children, Emerson and Harris

—Photo by Deidre Ruth Photography

## FEATURE ARTICLES

### An Overview of the 2023 Amendments to the Alabama Rules of Evidence

By Terrence W. McCarthy and Tyler E. Yarbrough

276

### “Throw Me a Lifeline!”

### The Survivor Benefit Plan Open Season

By Mark E. Sullivan

282

### Alabama State Bar 146<sup>th</sup> Annual Meeting Award Recipients and Photo Highlights

289

### Alabama Law Foundation 2023 Fellows

300

## COLUMNS

### President’s Page

268

### Executive Director’s Report

272

### Editor’s Corner

274

### Important Notices

275

### Opinions of the General Counsel

303

### Memorials

306

### Disciplinary Notices

310

### Young Lawyers’ Section Update

313

### The Appellate Corner

314

### About Members, Among Firms

326

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

L. Conrad Anderson, IV.....Co-Chair  
canderson@balch.com

Melissa Warnke.....Director of Communications/Staff Liaison  
melissa.warnke@alabar.org

Margaret Murphy.....Publications Director/Staff Liaison  
margaret.murphy@alabar.org



facebook.com/AlabamaStateBar



@AlabamaStateBar



@AlabamaStateBar



youtube.com/TheAlabamaStateBar



flickr.com/AlabamaStateBar



linkedin.com/AlabamaStateBar

# ADVERTISERS

ABA Retirement Funds.....270

Alabama Academy of  
Attorney Mediators .....273

Alabama Court Reporting, Inc.....263

Alabama Law .....326

Alabama Legal & Investigative  
Services, Inc.....324

Apollo Counseling.....323

Attorneys Insurance Mutual  
Of the South.....262

Cain & Associates Engineers.....302

Davis Direct.....321

J. Forrester DeBuys, III.....301

The Finklea Group, Inc.....319

Hilton Sandestin .....288

Insurance Specialists, Inc.....328

LawPay.....327

National Academy of  
Distinguished Neutrals.....269

Redding Crash  
Reconstruction LLC .....316

Schreiber ADR.....312



The Alabama Lawyer  
GRAPHIC DESIGN



The Alabama Lawyer  
PRINTING

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

## ALABAMA STATE BAR STAFF 415 Dexter Avenue Montgomery, AL 36104 (334) 269-1515 • (800) 354-6154 [www.alabar.org](http://www.alabar.org)

### ADMINISTRATION

Terri Lovell ..... Executive Director  
Chad Coker ..... Director of Operations  
Michelle Shaw ..... Executive Assistant  
Hunter Harris ..... Information Systems Manager  
Matt Mara ..... Building and Security Superintendent  
Stephanie Oglesby ..... Receptionist

### ACCOUNTING AND TRAVEL

Merinda Hall ..... Director of Finance  
Denise Perkins ..... Financial Assistant

### ADMISSIONS

Karen Lanceaux ..... Director of Admissions  
Sonia Douglas ..... Administrative Assistant  
LaDonna Vinson ..... Admissions Coordinator

### ATTORNEY LICENSING

Cathy Sue McCurry ..... Licensing and  
Regulatory Coordinator  
Angie Fuqua ..... Administrative Assistant  
Doris McDaniel ..... Administrative Assistant

### CENTER FOR PROFESSIONAL RESPONSIBILITY

Roman Shaul ..... General Counsel  
Jeremy McIntire ..... Deputy Chief General Counsel  
Mark Moody ..... Assistant General Counsel  
Autumn Caudell ..... Assistant General Counsel  
Stacey Moseley ..... Disciplinary Clerk  
Angie Burkhalter ..... Paralegal/Investigator  
Laurie Blazer ..... Client Security Fund Coordinator  
Julie Lee ..... Receptionist

### CENTER FOR PROFESSIONAL RESPONSIBILITY—ETHICS DIVISION

Tripp Vickers ..... Ethics Counsel

### COMMUNICATIONS AND MEDIA

Melissa Warnke ..... Director of Communications  
Olivia Walker ..... Communications Coordinator  
Margaret Murphy ..... Director of Publications

### LAW PRACTICE MANAGEMENT PROGRAM

Chris Colee ..... Coordinator

### LAWYER ASSISTANCE PROGRAM

Jeremy Rakes ..... Director of Lawyer Assistance Program  
Shannon Knight ..... Case Manager  
Joycelyn Hill ..... Administrative Assistant/  
Program Coordinator

### LAWYER REFERRAL SERVICE

John Dunn ..... Lawyer Referral Service Representative

### PROGRAMS

Robyn Bernier ..... Meetings and Events Coordinator  
Amy Fawcett ..... Administrative Assistant

### VOLUNTEER LAWYERS PROGRAM

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

### OFFICERS AND EXECUTIVE COUNCIL

Brannon J. Buck, Birmingham ..... President  
T. Thomas Perry, Jr., Demopolis ..... President-Elect  
C. Gibson Vance, Montgomery ..... Past President  
Felicia A. Long, Montgomery ..... Vice President  
Terri B. Lovell, Montgomery ..... Secretary  
Raymond L. Bell, Jr., Mobile ..... Executive Council  
Joshua P. Hayes, Tuscaloosa ..... Executive Council  
John A. Smyth, Birmingham ..... Executive Council  
Mark S. Boardman, Chelsea ..... Parliamentarian  
Samuel K. Ford, Birmingham ..... Ex Officio  
Christopher B. Driver, Birmingham ..... Ex Officio

### BOARD OF BAR COMMISSIONERS

1<sup>st</sup> Circuit, J. Jefferson Utsey, Butler • 2<sup>nd</sup> Circuit, Jason T. Simmons, Greenville • 3<sup>rd</sup> Circuit, Elizabeth C. Smithart, Union Springs • 4<sup>th</sup> Circuit, Kyra L. Sparks, Selma • 5<sup>th</sup> Circuit, Brian P. Strength, Tuskegee • 6<sup>th</sup> Circuit, Place No. 1, Joshua P. Hayes, Tuscaloosa • Place No. 2, Scott B. Holmes, Tuscaloosa • 7<sup>th</sup> Circuit, William H. Broome, Jr., Anniston • 8<sup>th</sup> Circuit, David W. Langston, Decatur • 9<sup>th</sup> Circuit, Dana J. Grimes, Ft. Payne • 10<sup>th</sup> Circuit, Place No. 1, James M. Terrell, Birmingham • Place No. 2, John A. Smyth, Birmingham • Place No. 3, Andrew S. Nix, Birmingham • Place No. 4, S. Freddy Rubio, Birmingham • Place No. 5, LaBella S. McCallum, Birmingham • Place No. 6, L. Conrad Anderson, Birmingham • Place No. 7, Katherine R. Brown, Birmingham • Place No. 8, Ryan P. Robichaux, Birmingham • Place No. 9, Erik S. Heninger, Birmingham • Bessemer Cut-off, Leslie S. Moore, Bessemer • 11<sup>th</sup> Circuit, Ralph E. Holt, Florence • 12<sup>th</sup> Circuit, Carmen F. Howell, Enterprise • 13<sup>th</sup> Circuit, Place No. 1, R. Edwin Lamberth, Mobile • Place No. 2, Frederick G. Helmsing, Jr., Mobile • Place No. 3, William R. Lancaster, Mobile • Place No. 4, Steven L. Nicholas, Mobile • Place No. 5, Sun-trease W. Williams-Maynard, Mobile • 14<sup>th</sup> Circuit, Richard E. Fikes, Jasper • 15<sup>th</sup> Circuit, Place No. 1, Robert E. Poundstone, Montgomery • Place No. 2, Patrick L. Sefton, Montgomery • Place No. 3, Joel D. Connally, Montgomery • Place No. 4, Leon Hampton, Jr., Montgomery • Place No. 5, Felicia A. Long, Montgomery • Place No. 6, J. David Martin, Montgomery • 16<sup>th</sup> Circuit, Bradley W. Cornett, Gadsden • 17<sup>th</sup> Circuit, L. Hunter Compton, Jr., Demopolis • 18<sup>th</sup> Circuit, Place No. 1, Clay R. Carr, Chelsea • Place No. 2, Mark S. Boardman, Chelsea • Place No. 3, P. Douglas Smith, Jr., Columbiana • 19<sup>th</sup> Circuit, Jacqueline P. Austin-Trucks, Wetumpka • 20<sup>th</sup> Circuit, R. Cliff Mendheim, Dothan • 21<sup>st</sup> Circuit, J. Kirkman Garrett, Brewton • 22<sup>nd</sup> Circuit, Manish H. Patel, Andalusia • 23<sup>rd</sup> Circuit, Place No. 1, J. Mark Debro, Huntsville • Place No. 2, Douglas C. Martinson, II, Huntsville • Place No. 3, Robin C. Wolfe, Huntsville • Place No. 4, M. Clay Martin, Huntsville • 24<sup>th</sup> Circuit, B. Scott Foster, Carrollton • 25<sup>th</sup> Circuit, Chrissy L. Riddle, Haleyville • 26<sup>th</sup> Circuit, Jorja B. Loftin, Phenix City • 27<sup>th</sup> Circuit, Clint L. Maze, Arab • 28<sup>th</sup> Circuit, Place No. 1, Steven P. Savarese, Daphne • Place No. 2, J. Langford Floyd, Fairhope • Place No. 3, J. Lynn Perry, Gulf Shores • 29<sup>th</sup> Circuit, Sarah Clark Bowers, Sylacauga • 30<sup>th</sup> Circuit, John W. Rea, Pell City • 31<sup>st</sup> Circuit, D. Edgar Black, Muscle Shoals • 32<sup>nd</sup> Circuit, Matthew K. Carter, Cullman • 33<sup>rd</sup> Circuit, Lee F. Knowles, Geneva • 34<sup>th</sup> Circuit, Jeffrey L. Bowling, Russellville • 35<sup>th</sup> Circuit, W. Robert McMillan, Monroeville • 36<sup>th</sup> Circuit, H. Jerome Thompson • 37<sup>th</sup> Circuit, Andrew D. Stanley, Opelika • 38<sup>th</sup> Circuit, Deborah L. Dunsmore, Scottsboro • 39<sup>th</sup> Circuit, Donald B. Mansell, Athens • 40<sup>th</sup> Circuit, Tyler T. Sims, Ashland • 41<sup>st</sup> Circuit, Brett A. King, Locust Fork

### AT-LARGE BOARD MEMBERS

Angela E. Kennedy, Bessemer • Raymond L. Bell, Jr., Mobile • Holly L. Sawyer, Dothan • Judge Charles Price, II, Birmingham • Jana R. Garner, Selma • Lisha L. Graham, Birmingham • Leila H. Watson, Birmingham • Richard M. Kemmer, Jr., Centreville • John T. Stamps, III, Bessemer

*The Alabama Lawyer* (USPS 743-090) is published six times a year by the Alabama State Bar, 415 Dexter Avenue, Montgomery, Alabama 36104. Periodicals postage paid at Montgomery, Alabama and additional mailing offices. POSTMASTER: Send address changes to *The Alabama Lawyer*, P.O. Box 671, Montgomery, AL 36103-671.

*The Alabama Lawyer* is the official publication of the Alabama State Bar. Views and conclusions expressed in articles herein are those of the authors, not necessarily those of the board of editors, officers or board of commissioners of the Alabama State Bar. Advertising rates will be furnished upon request. Advertising copy is carefully reviewed and must receive approval from the Office of General Counsel, but publication herein does not necessarily imply endorsement of any product or service offered. *The Alabama Lawyer* reserves the right to reject any advertisement. Copyright 2023. The Alabama State Bar. All rights reserved.

# OCTOBER IS PRO BONO MONTH!

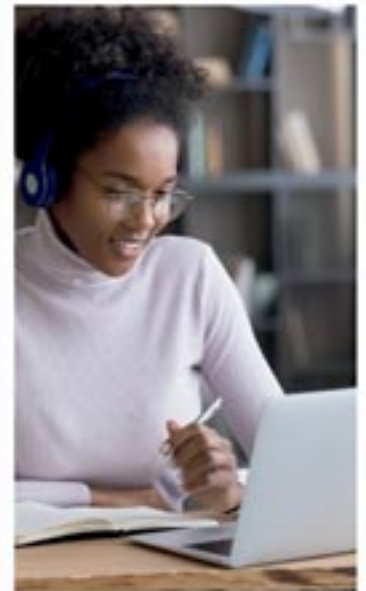
## PRO BONO MONTH FREE CLES

**October 4:** "Divorce 101: Uncontested Forms from Start to Finish" by Jessie Hardy, J. Hardy Family Law, LLC

**October 11:** "Ethics and Online Representation" by Linda Lund, *Director of ASB VLP*; Katarina Essenmacher, *ABAP Coordinator*; and Autumn Caudell, *ASB Assistant General Counsel*

**October 18:** "Foreclosure and Redemption: It's Not As Hopeless As You Think" by Fernando Morgan, Morgan Law Firm

**October 25:** "Tech Tips for Practice" by Chris Colee, *ASB Practice Management Advisor*, and Grace Simms, *Cumberland School of Law, Information Technology Librarian*



## VOLUNTEER LAWYER CLINICS

**October 4:** Selma Counsel & Advice Clinic - Edmundite Missions Recreation Center

**October 9:** Virtual Counsel & Advice Clinic - Zoom

**October 13:** Anniston Wills for Seniors Clinic - Anniston Public Library

**October 17:** Expungement Clinic - Thompson Chapel A.M.E. Zion Church (Opelika)

**October 19:** Tuscaloosa Counsel & Advice Clinic - Tuscaloosa Public Library

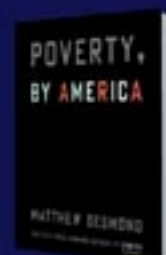
**October 24:** Dadeville Wills for Heroes Clinic - Ozark City Hall

*If you are interested at volunteering at any of these clinics, please contact Hilaire Armstrong at [hilaire.armstrong@alabar.org](mailto:hilaire.armstrong@alabar.org).*

## JOIN THE BOOK CLUB!

Get ready for the Third Annual Pro Bono Month Book Club! We will be reading *Poverty, by America* by Matthew Desmond during the month of October. The book club will meet every Tuesday at noon on Zoom.

A winner for a free copy of the book will be chosen each Friday in September on the Alabama State Bar's Facebook page.



**SIGN UP HERE:**





## P R E S I D E N T ' S   P A G E

Brannon J. Buck  
[bbuck@badhambuck.com](mailto:bbuck@badhambuck.com)



### “...with Civility and Justice for All”

The title of my first column, a slightly revised conclusion to the Pledge of Allegiance, captures two areas of emphasis for the state bar this next year. We return to our core mission – promoting professionalism and access to justice for the public. During the last few years, in the face of a pandemic and a mental health crisis among attorneys, we have rightfully emphasized lawyer wellness, and that focus continues. The Lawyers Helpline and five free annual counseling sessions

started by immediate past president Gibson Vance will be an ongoing member benefit. But now we reengage in areas that have recently lost our attention.

#### “...with Civility”

We often say that the practice of law is a higher calling – one of the few true professions. As lawyers, we work in an adversarial system. Being civil to one another requires an advanced degree in emotional intelligence. As technology



has progressed, it has become all too easy for us to sit behind a screen and send emails to opposing counsel without interacting on a personal level. Too often, these digital communications are unnecessarily combative.

Lawyering with civility requires more effort and a higher level of advocacy. When we resort to unnecessary hostility, we fall short of our calling as professionals. These failures happen more frequently now than in the past, and the stress of dealing with belligerent lawyers contributes to the excessive stress and mental health crisis in the profession.

My longtime law partner and mentor, Percy Badham, taught me the value of professionalism and civility. If you ever practiced with or against Percy, you experienced his unique ability to connect with people and to diffuse tension with humor. Percy has been, perhaps, our bar's most "civil" litigator, but he has also been a remarkably gifted advocate. We could use more "Percys" in our profession.



*Badham*

So, this year, and hopefully for years to come, we follow Percy's example and choose civility. We choose civility by sitting down with each other over a beverage to resolve our disagreements. We choose civility by picking up the phone instead of writing a contentious email. And we choose civility by giving each other a little grace when we inevitably make mistakes.

For the next several months, you will hear a constant drumbeat emanating from the Alabama State Bar that sounds the importance of civility. Civility should be the culture of our bar. When lawyers from other states have the privilege to practice here, they should leave with


the impression that Alabama has the most collegial group of lawyers they have ever encountered. This year, our bar will help us choose civility.

### **"...and Justice for All."**

The judicial system exists to protect rights, liberty, and property. But for almost one million Alabamians who live in poverty, and for probably many more than that, the judicial system is some far-away branch of government. The only lawyers they know are the ones advertising on TV. For far too long, the legal work of the poor has been left to a devoted few and neglected by many. Scores of Alabamians

either can't afford or can't find an attorney to assist with basic legal needs – things like a simple will, a child custody or child support problem, a housing eviction, or an uncontested divorce. The Volunteer Lawyers Program and Legal Services Alabama do admirable work in this area, but our state bar can and should do more.

This year, the state bar, with its more than 19,000 members, will provide collaborative leadership and bring new resources to the access to justice effort. We have already commenced work on an initiative that will leverage technology to connect those in need with resources that already exist. The new **Justice for All**



## THE NATIONAL ACADEMY OF DISTINGUISHED NEUTRALS

### ALABAMA CHAPTER

*Fast track scheduling with the state's top  
litigator-rated mediators & arbitrators for free...*

February 2023

Mo	Tu	We	Th	Fr
				1
4	5	6	7	8
11	12	13	14	15
18	19	20	21	22
25	26	27	28	

**www.ALMEDIATORS.org**

(Continued from page 269)

website will be designed – not for lawyers – but for people who don't know a lawyer. It will be a one-stop shop for obtaining legal assistance and accessing the court system. With easy-to-navigate prompts, a user will be able to find courthouse information; an attorney directory searchable by location and practice area; information about the Volunteer Lawyers Program, Legal Services Alabama, the Lawyer Referral Service, and Free Legal Answers; self-help court forms; and many other resources.

But the key is to bring **Justice for All** to the people who need it, when they need it, wherever they are. To that end, we have developed a **Justice for All QR**

**Code.** Posters and placards promoting the **Justice for All QR Code** will be strategically placed throughout our state, in courthouses, libraries, shelters, community centers, schools, and anywhere else someone might be seeking assistance with a legal problem. By simply scanning the **Justice for All QR Code**, you'll be taken to a webpage that will act as an easy gateway to the legal system.

The Alabama State Bar will soon celebrate its 100<sup>th</sup> anniversary as the legal profession's licensing and regulatory agency in our state. My hope is that this occasion will mark a transformational period where more struggling lawyers find their way to wellness,

where civility and collegiality become the default setting of our profession, and where the public, particularly those who live in poverty, come to view the justice system as a resource that can improve their lives.

We have important work to do. We need servant leaders and enthusiastic followers. If civility or access to justice tugs at your heartstrings, or if you prefer to engage with one of our other working committees or sections, please reach out to me. We welcome your involvement.

*Brannon Buck is the Alabama State Bar's 148<sup>th</sup> president. He can be reached at [bbuck@badhambuck.com](mailto:bbuck@badhambuck.com).* ▲

## Support & Guidance

We are dedicated to helping provide retirement plans to small firms and sole proprietors.



Built by **LAWYERS**,  
Powered by **PROS**®



### No firm is too small.

The **ABA Retirement Funds Program** is an employer sponsored retirement plan uniquely designed for the legal community. For 60 years we have been committed to the goal of providing the tools necessary to help all law professionals reach financial security. Sole proprietors and smaller firms will enjoy the same support and guidance as the nation's largest law firms.

- \$6.4 billion in retirement assets
- 3,900 law firms and legal organizations
- 37,000 lawyers and legal professionals
- No cost to your firm



[abaretirement.com](http://abaretirement.com) 800.826.8901 [joinus@abaretirement.com](mailto:joinus@abaretirement.com)

The ABA Retirement Funds Program is available through the Alabama State Bar as a member benefit. Please read the Program Annual Disclosure Document (April 2023) carefully before investing. This Disclosure Document contains important information about the Program and investment options. For small inquiries, contact us at: [joinus@abaretirement.com](mailto:joinus@abaretirement.com). Registered representative of Voya Financial Partners, LLC (member SIPC). Voya Financial Partners is a member of the Voya family of companies ("Voya"). Voya, the ABA Retirement Funds, and the Alabama State Bar are separate, unaffiliated entities, and not responsible for one another's products and services. CHQ823405\_0A25





# Check out *what* **\$50** CAN DO!

MAKE A \$50 TAX-DEDUCTIBLE CONTRIBUTION TO THE **ALABAMA**LAWFOUNDATION THROUGH THE OPT-OUT DUES CHECK-OFF ON YOUR BAR DUES STATEMENT FOR THE OPPORTUNITY TO MAKE LIVES BETTER. \$45 OF EVERY \$50 DONATED IS USED FOR LEGAL AID GRANTS.

Civil **legal aid** to low-income Alabama residents who need help with legal matters like preventing homes from going into foreclosure, executing a will to make sure their homes pass to their heirs, or getting their money back from a contractor who has scammed them.

Legal Services Alabama & Alabama's five Volunteer Lawyer Programs closed over **16,500 cases** last year.

Students who have had a parent permanently disabled or killed in a work-related accident can receive a scholarship through the KIDS' CHANCE Scholarship Fund to attend college or learn a trade. Over **200 students** have received scholarships college with help from KIDS' CHANCE. We have awarded **\$721,799** in scholarships since 1993.

**DONATE ONLINE NOW AND BECOME  
A CHAMPION OF EQUAL JUSTICE FOR ALL!**  
ALABAMA**LAW**FOUNDATION.*org*





## EXECUTIVE DIRECTOR'S REPORT

Terri Lovell  
[terri.lovell@alabar.org](mailto:terri.lovell@alabar.org)



My column in *The Alabama Lawyer* is an opportunity for me to give members a glimpse of the happenings at the Alabama State Bar. I admit that the staff and I share nervous excitement surrounding the launch of our new membership database. Though there may be challenges during the transition, we expect to provide a better membership experience for each of you. Along with a more user-friendly portal, members will be able to easily access a copy of their license, bar card, letter of good standing, and MCLE history, among other things.

As of September, the bar has also moved to paperless communication for notices other than those from the disciplinary division. Electronic communication through email has proven to be more efficient and a great cost savings for the bar. These types of cost savings have allowed our Board of Bar Commissioners to approve another year of dues at a reduced rate of \$300.

You will find this issue filled with highlights of another wonderful annual meeting. Thank you to all the sponsors, vendors, speakers, sections, and attendees

for your contribution to its success. We have many reasons to celebrate this past year, and even if you were not able to join us in Point Clear, please take time to review our annual report that summarizes a great bar year. You can find a link to the report on the homepage of *alabar.org*. We also hope you'll save the dates and make plans to attend next year's meeting June 26-29 at the Hilton Sandestin.



*Fred Gray is honored with the 2023 ABA Medal at the American Bar Association's Annual Meeting in August.*


Once again, the American Bar Association's Annual Meeting in August was a great opportunity for our bar officers to network with other state bars, to hear about trends in the profession, and to learn how other bars are successfully addressing the most critical needs of lawyers and those they serve. We were also able to celebrate with past president Fred Gray as he was honored with the ABA Medal, the most prestigious award given by ABA. The award is bestowed upon a lawyer for exceptionally distinguished service to the cause of American jurisprudence. Please join me in congratulating Mr. Gray on this well-deserved achievement.

The 2023-2026 Strategic Plan was recently approved by the Board of Bar Commissioners, giving our staff and our many member-volunteers direction and vision for the future. The four goals are 1) serve and protect the public by maintaining and advancing the highest standards of the legal profession; 2) improve access to justice for all Alabamians; 3) establish the Alabama State Bar as the leadership hub for the legal profession; and 4) promote and support the overall

health and well-being of our members. Each of these goals has measurable and attainable action steps. You can access a copy of the plan under the "Quick Links" on our website's front page or reach out to me personally if you want to be involved. There are many opportunities to get involved in the activities related to our strategic goals.

October is when we celebrate Pro Bono Month. I encourage you to learn more about Alabama Free Legal Answers and how you can get involved in pro bono work from the comfort of your home, work, or just about anywhere. Members of the public can ask a question and an attorney takes the question and provides an answer. It's an easy and fast way to help our citizens who need it most and get pro bono hours at the same time.

Although we are just a few weeks into the 2023-2024 bar year, we are already off to a great (and busy) start! ▲



ALABAMA ACADEMY  
OF ATTORNEY MEDIATORS



A non-profit association with members who are highly experienced Alabama attorneys dedicated to dispute resolution through mediation

**OUR PRINCIPLES INCLUDE:**

<p><i>To empower, not undermine, the role of attorneys as professionals in dispute resolution</i></p>	<p><i>To improve the effectiveness, consistency, and skills of attorney-mediators</i></p>
---	---

**For further information and a membership list, visit our website:**  
***alabamaattorneymediators.com***



## EDITOR'S CORNER

W. Gregory Ward  
wgward@mindspring.com



We temporarily lay aside our habit of themed issues to publish a couple of terrific but unrelated articles.

Terry McCarthy is the co-author of the Seventh Edition of *McElroy's Alabama Evidence* as well as the Third Edition of *Gamble's Alabama Rules of Evidence*. When he talks about evidence, I listen, and when he writes about evidence, I read. He partnered with Tyler Yarbrough to let us all know about two amendments to the Alabama Rules of Evidence – rules 404 (b) and 803 (10). Whether you represent plaintiffs or defendants in civil cases, or whether you prosecute or defend in criminal cases, these changes apply to you. Thank you, Terry and Tyler; this is stuff we all need to know. Miss “An Overview of the 2023 Amendments to the Alabama Rules of Evidence” at your peril (page 276).

Mark Sullivan is considered to have considerable knowledge about military family law issues. His article specifically addresses divorces involving members

of the military. With all the military bases in and around Alabama, that is a topic that many of us need to know more about. Did you know that in military divorces there are special rules involving survivor benefit plans, a survivor annuity for a former spouse? And did you know that the benefit can be lost if it isn't registered timely? Now that we have your attention, did you know that there is a time-sensitive opening for repairing existing error? Take a look at “Throw Me a Lifeline! The Survivor Benefit Plan Open Season” and see what you think (page 282). The article provides both a way to repair existing problems, and an understanding so the problems don't come up in future cases.

Enjoy the articles. Email me if you have questions or comments. And remember, we are always on the lookout for our next group of excellent writers.

Just wait until you see what we have planned for you in the next issue. ▲



## IMPORTANT NOTICES

### ▲ Annual License Fees and Special Membership Dues



## Annual License Fees and Special Membership Dues

Renewal notices for payment of annual license fees and special membership dues were emailed to all members on September 18. Payments can be made online, or you can print a personalized invoice from your member profile page to mail with your check. There is a grace period of the month of October to submit payment; license payments made after October 31 will be subject to a statutory late fee. ***As a reminder, you will not receive a paper invoice in the mail.***

If you have not logged into your account on our website since September 1, you will notice we upgraded to an enhanced online member portal, which replaces your dashboard. If you need help navigating the new system, we have put together detailed instructions you can find on the new log-in page or you can call the Alabama State Bar at (334) 269-1515, and staff members will be happy to assist you. ▲



# EVIDENCE

DO NOT USE THIS BAG WITH EVIDENCE THAT IS WET OR DAMP  
TO BE OPENED BY AUTHORIZED AGENTS ONLY

Submitting Agent: W.P. Felice  
 Case #: 17  
 Description of Evidence: Handwritten notes  
 Description of Item: Handwritten notes  
 Victim: Handwritten notes  
 Date: Handwritten notes  
 Time: Handwritten notes  
 AM PM

Agency: DSP Police  
 Collected By: Handwritten name  
 Case #: 201744  
 Date: 3/16  
 Time: Handwritten  
 Location: Handwritten  
 Remarks: Handwritten

CASE 664564

CS1/3/2020  
4/2/20

EVIDENCE - EVIDENCE  
W.P. Felice

Suspect #6

EVIDENCE - EVIDENCE

3

Date	Time
Date	Time
Date	Time
Date	Time
Date	Time
Date	Time
Date	Time
Date	Time
Date	Time
Date	Time





# An Overview of the 2023 Amendments to the Alabama Rules of Evidence

*By Terrence W. McCarthy and Tyler E. Yarbrough*

## Introduction

On March 3, 2023, the Alabama Supreme Court approved two amendments to the Alabama Rules of Evidence that became effective May 1, 2023.<sup>1</sup>

First, an amendment to Rule 404(b) significantly changed (and increased) the prosecution’s burden to provide notice of “other acts” evidence offered against the criminally accused.

Second, an amendment to Rule 803(10), the hearsay exception for the absence of public records, provides a “notice-and-demand” procedure in criminal cases when the prosecution offers a Rule 803(10) certification against a criminal defendant.

Both amendments – which apply only to criminal cases and do not impact civil cases – are consistent with amendments to the corresponding federal rules. The purpose of this article is to give the Alabama practitioner an overview of these two amendments.

## Amendment To Rule 404(b)

### Background

Most Alabama lawyers are familiar with Rule 404(b) of the Alabama Rules of Evidence, which allows a party to introduce evidence of other crimes, wrongs or acts for purposes *other* than to

show the person acted in conformity with their character on the occasion in question.<sup>2</sup> Permissible purposes for the evidence include, but are not limited to, proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.<sup>3</sup>

For example, suppose a criminal defendant is on trial for stealing a woman's car, and the prosecution wants to introduce evidence that he stole the woman's purse (which contained her car keys) two days before stealing the car. This prior act is not being offered to show the defendant is of bad character and therefore must have stolen the car, but to show he had the opportunity to steal the car by obtaining the keys. This is permissible Rule 404(b) evidence.

Although Rule 404(b) evidence can be offered in both civil and criminal cases, "it obtains special importance in criminal cases, where it is typically used by prosecutors seeking to rely on a criminal defendant's prior bad act as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake in the crime charged."<sup>4</sup>

When Federal Rule 404(b) was originally enacted in 1974, it had no notice requirement at all. Thus, prosecutors could spring Rule 404(b) evidence against criminal defendants without warning, resulting to some extent in trial by ambush. This chaotic approach changed in 1991, when the rule was amended to add "a pretrial notice requirement in criminal cases and [was] intended to reduce surprise and promote early resolution on the issue of admissibility."<sup>5</sup>

The notice provision added with the 1991 amendment to Federal Rule 404(b) could essentially be broken down into the following three requirements:

- (1) the accused had the affirmative obligation to request notice of Rule 404(b) evidence; without such a request, the prosecution had no obligation to provide notice;
- (2) assuming a request was made, the prosecution was required to provide "reasonable notice" in advance of trial, or provide notice during trial if pretrial notice was excused for "good cause;" and

- (3) the prosecution was obligated only to provide notice of the "general nature" of the Rule 404(b) evidence.

When the Alabama Rules of Evidence became effective in 1996, the notice requirement for Rule 404(b) mirrored that of the corresponding federal rule.<sup>6</sup>

For years, many criminal defense lawyers believed the original Rule 404(b) notice requirements to be inadequate. For example, because the rule only obligated prosecutors to provide notice of the "general nature" of any Rule 404(b) evidence, the notice often did not come with the specificity defense lawyers desired. In fact, the rule "was understood by some courts to permit the government to satisfy the notice obligation without describing the specific act that the evidence would tend to prove, and without explaining the relevance of the evidence for a non-propensity purpose."<sup>7</sup> In short, the Rule 404(b) notice provision "proved something of a disappointment for the defense."<sup>8</sup>

Over the years, several federal circuit courts suggested that Rule 404(b) needed to be more carefully applied. Over the course of several meetings, the advisory committee to the Federal Rules of Evidence monitored these cases and considered many changes to the rule.<sup>9</sup> Ultimately, the federal advisory committee recommended several changes to the Rule 404(b) notice provisions that became effective December 1, 2020, and these changes were based at least in part on the recognition "that some protection for defendants in criminal cases could be promoted by expanding the prosecutor's notice obligations under Rule 404(b)."<sup>10</sup>

### Alabama Follows the Lead of the Federal Courts

The advisory committee to the Alabama Rules of Evidence recommended to the Alabama Supreme Court that Rule 404(b) be amended to mirror the 2020 amendment to the corresponding federal rule. The majority of the Alabama Supreme Court agreed, and Rule 404(b) was amended to read as follows effective May 1, 2023 (the entire rule is quoted to provide context):

**Rule 404. Character Evidence Not Admissible to Prove Conduct; Exceptions; Other Crimes, Wrongs, or Acts**

For years, many criminal defense lawyers believed the original Rule 404(b) notice requirements to be inadequate.

- (a) **Character evidence generally.** Evidence of a person’s character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion, except:
- (1) **Character of accused.** In a criminal case, evidence of character offered by an accused, or by the prosecution to rebut the same, or if evidence of a trait of character of the alleged victim of the crime is offered by an accused and admitted under Rule 404(a)(2)(A)(i), evidence of the same trait of character of the accused offered by the prosecution;
  - (2) **Character of victim.**
    - (A) **In criminal cases.** (i) Evidence of a pertinent trait of character of the victim of the crime offered by an accused, or by the prosecution to rebut the same, or (ii) evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the first aggressor.
    - (B) **In civil cases.** Evidence of character for violence of the victim of assaultive conduct offered on the issue of self-defense by a party accused of assaultive conduct, or evidence of the victim’s character for peacefulness to rebut the same. Whenever evidence of character for violence of the victim of assaultive conduct, offered by a party accused of such assaultive conduct, is admitted on the issue of self-defense, evidence of character for violence of the party accused may be offered on the issue of self-defense by the victim and evidence of the accused party’s character for peacefulness may be offered to rebut the same.
  - (3) **Character of witness.** Evidence of the character of a witness, as provided in Rules 607, 608, 609, and 616.
- (b) **Other crimes, wrongs, or acts.**
- (1) *Prohibited Uses.* Evidence of other crimes, wrongs, or acts is not admissible

to prove the character of a person in order to show action in conformity therewith.

- (2) *Permitted Uses.* This evidence may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.
- (3) *Notice in a Criminal Case.* In a criminal case, the prosecutor must:
  - (A) provide reasonable notice of any such evidence that the prosecutor intends to offer at trial, so that the defendant has a fair opportunity to meet it;
  - (B) articulate in the notice the permitted purpose for which the prosecutor intends to offer the evidence and the reasoning that supports the purpose; and
  - (C) do so in writing before trial – or in any form during trial if the court, for good cause, excuses lack of pretrial notice.

The new Rule 404(b) is a significant change to pre-existing Alabama law in several respects:

*First*, the prosecution must provide reasonable notice of its Rule 404(b) evidence, so the defendant has a fair opportunity to meet it. “Under the amended rule, prosecutors should describe the specific Rule 404(b) evidence intended to be offered with sufficient detail so the defendant can adequately prepare to respond to such evidence.”<sup>11</sup> Prior to this amendment, prosecutors were required only to disclose the “general nature” of the Rule 404(b) evidence, which was a fairly low bar.<sup>12</sup>

*Second*, the prosecution must identify the specific “nonconformity” purpose for which the Rule 404(b) evidence is being offered (i.e., motive, intent, identity).<sup>13</sup> Notice that merely provides a “laundry list” of the various Rule 404(b) purposes is not sufficient.<sup>14</sup>

*Third*, the prosecution’s pretrial notice of intent to use Rule 404(b) evidence must be in writing.<sup>15</sup>

*Fourth*, the notice must be provided before trial “in sufficient time to allow the defendant a fair

opportunity to meet the evidence,” unless the pre-trial notice requirement is excused by the court for good cause.<sup>16</sup> “When notice is provided during trial after a finding of good cause, the court may need to consider protective measures to ensure the defendant is not prejudiced.”<sup>17</sup> Examples of protective measures could be making the Rule 404(b) witness available to the defendant before the “other acts” evidence is introduced or giving the defendant sufficient time to prepare.<sup>18</sup> When notice is provided during trial, it can be in any form.<sup>19</sup>

*Fifth*, in another significant change, the prosecution now has an **affirmative obligation** to disclose Rule 404(b) evidence to the defendant. Prior to the amendment, the burden was on the defendant to request Rule 404(b) evidence.<sup>20</sup> Otherwise, the prosecution had no obligation to disclose it.

*Finally*, the amendment is not intended to change what has long been the law in Alabama that the pretrial notice requirement is “obligatory upon the prosecution even when it intends to offer the collateral crimes, wrongs, or acts under theories other than Rule 404(b), such as rebuttal or impeachment.”<sup>21</sup>

### Amendment to Rule 803(10)

Rule 803(10), which provides a hearsay exception for the **absence** of a public record or entry, is a rule that is infrequently cited. While Rule 803(8) is the frequently relied upon public records exception to the hearsay rule, Rule 803(10) “is a companion concept that authorizes the admission of a certificate or testimony that a diligent search has been conducted and that no public record of a particular tenor has been found.”<sup>22</sup> To illustrate, suppose a party in a lawsuit claims that it filed the necessary paperwork to incorporate Acme, Inc. in the state of Alabama. If the opposing party offers testimony or a certificate from the Secretary of State that no record of Acme, Inc. was found after a diligent search, this could be offered as evidence that Acme, Inc. was never incorporated in Alabama.

The fact that Rule 803(10) provides the option of introducing a Rule 803(10) certificate in lieu of live testimony raises potential Confrontation Clause issues when

the certificate is offered against a criminal defendant. In *Melendez-Diaz v. Massachusetts*,<sup>23</sup> the majority opinion “suggested in dicta . . . that the introduction of such a certificate would violate the Confrontation Clause.”<sup>24</sup>

Rule 803(10) of the Federal Rules of Evidence was amended effective December 1, 2013, in response to the *Melendez-Diaz* case.<sup>25</sup> Alabama followed suit effective May 1, 2023, by adding the second sentence to Rule 803(10), which now reads as follows in its entirety:

Rule 803(10),  
which provides a  
hearsay exception  
for the *absence* of  
a public record or  
entry, is a rule that  
is infrequently  
cited.

### Rule 803(10). Absence of Public Record or Entry

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

(10) **Absence of public record or entry.** To prove the absence of a record, report, statement, or data compilation, in any form, or the nonoccurrence or nonexistence of a matter of which a record, report, statement, or data compilation, in any form, was regularly made and preserved by a public office or

agency, evidence in the form of a certification in accordance with Rule 902, or testimony, that diligent search failed to disclose the record, report, statement, or data compilation, or entry. Provided, however, that this exception to the hearsay rule shall apply in a criminal case only if a prosecutor who intends to offer a certification provides written notice of that intent at least 14 days before trial, and the defendant does not object in writing within 7 days of receiving the notice – unless the court sets a different time for the notice or the objection.

The May 1, 2023 amendment added what is referred to as a “notice-and-demand” procedure when the prosecution offers a Rule 803(10) certification against a criminal defendant.<sup>26</sup> Unless the court sets a different time, a prosecutor who intends to offer a Rule 803(10) certification must provide the accused with written notice of such intent at least 14 days before trial.<sup>27</sup> The accused has 7 days from receipt of that notice to object and demand the presence of the official who prepared the certificate.<sup>28</sup> In other words, this procedure gives the criminal defendant “veto power” over a prosecutor’s Rule 803(10) certificate and allows the defendant to demand the presence of the declarant at trial.<sup>29</sup>

# Conclusion

Since the Alabama Rules of Evidence became effective on January 1, 1996, the Alabama Supreme Court has adopted amendments and/or new rules on four occasions. The first change became effective January 1, 2012, when the so-called *Daubert* amendment changed the analysis for the admissibility of scientific expert testimony.<sup>30</sup> The second change became effective October 1, 2013, when Rules 804(b)(5), 902(11), and 902(12) were added and the following rules were amended: 404(a), 405(a), 407, 408, 412, 510, 608(b), 703, 801(d), 803(6), 804(b)(2), and 1103.<sup>31</sup> Effective January 30, 2020, Rules 902(13) and 902(14) were added, Rule 803(16) was amended, and the advisory committee's notes to Rules 503A(d)(3), 803(7), and 803(8) were amended.<sup>32</sup> The 2023 amendments represent the fourth change.

Needless to say, the rules of evidence are important, as are the four sets of amendments. For Alabama lawyers who still rely on the original rules of evidence book, it may be time to get a new one! ▲

## Endnotes

1. See [https://judicial.alabama.gov/docs/rules/OrderonRule404\(b\)Ala.R.Evid%20.pdf](https://judicial.alabama.gov/docs/rules/OrderonRule404(b)Ala.R.Evid%20.pdf). (establishing amendment to Ala. R. Evid. 404(b)); [https://judicial.alabama.gov/docs/rules/OrderonRule803\(10\)Ala.R.Evid.pdf](https://judicial.alabama.gov/docs/rules/OrderonRule803(10)Ala.R.Evid.pdf). (establishing amendment to Ala. R. Evid. 803(10)).
2. Ala. R. Evid. 404(a).
3. Ala. R. Evid. 404(b)(2).
4. *United States v. Ballou*, 59 F.Supp.3d 1038, 1050 (D.N.M. 2014) (internal citations and quotations omitted).
5. FED. R. EVID. 404(b) advisory committee's note to 1991 amendments.
6. Ala. R. Evid. 404(b) advisory committee's note.
7. FED. R. EVID. 404(b) advisory committee's note to 2020 amendments.
8. KENNETH W. GRAHAM, JR., 22B FED. PRACTICE & PROCEDURE § 5257 (2d ed. 2020).
9. See May 14, 2018, Report of the Advisory Committee on Evidence Rules (revised July 16, 2018).
10. *Id.*
11. Ala. R. Evid. 404(b) advisory committee's note to amendment (effective May 1, 2023).
12. *Id.*
13. *Id.*
14. *Id.*
15. *Id.*
16. Ala. R. Evid. 404(b) advisory committee's note to amendment (effective May 1, 2023); Ala. R. Evid. 404(b)(3)(C).
17. Ala. R. Evid. 404(b) advisory committee's note to amendment (effective May 1, 2023).
18. Ala. R. Evid. 404(b) advisory committee's note to amendment (effective May 1, 2023) (citing *United States v. Lopez-Gutierrez*, 83 F.3d 1235, 1241 (10th Cir. 1996) & *United States v. Perez Tosta*, 36 F.3d 1552, 1562 (11th Cir. 1994)).

19. Ala. R. Evid. 404(b)(3)(C).
20. Ala. R. Evid. 404(b) advisory committee's note to amendment (effective May 1, 2023).
21. Ala. R. Evid. 404(b) advisory committee's note to amendment (effective May 1, 2023) (quoting C. GAMBLE, ET AL., *McELROY'S ALABAMA EVIDENCE*, at § 69.02(9) (7th ed. 2020)).
22. CHARLES W. GAMBLE, TERRENCE W. MCCARTHY, & ROBERT J. GOODWIN, *GAMBLE'S ALABAMA RULES OF EVIDENCE*, § 803(10) (3d ed. 2013).
23. *Melendez-Diaz v. Massachusetts*, 557 U.S. 305, 321 (2009).
24. C. GAMBLE, ET AL., *McELROY'S ALABAMA EVIDENCE*, at § 269.03(1) (7th ed. 2020). (quoting JEFFREY BELIN, 30B FEDERAL PRACTICE & PROCEDURE, EVIDENCE § 6903 (2017 ed.)).
25. FED. R. EVID. 803(10) advisory committee's note to amendment (effective Dec. 1, 2013).
26. Ala. R. Evid. 803(10) advisory committee's note to amendment (effective May 1, 2023).
27. Ala. R. Evid. 803(10).
28. Ala. R. Evid. 803(10).
29. JEFFREY BELLIN, 30B FEDERAL PRACTICE & PROCEDURE, § 6904 (2023 ed.).
30. To learn about the *Daubert* amendment, see Robert J. Goodwin, *An Overview of Alabama's New Daubert-Based Admissibility Standard*, 73 ALA. LAW. 196 (2012); Terrence W. McCarthy & Brooke G. Malcom, *Alabama's Daubert Amendment: An Overview of the Current State of the Law and Resources for the Practitioner*, 79 ALA. LAW. 254 (2018).
31. These rule changes are all discussed in the Seventh Edition of *McELROY'S ALABAMA EVIDENCE* and the Third Edition of *GAMBLE'S ALABAMA RULES OF EVIDENCE*.
32. To learn about the 2020 amendments, see Charles W. Gamble, Robert J. Goodwin, & Terrence W. McCarthy, *An Overview of the 2020 Amendments to the Alabama Rules of Evidence*, 81 ALA. LAW. 350 (2020).

---

## Terrence W. McCarthy



Terry McCarthy (along with Charles Gamble and Robert Goodwin) is co-author of the Seventh Edition of *McElroy's Alabama Evidence* and the Third Edition of *Gamble's Alabama Rules of Evidence*. He is a partner at Lightfoot, Franklin & White; serves on the advisory committee for the *Alabama*

*Rules of Evidence*; and has taught evidence and procedure courses at multiple law schools for most of his legal career. He is proud of his co-author for this article, who was his evidence student at Cumberland School of Law.

---

## Tyler E. Yarbrough



Tyler Yarbrough is a 2023 graduate of Cumberland School of Law, where she was a member of the *Cumberland Law Review* and the National Trial Team and served as president of the Student Bar Association. She will begin her legal career practicing at Lightfoot, Franklin & White.





# “Throw Me A Lifeline!”

## The Survivor Benefit Plan Open Season

*By Mark E. Sullivan*

### The Survivor Benefit Plan – What is it?

Attorneys who handle divorce cases will sometimes encounter a military divorce settlement. An often-overlooked aspect of the pension divisions is the Survivor Benefit Plan (SBP) – a survivor annuity for the former spouse. This article deals with retrieving a

potentially overlooked death benefit, and how to apply for SBP coverage.

An essential element to consider in the military divorce settlement is the Survivor Benefit Plan (SBP).<sup>1</sup> This death benefit provides monthly payments to the surviving former spouse for the rest of her life, adjusted annually for inflation. Since the military pension ends at the death of the retiree, this survivor annuity can be a significant measure of protection if the servicemember or retiree dies

*Overlooking the benefit or ignoring this important deadline can also give rise to a malpractice claim.*



before the beneficiary. But the SBP election must be registered with the retired pay center<sup>2</sup> within one year of the divorce.<sup>3</sup>

The one-year deadline is often missed because no one is aware of this SBP time limit. Without a timely election of SBP, it's lost. And that is a big problem for the retiree's former spouse, since her share of the pension dries up at the death of the retiree. Overlooking the benefit or ignoring this important deadline can also give rise to a malpractice claim.

## Open Season To the Rescue

In December 2022, Congress passed legislation to *open the door* in those case where the servicemember or retiree, "Major John Doe," is not participating in the SBP program. The Survivor Benefit Plan Open Season rules are found in the 2023 National Defense Authorization Act (NDAA).<sup>4</sup> The "Open Season" window closes December 31, 2023. The statute provides potential Survivor Benefit Plan coverage for A) military retirees who are in receipt of retired pay, and B) those eligible servicemembers or former members who are awaiting retired pay (such as members of the National Guard or Reserves) who were not enrolled in SBP or RCSBP (Reserve Component Survivor Benefit Plan) as of December 22, 2022.

If our hypothetical Major Doe enrolls during the SBP Open Season, there will likely be "back payments" to confront. John will

have to pay retroactive SBP premium costs which would have been paid if he had enrolled at retirement (or enrolled at another earlier date, depending on his family circumstances).

## Resources, Links and Overview

There is a general overview of the SBP Open Season program at: <https://www.dfas.mil/RetiredMilitary/newsevents/newsletter/December2022-SBPOS23/>.

Details are in a notice at the Defense Department's "Military Compensation" page: <https://militarypay.defense.gov/Benefits/Survivor-Benefit-Program/>. Important information is in a notice titled "NDAA 2023 Survivor Benefit Plan (SBP) Open Season," which is found at: <https://www.dfas.mil/RetiredMilitary/provide/sbp/SBP-Open-Season-NDAA2023/>. This web page includes a link to "SBP Open Season Enrollment – Frequently Asked Questions" and also a link to the enrollment information and the Letter of Intent (LOI), which John needs to complete as his preliminary inquiry about applying for Open Season coverage. This is a voluntary election of "Open Season SBP," and it may not be imposed by a court ordering John Doe to, "Make that Open Season application or else!"

The steps for the application process for John Doe are as follows:

- (1) First, he downloads and saves the LOI and completes it.



*Some cautious former spouses, reluctant retirees, or wary service-members might raise a concern about the requirement that the Open Season application be voluntary and not coerced by a court order that imposes the requirement to apply for this one-time opportunity.*

- (2) Then he submits it, using the information shown on the documents.
- (3) He will be sent a cost estimate so that he can work out an arrangement for payment of the cost. This can be done with a partial lump sum and subsequent monthly payments, a “payment plan” for all the money due, or a single lump-sum payment.
- (4) The next step is for the retired pay center to confirm the enrollment.

Each one-time buy-in arrangement and premium is unique. This is because SBP premiums are based on individual factors and data, such as the ages of the parties and their age differential. Estimated costs are provided to John soon after he submits a Letter of Intent.

How long does it take from beginning to end? The Defense Finance and Accounting Service (DFAS) advises that the normal time for processing an application (through the LOI) is 30 days from the date of receipt of the LOI.

## Court-Ordered SBP

Some cautious former spouses, reluctant retirees, or wary service-members might raise a concern about the requirement that the Open Season application be voluntary and not coerced by a court order that imposes the requirement to apply for this one-time opportunity. Many military divorce cases contain a divorce decree, a court

order, or a settlement that is incorporated into the divorce, requiring the election of former-spouse SBP coverage. Does that prior court ruling mean that John Doe may not elect Open Season SBP due to the previous court order in the case?

The answer is at Q12-13 in “Frequently Asked Questions.” The text contains a reference to an election to opt into the Open Season SBP being voluntarily made and not subject to a court order requiring Open Season enrollment. In response to a question about whether the individual can be required to enroll in “Open Season SBP,” the answer DFAS provides makes it clear that it’s not just *any* previous court order; it’s a current court order requiring *Open Season participation* which is involved. Here is the statutory section:

- (3) *Election must be voluntary. An election under subsection (a) or (b) is not effective unless the person making the election declares the election to be voluntary. An election under subsection (a) or (b) to participate or not to participate in the Survivor Benefit Plan may not be required by any court.*

Sections (a) and (b) in this text refer to SBP Open Season enrollment, not to a *previous court order* that required SBP coverage for a former spouse. Thus, John’s Open Season SBP election cannot be compelled by a court order, but this doesn’t mean that he cannot make a voluntary election, acting according to a previous divorce settlement (from months or years ago) which specifically required him to elect former-spouse SBP coverage.





*The statute allows the retiree to get rid of coverage (with consent of the beneficiary).*

## Questions and Answers

Nothing is simple in the world of military pension division. Here are some questions and answers that may help to clarify the Open Season for SBP:

**Q:** My ex-spouse elected a LOW amount for the SBP base. Can the Open Season statute fix that?

**A:** No – the statute does not address raising the basis for SBP. The highest amount for the SBP base is full retired pay. The bottom is \$300 per month. The court order or the separation agreement should define the SBP base amount.

The problem of divorce settlements which do not specify the SBP base is illustrated in a 2018 Michigan case, *Weatherford v. Bayless*.<sup>5</sup> The parties married in 1986, and they executed a consent order in 2010 for divorce which required the ex-wife to get half of the disposable retired pay of her former husband, a rear admiral, and to be assigned as his former-spouse SBP beneficiary within one year of the divorce decree. There was no mention of the SBP base amount.

The former husband elected a base amount of \$300 per month, which would mean only \$165 per month for the former wife upon his death – “a precipitous drop,” according to the Court of Appeals opinion, from the current \$3,000 per month which the ex-wife was receiving as half of his disposable retired pay. The ex-wife filed suit

in 2014 to enforce the parties’ 2010 divorce consent judgment. The trial judge ordered the former husband to elect the ex-wife for full former-spouse SBP coverage based on his full retired pay.

**Q:** My former wife, after her retirement from the Navy, selected her new husband as the SBP beneficiary. The divorce decree said that I was supposed to be the SBP beneficiary after the dissolution. Is this statute the answer to my prayers? Can it be used to ditch the new husband and replace him with me, the “military spouse” during the entire term of my ex-wife’s service?

**A:** No – there is no indication in the Open Season statute that the law allows for swaps and replacements for the designated SBP beneficiary (the new husband in this case). This problem and the one above (the level of SBP coverage and the minimum base) would need to be sent to the appropriate Board for Correction of Military Records to try to persuade the board that the relief requested is needed to prevent “an injustice.”<sup>6</sup>

**Q:** My ex-wife and I have agreed to get rid of SBP; we think it’s too costly and it doesn’t fit our needs. Can the Open Season statute help us?

**A:** Yes. The statute allows the retiree to get rid of coverage (with consent of the beneficiary). See the instructions and links above to find out about how to discontinue coverage.

## Conclusion

If the Open Season process is successful, then it will certainly bring peace of mind to the parties regarding the death benefit for the former spouse and the SBP coverage which has been obtain when it was thought to be lost. And it would eliminate the need to apply to the Board for Correction of Military Records, with the expected waiting time of about two years, to try to get the records of the retiree changed to lock in SBP coverage. ▲

### Endnotes

1. The Alabama Court of Civil Appeals in 2011 described the Survivor Benefit Plan as a plan to provide a death benefit to surviving spouses and dependent children of deceased military retirees. Upon the death of an SBP participant, the participant's beneficiaries receive monthly annuity payments. *Smith v. McIntosh*, 70 So.3d 1277, 1281 (Ala. Civ. App. 2011). It cited a West Virginia Supreme Court decision as providing a succinct description of the SBP: "The survivor benefit plan is designed to provide financial security to a designated beneficiary of a military member, payable only upon the member's death in the form of an annuity. Upon the death of the member, all pension rights are extinguished, and the only means of support available to survivors is in the form of the survivor benefit plan." *Id.* at n.1 (citing *Smith v. Smith*, 438 S.E.2d 582, 584 (W. Va. 1993)).
2. This is the Defense Finance and Accounting Service for the Army, Navy, Air Force, Marine Corps, and Space Force. The Coast Guard Pay and Personnel Center handles retired pay for members of the Coast Guard and the commissioned corps of the Public Health Service and the National Oceanic and Atmospheric Administration.
3. Courts in Alabama have the authority to award SBP coverage to a former spouse in a divorce proceeding. *Schado v. Schado*, 648 So.2d 1169, 1171 (Ala. Civ. App. 1994).
4. The statute is also known as Public Law 117-263. "SBP Open Season" is found at Section 643.
5. *Weatherford v. Bayless*, No. 337635, 2018 Mich. App. LEXIS 2504 (Ct. App. May 17, 2018) (unpublished opinion).
6. The statute establishing the service boards is 10 U.S.C. § 1552.

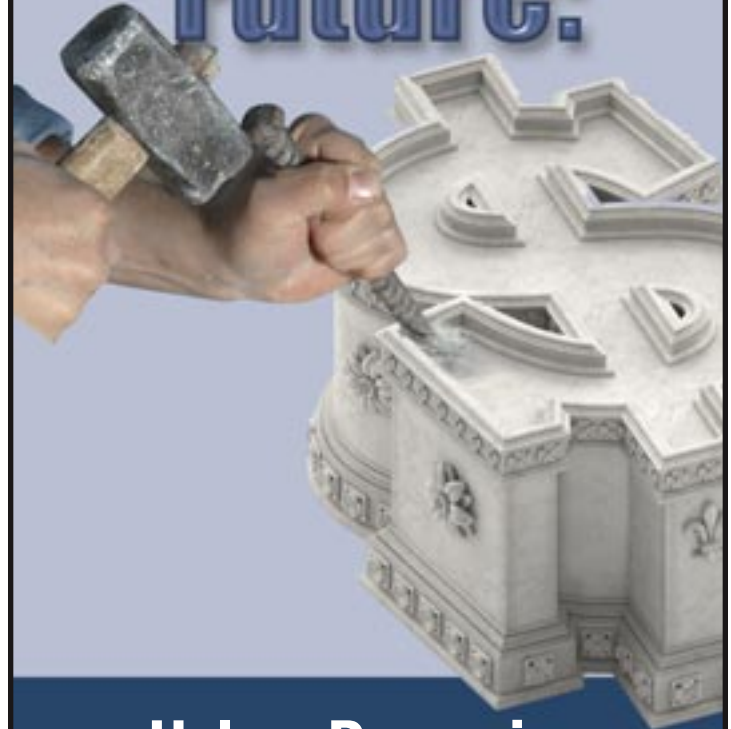
---

### Mark E. Sullivan



Mark Sullivan is a retired Army Reserve JAG colonel and is the author of *The Military Divorce Handbook* (Am. Bar Assn., 3<sup>rd</sup> Ed. 2019) and internet resources on military family law issues. He is a Fellow of the American Academy of Matrimonial Lawyers and has been a board-certified specialist in family law for more than 30 years.

# Shape the Future:



## Help a Deserving Law Student by Donating to the ACJSF Scholarship Fund!



ACJSF is an Alabama non-profit corporation with I.R.C. 501(c)(3) tax-exempt status.  
[acjsf.org/IRS exemption letter for ACJSF.pdf](http://acjsf.org/IRS exemption letter for ACJSF.pdf)

**Donations can be made to ACJSF and mailed to the address below.**

P. O. BOX 2436 • OZARK, AL 36361  
[acjsf.org](http://acjsf.org)



Hilton

SANDESTIN BEACH  
GOLF RESORT & SPA

IT'S **All** RIGHT HERE.



888-519-0048  
[Meetings.HiltonSandestinBeach.com](https://www.Meetings.HiltonSandestinBeach.com)  
#HiltonSandestin



# ALABAMA STATE BAR 146<sup>TH</sup> ANNUAL MEETING

## Award Recipients and Photo Highlights

To learn more about  
our award recipients, go to  
[www.alabar.org/news/](http://www.alabar.org/news/).

Photos by Kelli Alfreds, Montgomery

### JUDICIAL AWARD OF MERIT

This award is presented to a judge who is not retired, whether state or federal court, trial or appellate, and is determined to have contributed significantly to the administration of justice in Alabama.

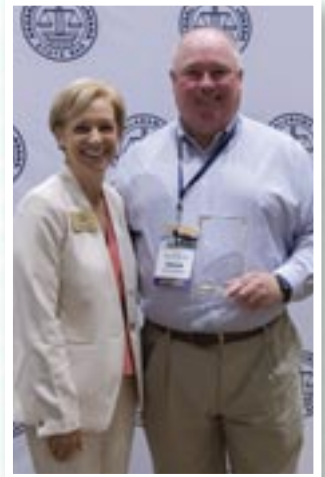
**Judge Eddie Hardaway, Jr.**



Judge Eddie  
Hardaway, Jr.



Terri Lovell with  
Joel Connally



Terri Lovell with  
Brian Strength



Terri Lovell with Rebekah McKinney

### MICHAEL D. ERMERT AWARD OF MERIT

This award is the highest honor given by the Alabama State Bar to a lawyer and serves to recognize outstanding constructive service to the legal profession in Alabama.

**Rebekah McKinney**

### COMMISSIONERS' AWARD

This award was created by the Board of Bar Commissioners in 1998 to recognize individuals who have had a long-standing commitment to the improvement of the administration of justice in Alabama.

**Joel Connally and Brian Strength**

### WILLIAM D. SCRUGGS, JR. SERVICE TO THE BAR AWARD

This award was created in 2002 in honor of the late Bill Scruggs, former state bar president to recognize outstanding and dedicated service to the Alabama State Bar.

**Halron Turner**



Halron Turner



*Maibeth Porter and Cole Portis*

## **J. ANTHONY “TONY” MCLAIN PROFESSIONALISM AWARD**

*The J. Anthony “Tony” McLain Professionalism Award honors the leadership of Tony McLain and encourages the emulation of his deep devotion to professionalism and service to the Alabama State Bar by recognizing outstanding, long-term, and distinguished service in the advancement of professionalism by living members of the Alabama State Bar.*

**Maibeth Porter and Cole Portis**



*(L-R) Elizabeth Smithart, Angela Kennedy, Mark Debro, Brett Holsombeck, Felicia Long, Carmen Howell, Mark Boardman, and Brannon Buck*

## **PRESIDENT’S AWARD**

*This award is presented to members of the bar who best exemplify the Alabama State Bar motto, “Lawyers Render Service.” Recipients are chosen by the current bar president.*

**Mark Boardman  
Brannon Buck  
Mark Debro**

**Brett Holsombeck  
Carmen Howell  
Angela Kennedy**

**Felicia Long  
Elizabeth Smithart**

# 50-Year Members

Charles Fuzell Abernathy  
William Henry Agee  
Charles Woodruff Allen  
Richard Franklin Allen  
Col. Paul Benjamin Anderson, Jr.  
David Leon Ashford  
Edward Jackson Ashton  
Robert Lowell Austin  
Steve Arnold Baccus  
Spencer Thomas Bachus, III  
Thomas Edmund Baddley, Jr.  
Charles David Baker  
Preston Baker Barnett  
James Thomas Baxter, III  
Ernest Will Beard  
Sanford Dixon Bishop, Jr.  
Hon. Michael Franklyn Bolin  
Louis Andrew Borghese  
Eric Allison Bowen  
Hon. William Marion Bowen, Jr.  
Hon. Arthur Bennett Briskman  
Daniel Britton  
Hon. Houston Lanier Brown  
Richard Francis Browne  
Walter Graham Browning  
Kent Boutwell Brunson  
William Powell Burgess, Jr.  
Bruce Allen Burttram  
Hon. John Ferrell Butler  
Hon. Robert George Cahill  
Malcolm Nall Carmichael  
Ashley Carraway  
Robert Webb Chesnut  
John Calvin Coggin, III  
James Mason Corder, Jr.  
Michael Albert Crespi  
John T. Crowder, Jr.  
Hon. Daniel Alford Crowson  
Charles Fredrick Daniels  
James Edmund Davis, Jr.  
Walter Allen Davis  
Hon. Charles Herbert Dodson, Jr.  
Cary Linwood Dozier  
Hon. Joel Fredrick Dubina

Stewart Ray Dudley  
Richard Clinton Duell, III  
James Richard Duke  
Jim Keith Duncan  
Charles Burton Dunn  
Joe Dixon Edge  
Robert Benjamin Eubank  
Terry Tumlin Everett  
Harold Laverne Ferguson, Jr.  
James Richard Foley  
Susan Lee Frost  
George Locke Galbraith  
Thomas Marlowe Galloway, Jr.  
Jonathan Prince Gardberg  
Broox Gray Garrett, Jr.  
Van Coleman Gholston  
Michael Davis Goodson  
Walter Frank Greenleaf  
Joseph Barton Greer, III  
Robert Young Griffin, Jr.  
William Allen Grocholski  
John Marshall Gruenewald  
Guy Fleming Gunter, III  
Lee Louis Hale  
James Ellis Haley  
Theodore Leslie Hall  
Stuart Winston Hankins  
John Clinton Harris, Jr.  
James Goodloe Harrison  
James Greene Hawthorne, Jr.  
Hon. Lance Karl Hiltbrand  
Timothy Joseph Hoff  
Roscoe Benjamin Hogan, III  
Charles Powell Hollifield  
Harry Lowry Hooper, III  
Harry L. Hopkins  
Ernest Harold Hornsby  
Christopher Gadsden Hume, III  
Hon. Sidney Edward Jackson  
Hon. Inge Prytz Johnson  
James Tennille Johnson, III  
Alan Eric Johnston  
Gilbert Eglloff Johnston, Jr.  
George Edward Jones, Sr.

Marilyn Sheeley Kavanaugh  
Thomas Grady Keith  
John Wesley Kelly, III  
Jerry Richard Knight  
Joseph O'Neil Kulakowski  
Col. Thomas Maxson Kullman  
Hon. Gay Mathers Lake, Jr.  
Michael David Langan  
Grady Oliver Lanier, III  
William Waldo Lawrence  
Gregory Luce Leatherbury, Jr.  
Winston Tatum Lett  
William Robert Lewis  
Curtis O'Neal Liles, III  
Alan Carpenter Livingston  
Joseph Haran Lowe, Jr.  
Julius Raymond Lowery, Jr.  
Margaret Smith Marston  
Bobby Don McCarter  
Douglas Lee McWhorter  
Walter Ralph Stephen Meigs  
James Floyd Minor  
Christopher Marlowe Mitchell  
Hon. Roger Miles Monroe  
George Allen Moore  
Grady Larry Morgan  
Timothy Wayne Morgan  
Charles Thomas Morris  
William Alexander Moseley  
William Franklin Murray, Jr.  
Philip Patton Nelson  
Michael Alan Newsom  
Kenneth Edward Niemeyer  
Horace Earl Nix, Jr.  
Richard Carlen Noser  
Alfred Alaby Oldham, Jr.  
Charles Nichols Parnell, III  
Charles Burton Paterson  
Hon. James William Patton, III  
Robert Hicks Pettey, Jr.  
Carl Owen Pilgrim  
William Stitt Poole, Jr.  
Robert Emmett Poundstone, III  
Hon. Caryl Penney Privett

Edward Brian Raymon  
Lynn Ashley Renoll  
Benjamin Russell Rice  
Billy Jack Rivers  
Morris Lloyd Roebuck  
Larry Wright Roney  
James Bruce Schrimsher  
John Paul Scott, Jr.  
Hon. Jefferson B. Sessions, III  
Hon. Jerry Cleveland Shirley  
Donald Joseph Sides  
James Edward Smith  
Katharine Palmer Smith  
Arnold Rankin Sneed  
Ronald Albert Snider  
Joel Lee Sogol  
Vick Speed  
Joseph William Spransy  
Donald Eugene Stanley  
Jack Porter Stephenson, Jr.  
Hon. Jerry Evan Stokes  
John Gilbert Stokesberry  
John Ronald Storey  
John Benton Tally, Jr.  
Richard Lawrence Thiry  
Daniel Joseph Thompson, Jr.  
Hon. Perry Wayne Thorn  
Overby Stanley Thornton  
Richard Warren Tingle  
William Cox Tucker, Jr.  
James Edward Turnbach  
Hugh White Underwood, III  
Donald George Valeska, II  
Laurence Duncan Vinson, Jr.  
Jerry Lee Weidler  
Vernon Leo Wells, II  
John David Whetstone  
Roscoe Aaron Williams  
Earl Calhoun Wilson  
Robert Guest Wilson  
Jacob Dorman Wingard, Jr.  
Robert Henry Woodrow, III  
James Alexander Yance

# Volunteer Lawyers Program Pro Bono Awards



Tara Rose

## ALBERT VREELAND PRO BONO AWARD

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

**Tara Rose**



Linda Lund, Kelly McTear, Anna Spidle, Peyton Faulk, Jon Lewis, George Parker, Bobby Poundstone, and Terri Lovell

## LAW FIRM AWARD

**Bradley Arant Boult Cummings LLP –  
Montgomery Office**

## LAW STUDENT AWARD

**Anna Spidle**

## MEDIATOR AWARD

**Jon Lewis**

## PUBLIC INTEREST ATTORNEY AWARD

**Kelly McTear**



# Women's Section Awards

## MAUD MCLURE KELLY AWARD

Maud McLure Kelly was the first woman to be admitted to the practice of law in Alabama. In 1907, Kelly's performance on the entrance exam at the University of Alabama Law Department merited her admission as a senior, the second woman ever to have been admitted to the school.

**Celia Collins**



*Celia Collins*

## SUSAN B. LIVINGSTON AWARD

This award is presented in memory of Susan Bevill Livingston who practiced at Balch & Bingham. Criteria for this award reflect elements of a continual commitment as a mentor, a sustained level of leadership, and a commitment to the community.

**Leslie Barineau**



*Leslie Barineau*



*Antoinette Richardson and Rolanda Turner*

## JUSTICE JANIE L. SHORES SCHOLARSHIP

To encourage the next generation of women lawyers, the Justice Janie L. Shores Scholarship Fund was established. Named in honor of the first woman to sit on the Supreme Court of Alabama, the scholarship is awarded to an outstanding woman who is an Alabama resident attending law school in Alabama.

**Antoinette Richardson and Rolanda Turner**

# Alabama Lawyer Assistance Program Award



*Hugh Nickson*



*Elizabeth Young*

## JEANNE MARIE LESLIE SERVICE AWARD

This award recognizes exemplary service to lawyers in need in the areas of substance abuse and mental health.

**Hugh Nickson and Elizabeth Young**

# Thank you to our Sponsors & Exhibitors

## Presenting Sponsor

Campbell Law, PC



## Jubilee Sponsor

Insurance Specialists, Inc.

## Luncheon Sponsor

Attorneys Insurance Mutual of the South, Inc.

## Diamond Sponsors

Alabama Civil Justice Foundation

Alabama Law Foundation

## Platinum Sponsors

Alabama Court Reporting

Beasley Allen

Cite Court Reporting

Maynard Nexsen

## Gold Sponsors

Badham & Buck, LLC

Huseby Global Litigation

Pearce & Associates Auction Company

Veritext Legal Solutions

## Silver Sponsors

Alliance Insurance

Bedford, Rogers, Bowling & McReynolds, PC

Bradley Arant

Business Law Section

Commonwealth Community Trust

Jinks Crow, LLC

Leadership Forum Alumni Section

Lewis & Feldman, LLC Mediation

Solo & Small Firm Section

White Arnold & Dowd

Women's Section

## Publicity

Law Clerk

Legal Services Alabama

## Friends of the Bar

Alyce Spruell

Bankruptcy and Commercial Law Section

Cain & Associates Engineers & Contractors, Inc.

Dispute Resolution Section

International Law Section

Southern Auction Solutions

Stone Crosby, PC

William T. Coplin, Jr. LLC

## Bronze Sponsors

Alabama Association of Paralegals, Inc.

Administrative Law Section

Alabama Center for Dispute Resolution

Alabama Chapter of the American

Board of Trial Advocates

Alacourt.com

BMSS Advisors & CPAs

Copeland Franco

Cory Watson, PC

Crew Law Group

Elder Law Section

Family Law Section

Gilsbar

Health Law Section

Mauldin & Jenkins, LLC

Monteagle Advisory, LLC

Real Property, Probate & Trust Section

Regions Bank

Swift, Currie, McGhee & Heirs, LLP

Strength & Connally, LLC

Workers' Compensation Section

Young Lawyers' Section

## In-Kind Sponsor

Davis Direct

# Exhibitors

BMSS Advisors & CPAs

Cain & Associates Engineers & Contractors, Inc.

Campbell Law, PC

Comprehensive Investigative Group

Connect Alabama

Fastcase

Free Legal Answers

Gilsbar

High Rise Financial, LLC

Huntsville Bar Association

Huseby Global Litigation

Integrative Health Services, LLC

Insurance Specialists, Inc.

MLCworks

Pearce & Associates Auction Company

PEG, Inc.

Rimkus

Smokeball

Southern Auction Solutions

Veritext Legal Solutions

Warren Averett

Alabama Bench & Bar Historical Society

Alabama Center for Dispute Resolution

Alabama Civil Justice Foundation

Alabama Court Reporting

Alabama Law Foundation

Alabama Lawyer Assistance Program

Alabama State Bar Volunteer Lawyers Program

Alacourt.com

Atlanta Custom Tailors

Attorneys Insurance Mutual of the South, Inc.

Blue Cross Blue Shield of Alabama

# Wednesday



*Attendees catch up with friends around the state while checking in at the registration desk.*



*Alabama Supreme Court Justices present a panel discussion to a packed audience.*



*Families kick off the annual meeting with dinner and music for the opening night reception.*



*Event sponsor Tom Campbell (Termite Tom) enjoys time together with his friends at the reception.*



*President Vance and his wife, Kate, with Justice Sarah Stewart and Past President Cole Portis, his wife, and daughters*



*The littlest attendees warm up the dance floor for the opening night band, Parrot Tales.*

# Thursday



*Archie Manning talks about his family, his experience with the NFL, community involvement, and the importance of mental health at the Bench and Bar Luncheon.*



*Raymond Bell greets Archie Manning before introducing him on behalf of Bench and Bar Luncheon sponsor AIM.*



*VLP reception attendees celebrate the pro bono accomplishments and award recipients of the year.*



*Mark and Ane Debro strike a pose against the VLP reception's balloon backdrop.*



*Noah Galloway shares his impactful life story of determination and hard work to overcome the loss of his arm and leg.*



*Joycelyn Hill and Jenny Lewis share tips on building mental strength, endurance, and resiliency in times of turmoil.*



*Clayton Mitchell cools off with a popsicle at the children's poolside ice cream social.*



*Judge Price (standing) visits with attendees enjoying the Faulkner Law dessert reception.*

# Friday



*President-elect Buck and President Vance are ready to take part in the annual Friends of Tony McLain Golf Tournament.*



*Friendships are made and renewed at the Maud McLure Kelly Award Luncheon.*



*ISI's Bill Bass features the company's pet insurance offering with a four-legged friend at their exhibit booth.*



*Felicia Long, Elizabeth Portis, Allison Skinner, Leila Watson, and Wendy Crew attend the Women in the Law Reception and Maud McLure Kelly Award Luncheon.*



*BMSS Advisors and other vendors engage with attendees at the legal expo.*



*Past presidents doing what they do best – visiting, relaxing, and enjoying another annual meeting!*

# Friday

(Continued)



*Shoppers check out the incredible variety of items to bid on at the Women's Section Silent Auction fundraiser.*



*Past President Lee Copeland (right) is full of advice for President Vance!*



*Carter, Gibson, and Kate Vance watch guests hit the dance floor at the President's Closing Night Reception...*



*...while enjoying the sounds of Park Band.*



*The Friday night reception provides one more chance to mix and mingle.*

# Saturday



*Fred Gray describes how faith made his achievements as a lawyer possible during his Saturday breakfast address.*



*Senator Katie Britt shares experiences about working across the aisle in Washington while congratulating Gibson Vance on a successful year as president of the Alabama State Bar.*



*Chief Justice Tom Parker administers the presidential oath to Brannon Buck with his family alongside him.*



*Brannon Buck makes his first address as the 148<sup>th</sup> president of the Alabama State Bar.*



*ISI's Charlotte Gardner congratulates Allen Rigsby as the winner of the Grand Prize Giveaway.*



*President-elect Tom Perry and his wife, Melinda, at the reception for President Buck*



# Alabama Law Foundation 2023 Fellows

On May 20, 27 Alabama lawyers were officially inducted as Alabama Law Foundation Fellows.

The Fellows program was established in 1995, and the charter Fellows were past presidents of the Alabama State Bar and the Alabama Law Foundation. A new class is inducted each year.

Fellows nominate and choose bar members who demonstrate outstanding commitment to the profession and their communities. Leadership and support for the law foundation's programs are provided by Fellows.

“Our Fellows are incredibly important to the work of the Alabama Law Foundation,” said ALF Board President Matt McDonald. “They are the leaders in the legal community and represent those willing to provide guidance to move forward the ultimate mission of the legal profession – lawyers render service. They set an example for service and guide other lawyers along the path to ensure access to justice for all, no matter their circumstances.”

No more than one percent of bar members may become Fellows; therefore, the selection committee





invites into fellowship an exceptional group of lawyers who have demonstrated their dedication to improving their communities and state.


“To me, being a ... Fellow is about being a difference-maker in and through the profession of law – being someone who creates positive change and who illustrates excellence, integrity, and generosity of one’s time, talents, and resources to improve the lives of others,” said Gibson Vance, who was selected as a Fellow in 2016. Vance is the immediate past president of the state bar.

Fellows accepted into membership for 2023 are: **D. Keith Andress**, Birmingham, Burr & Forman LLP; **Gregory P. Butrus**, Birmingham, Balch & Bingham LLP; **District Judge Spiro N. Cheriogotis**, Mobile, 13<sup>th</sup> Judicial Circuit; **Associate Justice Gregory C. Cook**, Montgomery, Alabama Supreme Court; **Ernest Cory**, Birmingham, Cory Watson PC; **Kristin D. Dukes**, Mobile, University of South Alabama-Legal Dept.; **Samarria M. Dunson**, Montgomery, Dunson Group LLC; **Jennifer R. Egbe**, Birmingham, Huie Fernambucq & Stewart LLP; **Erin B. Fleming**, Daphne, Stone Crosby; **Judge Matthew D. Fridy**, Montgomery, Alabama Court of Civil Appeals; **Circuit**

**Judge Benjamin A. Fuller**, Prattville, 19<sup>th</sup> Judicial Circuit; **Alexandra K. Garrett**, Mobile, Silver Voit & Garrett PC; **Josh P. Hayes**, Tuscaloosa, Prince, Glover & Hayes; **Dennis M. Henry**, Montgomery, Faulkner University; **Michael R. Holberg**, Montgomery, Holberg & Holberg; **Cason M. Kirby**, Birmingham, Campbell Partners LLC; **R. Scott Lewis**, Bay Minette, Stone Crosby PC; **U.S. District Judge Corey L. Maze**, Anniston, Northern District of Alabama; **Rachel J. Moore**, Birmingham, Christian & Small; **John C. Neiman**, Birmingham, Maynard Nexsen; **Riley W. Roby**, Montgomery, Balch & Bingham LLP; **Jay M. Ross**, Mobile, Adams & Reese LLP; **L. Shane Seaborn**, Clayton, Penn & Seaborn LLC; **George A. Smith II**, Huntsville, Bradley Arant Boulton Cummings; **Halron W. Turner**, Chatom, Turner Onderdonk Kimbrough Howell Huggins & Bradley; **Mary A. Turner**, Tuscaloosa, Turner Law Group; and **Robin C. Wolfe**, Madison, Robin Wolfe Law.

For more than 35 years, as the only charitable, tax-exempt organization affiliated with the Alabama State Bar, the Alabama Law Foundation has helped the state’s lawyers make a valuable difference

in the lives of Alabama’s citizens. The foundation makes annual grants to organizations that provide free legal aid to the poor in civil cases and for projects that improve the administration of justice. Grants awarded for 2023 total \$1,455,899.



**J. FORRESTER DEBUYS, III**  
(de-owez) CLU®, ChFC®, AEP®

**FINANCIAL IDEAS,  
INSTITUTIONS & INSTRUMENTS  
THAT STAND THE TEST OF TIME.**

- Life/Disability\* Insurance
- Annuities\*\*
- Long Term Care Insurance
- Retirement Income Planning
- Estate Planning
- Deferred Compensation
- Key Person Coverage
- Group Life & Disability
- Business Succession Planning

\*Products available through one or more carriers not affiliated with New York Life. Dependent on carrier authorization and product availability in your state or locality.  
\*\*Issued by New York Life Insurance and Annuity Corporation.

Registered Representative offering securities through MURE Securities LLC.  
Member NIFA/SIPC a licensed insurance agency Financial Advisor  
offering investment advisory services through Eagle Strategies LLC.  
A Registered Investment Advisor Agent, New York Life Insurance Company

2311 HIGHLAND AVENUE SOUTH, SUITE 100  
BIRMINGHAM, AL 35205  
205-918-1515

**WWW.FORRESTDDEBUYS.COM**

“The need for legal aid in Alabama is dire,” Vance said.

Alabama is the nation’s seventh poorest state. More than 747,000 of our neighbors, including 233,000 children, live below the poverty line. Hundreds of thousands of

low-income Alabamians go without legal assistance each year. Unlike the criminal defense system, the constitutional guarantee of funding for low-income Alabamians who need civil legal assistance has not yet been met. The consequences of a lack of access to justice are devastating for the poor. Last year, in our state alone, around 422,000 households experienced more than 733,000 legal issues with low-income households only having had legal assistance for approximately 16 percent of these legal problems.

“While these numbers certainly illustrate a grim outlook, Alabama’s attorneys are a bright light in our state, standing out amongst attorneys throughout the country,” Vance said. “Lawyers provide services that no one else can, and our profession’s commitment and duty to pro bono service unites us as attorneys. I think this is one of the hallmarks of the legal professional – offering our unique skill set to help those unable to afford representation.”

Additionally, the law foundation provides three scholarship programs for law-related education – the Cabaniss Johnston Scholarship, the Justice Janie L. Shores Scholarship, and the W. Verbon

Black Scholarship. It also administers the Kids’ Chance Scholarship Fund, which helps the children of injured workers attend college. The foundation’s newest program, established in 2021, the ROBE Fund, provides scholarships to general jurisdiction state judges wishing to attend judicial education programs.

“We are honored to recognize the outstanding attorneys who were selected as Fellows in 2023,” said Dawn Hathcock, executive director of the Alabama Law Foundation. “Our Fellows understand the importance of giving back, through service in one of the state’s many Volunteer Lawyer Programs, by mentoring young people who are interested in a career as a lawyer, and by providing essential services to ensure access to justice for everyone in Alabama. These are the leaders who recognize a need and step up to offer their help in finding solutions. We congratulate the 2023 Alabama Law Foundation Fellows, and we look forward to working with them to help us make a difference.”

For more information about the Alabama Law Foundation and the Fellows program, visit [www.alabama-lawfoundation.org](http://www.alabama-lawfoundation.org). ▲

## CONSTRUCTION & ENGINEERING EXPERTS

Forensic engineering and investigative inspections:

Commercial • Industrial • Residential

*Our specialists have Testifying Expertise*

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

CAIN AND ASSOCIATES  
ENGINEERS & CONSTRUCTORS, INC.

CONTACT: HAL K. CAIN, PRINCIPAL ENGINEER  
HALKCAIN@AOL.COM  
251.473.7781 • 251.689.8975  
WWW.HKCAIN.COM



## OPINIONS OF THE GENERAL COUNSEL

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



# Imputed Disqualification of Law Firms When Lawyer and Nonlawyer Employees Change Firms

### QUESTION:

In formal opinions RO-91-01 and RO-91-28, the Disciplinary Commission of the Alabama State Bar held, in substance, that conflicts of interest resulting from nonlawyer employees changing law firms can be overcome by building a “Chinese wall” to screen the newly hired employee from involvement with any matter on which the employee worked while employed at his or her old firm. In recent years, however, an increasing number of jurisdictions have concluded that such screening procedures are ineffective when a nonlawyer employee has obtained confidential information concerning the matter in litigation. Consideration of the positions taken by these jurisdictions calls into question the factual and ethical validity of the rationale upon which these two opinions were predicated, and the Disciplinary Commission has, therefore, determined that the conclusions reached therein should be reconsidered.

(Continued from page 303)

### ANSWER:

A nonlawyer employee who changes law firms must be held to the same standards as a lawyer in determining whether a conflict of interest exists. A firm which hires a nonlawyer employee previously employed by opposing counsel in pending litigation would have a conflict of interest and must therefore be disqualified if, during the course of the previous employment, the employee acquired confidential information concerning the case.

### DISCUSSION:

In some jurisdictions the “Chinese wall” cure for conflicts resulting from changing firms has been applied to lawyers as well as nonlawyers. The Alabama Supreme Court, however, has taken the position that the “Chinese wall” concept should not apply to practicing lawyers. In *Roberts v. Hutchins*, 572 So.2d 1231 (Ala. 1990), the court held, by way of dicta, that the “Chinese wall” could not provide an effective screen to attorneys in private practice but should apply only to government or other publicly employed attorneys. 572 So.2d 1231, 1234 at n. 3.

More significantly, in 1990 the Alabama State Bar proposed, and the Alabama Supreme Court adopted, the Alabama Rules of Professional Conduct, which became effective January 1, 1991. Rule 1.10(b) of the Rules of Professional Conduct governs conflicts of interest on the part of a firm which employs an attorney previously employed by opposing counsel in ongoing litigation and provides, in substance, that an attorney with confidential information about a former client has a conflict of interest which precludes representation by the firm. The rule makes no mention of, or provision for, any type of “Chinese wall” screening process.

Based upon the above, the Office of General Counsel and the Disciplinary Commission have consistently held that such conflicts on the part of an attorney cannot be cured or overcome by erection of a “Chinese wall” or any other type of screening procedure. The Disciplinary Commission refused, however, to disallow the “Chinese wall” concept in addressing conflicts of interest which can result when a nonlawyer changes law firms.

In recent years, various jurisdictions have begun to question the effectiveness of screening procedures when a nonlawyer employee who changes firms is in possession of confidential information concerning the matter in litigation. One of the first jurisdictions to reject screening and to hold nonlawyer employees to the same standard as lawyers was the U.S. District Court for the Western District of Missouri. In *Williams v. Trans World Airlines, Inc.*, 588 F. Supp. 1037 (W. D. Mo. 1984), the court made the following statement:

“Nonlawyer personnel are widely used by lawyers to assist in rendering legal services. Paralegals, investigators, and secretaries must have ready access to client confidences in order to assist their attorney employers. If information provided by a client in confidence to an attorney for the purpose of obtaining legal advice could be used against the client because a member of the attorney’s nonlawyer support staff left the attorney’s employment, it would have a devastating effect on both the free flow of information between the client and the attorney and on the cost and quality of legal services rendered by an attorney. Every departing secretary, investigator, or paralegal would be free to impart confidential information to the opposition without effective restraint. The only practical way to assure that this will not happen and to preserve public trust in the scrupulous administration of justice is to subject these ‘agents’ of lawyers to the same disability lawyers have when they leave legal employment with confidential information.” 588 F. Supp. at 1044.

Subsequently, as more states began to adopt the Model Rules of Professional Conduct, or some variation thereof, more and more jurisdictions concluded that Rule 5.3(a)&(b) when read in conjunction with Rule 1.10(b) requires that nonlawyer employees be held to the same standards as attorneys with regard to client confidentiality and conflicts of interest resulting from changing firms. Typical of the jurisdictions which employed this analysis is the opinion of the Supreme Court of Nevada in *Ciaffone v. District Court*, 113 Nev. 1165, 945 P.2d 950 (1997). The Nevada Supreme Court concluded as follows:

“When SCR 187 [ARPC Rule 5.3] is read in conjunction with SRC 160 (2) [ARPC 1.10 (b)], nonlawyer employees become subject to the same rules governing imputed disqualification. To hold otherwise would grant less protection to the confidential and privileged information obtained by a nonlawyer than that obtained by a lawyer. No rationale is offered by Ciaffones which justifies a lesser degree of protection for confidential information simply because it was obtained by a nonlawyer as opposed to a lawyer. Therefore, we conclude that the policy of protecting the attorney-client privilege must be preserved through imputed disqualification when a nonlawyer employee, in possession of privileged information, accepts employment with a firm who represents a client with materially adverse interests.” 945 P.2d at 953.

The Nevada Supreme Court characterized the “Chinese wall” approach as having been “roundly criticized for ignoring the

realities of effective screening and litigating that issue should it ever arise.” The court cited as an example of such criticism an article in the *Georgetown Journal of Legal Ethics*, viz.:

“For example, one commentator explained that a majority of courts have rejected screening because of the uncertainty regarding the effectiveness of the screen, the monetary incentive involved in breaching the screen, the fear of disclosing privileged information in the course of proving an effective screen, and the possibility of accidental disclosures. M. Peter Moser, *Chinese Walls: A Means of Avoiding Law Firm Disqualification When a Personally Disqualified Lawyer Joins the Firm*, 3 *Geo. J. Legal Ethics* 399, 403, 407 (1990).” 945 P.2d at 953.

There are numerous other decisions which reach the same or similar conclusions, e.g., *Cordy v. Sherwin Williams*, 156 F. R. D. 575 (D.C. N.J. 1994); *MMR/Wallace Power & Industrial, Inc. v. Thames Associates*, 764 F. Supp. 712 (D. Conn. 1991); *Makita Corp. v. U.S.*, 17 C. I. T. 240, 819 F. Supp 1099 (CIT 1993); *Glover Bottled Gas Corp. v. Circle M. Beverage Barn, Inc.*, 129 A.D.2d 678, 514 N.Y.S. 2d 440 (1987); *Smart Industries v. Superior Court*, 179 Ariz. 141, 876 P.2d 1176 (1994); *Koulisis v. Rivers*, 730 So.2d 289 (Fla. Dist. App. 1999); *Daines v. Alcatel*, 194 F. R. D. 678 (E. D. Wash. 2000) and *Zimmerman v. Mahaska Bottling Co.*, 270 Kan. 810, 19 P.3d 784 (2001).

In *Zimmerman, supra*, the Supreme Court of Kansas pointed out that disqualification is not inevitable in every instance.

“Our holding today does not mean that disqualification is mandatory whenever a nonlawyer moves from one private firm to another where the two firms are involved in pending litigation and represent adverse parties. A firm may avoid disqualification if (1) the nonlawyer employee has not acquired material and confidential information regarding the litigation or (2) if the client of the former firm waives disqualification and approves the use of a screening device or Chinese wall.” 19 P.3d at 793.

For the reasons stated above, the Disciplinary Commission of the Alabama State Bar is of the opinion that a nonlawyer employee who changes law firms must be held to the same standards as a lawyer in determining whether a conflict of interest exists. A firm which hires a nonlawyer employee previously employed by opposing counsel in pending litigation would have a conflict of interest and must therefore be disqualified if, during the course of the previous employment, the employee acquired confidential information concerning the case. However, as indicated in *Zimmerman, supra*, the client of the firm may waive disqualification and approve the use of a screening device or Chinese wall. (NOTE: This opinion reverses ROs 1991-01 AND 1991-28). ▲

  
Alabama  
State  
Bar

Join the  
conversation  
on social media!

 [facebook.com/AlabamaStateBar](https://facebook.com/AlabamaStateBar)

 @AlabamaStateBar

 @AlabamaStateBar

 [linkedin.com/AlabamaStateBar](https://linkedin.com/AlabamaStateBar)

 [youtube.com/TheAlabamaStateBar](https://youtube.com/TheAlabamaStateBar)

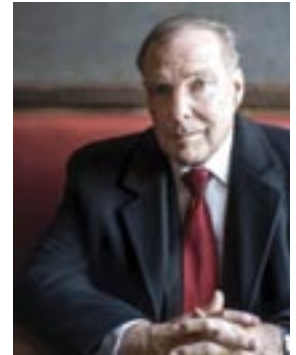


## MEMORIALS

- ▲ **Stephen Richard Arnold**
- ▲ **Richard A. Ball, Jr.**
- ▲ **Lucien Tennent Lee, III**
- ▲ **Louis Buisch Lusk**

# Stephen Richard Arnold

Steve Arnold of Birmingham, age 75, passed away on May 26, 2023 following a recent illness. He graduated from Indian Springs School in 1966 and from the University of Alabama with a BS in Finance in 1971. Steve served our country in the United States Army on active duty from 1970-1971 in Fort Sill, Oklahoma and then transferred to the inactive reserves in 1971; he discharged with the rank of captain in 1978. Following his active-duty military service, Steve attended Cumberland School of Law at Samford University, receiving his Juris Doctor in 1974 and beginning a law practice that would span nearly 50 years.



*Arnold*

For the first five years of his legal career, Steve engaged in a broad general practice with the firm of Jones, Arnold & Roden, resulting in the beginning of his specialization in matrimonial law. He was next a partner in Durward & Arnold, concentrating solely in matrimonial law (1979-1993). Steve then joined White Dunn & Booker (1993-2003), the predecessor firm to White Arnold & Dowd PC, where he served as a founding member, named partner, and member of the executive board until his death.

Steve enjoyed a well-deserved reputation as one of Alabama's pre-eminent matrimonial and divorce attorneys. His extensive background in finance, accounting, and general business enhanced his chosen concentration in financially and legally complex matrimonial matters. Steve was a talented advocate who valued – and expected – honesty, excellence, and integrity from his professional teammates and adversaries. He was dedicated to serving his clients' overall best interests. Steve emphasized problem-solving, negotiating, and achieving positive resolutions for his clients. He managed to counsel and successfully guide his clients through the stresses of divorce, matrimonial litigation, and the court system without losing his own humanity and compassion.

Steve's pursuit of professional excellence naturally led to his selection as one of the first five practitioners in Alabama for fellowship in the prestigious American Academy of Matrimonial Lawyers ("AAML"). Through the AAML, he worked to improve the practice of matrimonial law on a national level, including serving as a national faculty member for the AAML Institute for Training Young Lawyers, as governor, and as a member of the board of the AAML Foundation. In recognition of his superior trial and advocacy skills, Steve was certified as a family law trial specialist by the National Board of Trial Advocacy and named a fellow of the American College of Family Trial Lawyers. He co-founded the Family Law Section of the Alabama State Bar and served as the section's president. Steve

also served as a board member of the Heart Gallery, advocating for adoption of Alabama youth in foster care.

Steve and his beloved wife, Barbie, prioritized spending time with their blended family: son Allen (Evalouise), daughter Allene, daughter Robin Ennis (John), and son David Parks (Camila). His greatest joy in life was being “SteveO” to their eight grandchildren: Adelia, Kate, and Lillian Arnold, and Alden, Andrew, Archer, Meadow, and Miles Ennis. Steve enjoyed exploring the world with Barbie, especially summers in Maine, and deeply valued time spent closer to home hosting family and friends on the Gulf Coast and at their lake home at Blackridge on the outskirts of Birmingham. He appreciated beauty, seeking it out in the artists he befriended as well as in nature, most often on golf courses all over the world. Steve especially enjoyed playing golf at Vestavia Hills Country Club, where he recently achieved a hole-in-one.

Steve was a master wordsmith. He loved the English language, both written and spoken. Appreciating Steve as the wordsmith he was, these are some of the key nouns that defined Steve Arnold:

**Husband** – Steve and Barbie danced the dance of life together. They brought out the best in each other and truly enjoyed being together. They created joy for each other, and their relationship personified true love.

**Father/parent/brother/uncle** – These are titles that encompass other applicable nouns: protector, role model, helper, teacher, coach. Steve shared his love of learning with his children through a shared love of reading and discussing the issues of the day. Long before the internet, Steve was an exceptional influencer. He left a legacy of successful men and women who benefitted from having him selflessly share his many gifts.

**Grandfather** – Steve was no mere mortal when he assumed this role. It transformed Steve into a superhero: he became “SteveO,” the leader and advocate for all eight grandchildren. In return, SteveO received his grandchildren’s total adoration. The depth of his love will live on in each of them.

**Connoisseur** – A connoisseur has innate talent, insatiable curiosity, and dedication to developing the competence required to act as a critical judge. Steve was a quintessential connoisseur with a wide spectrum of interests, including art, food (although his sophisticated palate still considered French fries and gelato to be basic food groups), wine, nature, jazz, sports, and most importantly, relationships.

**Traveler** – Steve and Barbie traveled the world and made friends wherever they went. Regardless of the locale, Steve relished each experience and seized every available opportunity. He was never a tourist. Rather, Steve and Barbie were always respectful guests, expressing delight and appreciation at their great fortune to be in the home of new friends they came to love and respect.

**Lawyer/advocate/counselor/leader** – Steve’s reputation as a “go-to lawyer” in his specialty was widely known, but in our profession, he was so much more. He was respected in the legal community and by his clients. Steve’s clients knew that

they were well represented legally. But more importantly, they knew they were the beneficiaries of his gifts of empathy and thoughtful strategic thinking. He embraced the roles of attorney and counselor for his clients during particularly intense periods of their lives.

Steve Arnold was a gentleman and a gentle man. He will be dearly missed. Those who loved him will honor his memory by how they see beauty in the world around them and how they love each other well.

Thanks be for the life of Steve Arnold.

–White, Arnold & Dowd PC, Birmingham

## Richard A. Ball, Jr.

Dickie Ball, also affectionately known as “The Admiral” (for his command presence), died at his home on April 21, 2023 after a rich and meaningful life of nearly 85 years, 60 of which he spent as an outstanding lawyer melding a business and litigation practice.

He graduated from Sidney Lanier High School in 1956 and went on to obtain his undergraduate and law degrees from the University of Alabama where he was a member of the varsity golf team and an honor student.

After his admission to the Alabama State Bar, he attended the U.S. Army Judge Advocate General’s School at the University of Virginia and the Basic Infantry Officers Orientation Course at Ft. Benning, Georgia and was then assigned to Headquarters U.S. Army Europe in Heidelberg, Germany, where he served in the Judge Advocate General’s branch for two years.

He was discharged honorably as a captain and returned home to practice with his father and uncle in the firm of Ball & Ball, the predecessor to Ball, Ball, Matthews & Novak.

He taught those of us who practiced with him what it truly means to be a “partner” in a law firm. He was a lawyer we could depend on absolutely, who would share his time, his experience, his courtroom skills, his professional demeanor, his ethical approach to his practice, and his keen sense of humor with us on a daily basis. He never asked why you needed help or counsel. He only wanted to know what you needed so he could provide you with all the assistance that was within his power.

He was devoted to his clients and served them tirelessly, and skillfully and accomplished great things for them. They returned their devotion to him. Many of them have told me of what he did for them in their time of need and how much they valued his contributions to their lives. He earned a degree of appreciation from them that remained long after he had completed the tasks they entrusted him with.

He liked to talk about “getting in the books” and “getting his hands dirty” with hard work when preparing for a trial.



Ball

*(Continued from page 307)*

He kept a complete set of the Alabama Code within his reach for his entire career. He considered it to be the essential tool of his practice. He never really thought a computer could be trusted quite as much as a book.

His commitment to doing things the right way was reflected in the manner in which he played golf. He always played it where it lay and abided by the rules because he respected them and felt that the games of golf and life demanded his best and most honest effort. He laughed about his ability to shoot his age with ease saying it only meant he had gotten old. Everyone liked to play with him, and he could make the worst duffer playing along with him feel comfortable using his unique skills to teach us that the joy was in the companionship, the outdoors, and the great shot whether it be rare or routine. He was a competitor and a winner who knew the importance of keeping all aspects of his life in the proper perspective.

He loved and cared for his family. You could see the pride and joy in his face when he was with them or spoke of them.

He was generous to all who came in contact with him and touched the lives of many in profound and important ways. We all miss him and are eternally grateful for having been privileged to be among the many who benefited from our association with him.

I miss his knock on my door, as it always led to something good.

*—Tabor Novak, Montgomery*

## Lucien Tennent Lee, III

Tennent Lee passed away March 19, 2023. He was born March 19, 1937 in Wetumpka and grew up in Tuscaloosa.

He attended the University of Alabama, where he earned a degree in commerce and business administration. He was inducted into the commerce scholastic honorary, Beta Gamma Sigma, and the leadership honorary, Omicron Delta Kappa. He was also a member of Delta Tau Delta social fraternity.



*Lee*

Tennent graduated with honors from the University of Alabama School of Law as a member of the Farrah Order of Jurisprudence (now Order of the Coif). He served on the Board of Editors of the *Alabama Law Review* and was a member of the University of Alabama National Moot Court Team, which won the Southeastern Regional competition.

He began law practice in Huntsville in 1963 with the firm of Bell, Morring, Richardson & Cleary. When he retired, he was a shareholder in the firm of Wilmer & Lee PA.

Tennent served as president of the Huntsville-Madison County Bar Association. He was also active in the Alabama State Bar, chairing several committees, including its Board of Bar Examiners. For this latter service he was given the Award of Merit by the state bar.

He was an original director of Attorneys Insurance Mutual of the South when it was formed and served as a director and chair of the claims committee until his death. Prior to retiring in 2006, Tennent was one of the pioneer civil mediators in the state.

Tennent is survived by his wife of 41 years, Diane Mahaffey Lee; two children, Kimberly Burkett Knight and Christopher Caldwell Lee; and three grandchildren.

*—Dag Rowe, Huntsville*

## Louis Buisch Lusk

On July 15, 2023, the legal profession lost a true gentleman and scholar, when Louis Lusk passed away at the age of 91. Louis was a third-generation country lawyer who spent his entire legal career at the same office in Guntersville, initially with his father, Marion F. Lusk, and lately with his son, Jonathan M. Lusk.

Louis was brilliant. He was valedictorian of his high school class, graduated from the University of Alabama and the University of Alabama School of Law, both with highest honors, and received an LLM in jurisprudence from Yale University in 1957.



*Lusk*



He was a member of Phi Eta Sigma freshman honorary, Omicron Delta Kappa, Phi Kappa Tau, and Phi Beta Kappa. He was president of the Marshall County Bar Association, a member of the Board of Bar Commissioners of the Alabama State Bar and the Alabama Defense Lawyers Association and inducted into the American College of Trial Lawyers.

During his 65 years of active trial practice, Louis continually earned the respect of his brother and sister attorneys, the judiciary, his clients, and his friends. Throughout his career, he was a mentor for many younger lawyers and always had time to help other attorneys with legal issues. Perhaps

his strongest traits were his unquestionable integrity and his civility, with his peers and adversaries alike.

Louis was survived by his lovely wife of 68 years, Carolyn Regan Lusk; five children, Annette Loper of Atlanta; Louis Lusk, Jr. of Ashville; Sarah Hoberstroh of Birmingham; Catherine King of Nashville; and Jonathan Lusk of Huntsville; 15 grandchildren; and two great-grandchildren.

Louis was the oldest member of First Presbyterian Church of Guntersville where he served as an elder and deacon. He will be remembered fondly for years to come. ▲

**John Michael Aaron**

Alabaster  
Died: July 7, 2023  
Admitted: 1997

**Hon. John Lawrence Carroll**

Birmingham  
Died: August 14, 2023  
Admitted: 1974

**Jennifer Lynn Behel-Thigpen**

Florence  
Died: July 4, 2023  
Admitted: 2000

**James Curtiss Bernard**

Phenix City  
Died: May 6, 2022  
Admitted: 1977

**Kenneth Hugh Bonham**

Springville  
Died: July 2, 2023  
Admitted: 2003

**Hon. Harry Franklin Brunner, Jr.**

Cullman  
Died: May 26, 2023  
Admitted: 1981

**George Marion Callen, III**

Warrior  
Died: April 3, 2023  
Admitted: 1976

**David Richard King**

Birmingham  
Died: July 4, 2023  
Admitted: 1987

**Hon. John George Lowther**

Birmingham  
Died: June 29, 2023  
Admitted: 1974

**John Michael Manasco**

Montgomery  
Died: August 5, 2023  
Admitted: 1980

**Daniel Harry Markstein, III**

Birmingham  
Died: August 8, 2023  
Admitted: 1966

**Hon. John Alexander McBrayer**

Birmingham  
Died: March 28, 2023  
Admitted: 1981

**Bill Clayton Messick**

Mobile  
Died: August 16, 2023  
Admitted: 1995

**Frank Chadwick Morriss**

Montgomery  
Died: May 10, 2023  
Admitted: 1984

**Laura Elizabeth Nolan**

Montgomery  
Died: July 15, 2023  
Admitted: 1981

**Bert Powell Noojin**

Gulf Shores  
Died: January 21, 2023  
Admitted: 1978

**James Lee Richey**

Birmingham  
Died: June 15, 2023  
Admitted: 1983

**Howard Murfee Schramm, Jr.**

Point Clear  
Died: July 20, 2023  
Admitted: 1967

**Franklin Louis Shuford, Jr.**

Mobile  
Died: July 29, 2023  
Admitted: 1990

**Ronald Frederick Thompson**

Birmingham  
Died: July 22, 2023  
Admitted: 1968

**Ritchie Lee Tipton**

Tuscaloosa  
Died: June 9, 2023  
Admitted: 1979

**George Walton Walker, III**

Auburn  
Died: July 25, 2023  
Admitted: 1989

**John Newton Wrinkle**

Birmingham  
Died: July 20, 2023  
Admitted: 1955



NOTICE

## DISCIPLINARY NOTICES

- ▲ Reinstatement
- ▲ Disbarments
- ▲ Suspension
- ▲ Public Reprimands

### Reinstatement

- Johns Creek, Georgia attorney **Eric David Logan**, who is also licensed in Alabama, was reinstated to the active practice of law in Alabama by order of the Supreme Court of Alabama, effective May 15, 2023. Logan was previously suspended from the active practice of law for failing to comply with the 2020 Mandatory Continuing Legal Education requirements of the Alabama State Bar.

### Disbarments

- Montgomery attorney **John Warren Godwin** was disbarred from the practice of law in Alabama by order of the Supreme Court of Alabama, effective May 23, 2023. The Supreme Court of Alabama entered its order based upon the May 4, 2023 order of Panel III 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 Godwin's consent to disbarment, based on Godwin's recent conviction for financial exploitation of an elderly person—first degree, in violation of section 13A-6-195, Class B felony. [Rule 23(a), Pet. No. 2023-669]
- Spanish Fort attorney **John Perry Thompson** was disbarred from the practice of law in Alabama by order of the Supreme Court of Alabama, effective May 10, 2023. The Supreme Court of Alabama entered its order based upon the April 5, 2023 order of the Disciplinary Commission of the Alabama State Bar. The Supreme Court of Alabama entered its order based on the fact that Thompson pled guilty to four counts of attempting to possess child pornography in violation of Ala. Code Section 13A-12-192, (2022), Class A Misdemeanors. [Rule 22(c), Pet. No. 2023-176; ASB No. 2020-520]

## Suspension

- Phenix City attorney **Allen Charles Jones** was summarily suspended from the practice of law in Alabama by the Supreme Court of Alabama, effective April 27, 2023, pursuant to Rule 20(a), Alabama Rules of Disciplinary Procedure. The Supreme Court of Alabama noted the summary suspension based upon the Disciplinary Commission's order that Jones be summarily suspended for failing to respond to a pending disciplinary matter. [Rule 20 (a), Pet. No. 2023-642]

## Public Reprimands

- Mobile attorney **Darryl Tyrone Blackmon** was issued a public reprimand with general publication on May 5, 2023, by the Disciplinary Commission of the Alabama State Bar, for violating Rules 1.1 [Competence], 1.3 [Diligence], and 1.4 [Communication], Alabama Rules of Professional Conduct. On July 2, 2021, Blackmon was retained by clients to file for custody/guardianship of their 16-year-old granddaughter. The clients paid Blackmon \$875 on July 2, 2021. The child had been residing with her grandparents since February 2020. The child has a medical condition associated with epilepsy and the grandparents needed a court order permitting them to seek and obtain medical care on her behalf as well as educational decisions. The child's father abandoned the child with the grandparents. After Blackmon was retained, the grandparents had difficulty communicating with him. Blackmon failed to return calls, emails, and text messages, and his voicemail was continuously full. Blackmon failed to appear in court on September 25, 2021 and did not answer calls from the grandparents, the GAL, or the court. In court, there were no records of service on the child's mother. Following the missed court appearance and the continued difficulty reaching Blackmon, the grandparents terminated him. The grandparents learned the case

ALABAMA LAWYER ASSISTANCE PROGRAM  
LAWYERS HELPING LAWYERS

YOU TAKE CARE OF YOUR CLIENTS, BUT WHO TAKES CARE OF YOU?

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

THE ALABAMA LAWYER

(Continued from page 311)

# SCHREIBER ADR

ARBITRATION | MEDIATION



**WE TURN DISPUTES INTO RESOLUTIONS**

LEFT TO RIGHT

Judge David Jordan\*, Steve Ford, Richard Lord,  
Allen Schreiber, Gaynor St. John, Phillip McCallum,  
Judge Bob Vance\*, Jonathan Lowe

\*RETIRED

In person or via Zoom, Schreiber ADR mediators and arbitrators provide matter-specific knowledge, valuable experience, and peer-recognized skill in resolving a wide range of tort disputes and business, employment, insurance and other litigated matters.



**Convenient, Online Scheduling**

Schedule your next ADR session using our online calendar at [schreiberadr.com/calendar](https://schreiberadr.com/calendar), or call us at 855-754-8807.

2231 20th Ave. S., Suite 202, Birmingham • 855-754-8807 • [schreiberadr.com](https://schreiberadr.com)

was misfiled in probate court, and they incurred additional expenses and delay of time to file in the appropriate juvenile court. [ASB No. 2021-1194]

- Meridian, Mississippi attorney **Joseph Anthony Denson**, who is also licensed in Alabama, was issued a public reprimand with general publication on May 5, 2023, as ordered by the Disciplinary Commission of the Alabama State Bar, for violating Rules 1.3 [Diligence], 1.4 [Communication], 1.16(d) [Declining or Terminating Representation], and 8.4(g) [Misconduct], Alabama Rules of Professional Conduct. In 2016, Denson was retained to represent a client and his trucking company in a breach of contract. The client paid Denson \$10,000 at the outset of the representation. Denson failed to file a response to the motion for summary judgment and failed to notify the client of the dismissal of his lawsuit. [ASB No. 2021-1194] ▲



## YOUNG LAWYERS' SECTION UPDATE

Christopher B. Driver  
[cdriver@badhambuck.com](mailto:cdriver@badhambuck.com)



The Young Lawyers' Section has been busy over the past year! For those of you who may not be familiar with the YLS, we are comprised of lawyers who are 36 years old or younger or have been admitted to the bar for three years or less. Through the events that we host and the work that we do, the YLS aims to provide meaningful networking opportunities for young lawyers in the state, to serve both the members of our section and the public, and to encourage involvement with the Alabama State Bar. Each year, the YLS hosts three signature events that embody these aims.

First, we host the Admission Ceremony to officially welcome all new admittees to the Alabama State Bar. The 2022 Admission Ceremony was a great success, and the 2023 ceremony is shaping up to be another success. If you are a new admittee, I encourage you to attend this year's Admission Ceremony on October 19 at the Montgomery Performing Arts Centre in downtown Montgomery.

Second, the YLS hosts four annual Minority Prelaw Conferences in Birmingham, Huntsville, Mobile, and Montgomery that introduce high school students to the practice of law. Each conference has local attorneys speak about being a lawyer, and we have a mock trial where the students serve as jurors, which is always a great time. In the past, I have volunteered to be the criminal defendant in a mock trial, and I am happy to report that the future of our jury system is in good hands. I was rightfully acquitted of all charges! Although the Minority Prelaw Conference requires a lot of work, it is always worth the effort. This past year, we had 200–250 students attend our conferences.

Finally, the YLS hosts its annual Orange Beach CLE every May – which is one of the few networking opportunities in the state devoted to young lawyers of all practice areas from all parts of Alabama. This year's CLE was a great time. We offered around six hours of CLE credit and had four social events throughout the weekend. We look to keep the fun (and continuing education) going next year, so be on the lookout for information about the May 2024 Orange Beach CLE!

In addition to our three signature events, the YLS also operates the Alabama State Bar's disaster relief hotline, represents the interests of Alabama's young lawyers at the American Bar Association, and helps sponsor the Alabama State Bar Annual Meeting. I encourage all YLS members to attend the Orange Beach CLE, and if you want to be involved with the Admission Ceremony, Minority Prelaw Conference, or any of our other activities, please reach out to me. You can also follow us on Instagram (@asbyounglawyers) or Facebook (Young Lawyers Section of the Alabama State Bar). ▲



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 Boulton 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.

## RECENT CIVIL DECISIONS From the Alabama Supreme Court

### Immunity

#### ***Ex parte Thomas*, No. SC-2022-0525 (Ala. Mar. 3, 2023)**

The court denied a petition for mandamus directing the trial court to enter summary judgment on state-agent immunity in a case arising from a car accident allegedly caused by a law enforcement officer blocking both lanes of traffic while stopping two cars for speeding. The supreme court reasoned that the rules of the road forbade the officer from stepping into a traffic lane of I-65 and failing to yield to traffic, and those statutes applied on their face to "any person afoot."

#### ***Murey v. Chickasaw*, Nos. 1210384 and 1210392 (Ala. Mar. 17, 2023)**

In a procedurally complex case, the court affirmed summary judgment on the statute of limitations and state agent immunity grounds in a case arising from a person dying in police custody. A prior action asserting similar claims had been filed in state court and removed to federal court. The federal court granted summary judgment for the defendants as to the federal claims and then dismissed the state-law claims without prejudice. The plaintiff then filed a new lawsuit. It asserted claims against defendants that were not defendants in the original action. These claims were held to be untimely. Claims against original defendants were timely but barred by state-agent immunity.

#### ***Ex parte Muscle Shoals*, No. SC-2022-0524 (Ala. Mar. 31, 2023)**

The court issued a writ of mandamus directing the trial court to dismiss the plaintiff's request for injunctive relief against a city. The requested injunction sought to compel the city to enact a comprehensive stormwater management plan, and the supreme court found that the city's decisions to enact or enforce ordinances concerning drainage are public-policy decisions made in connection with the city's responsibility to provide for public health and general welfare.

### Legal Malpractice

#### ***Fox v. Hughston*, No. SC-2022-0564 (Ala. Mar. 10, 2023)**

The court affirmed the dismissal of a legal malpractice claim as untimely, though the court declined to decide whether the "occurrence" or "damage" approach triggered the running of the statute of limitations because it found the claim to be untimely under either approach. The court concluded that a malpractice claim based on the failure to file a written notice of appeal must be filed within two years of the date the notice was due (subject to the six-month savings provision).

***Shaeffer v. Thompson, No. SC-2022-0813 (Ala. April 21, 2023)***

The Alabama Supreme Court affirmed summary judgment for the attorney in a legal malpractice case, finding that he had met his burden of showing that decisions made at trial were not negligent. It also affirmed the trial court's conclusion that the plaintiffs' attempts to rebut the attorney's showing failed to show that the attorneys' decisions at trial fell outside the province of his professional judgment.

**Wrongful Death**

***Ghee v. US Able Mut. Ins. Co., No. 1200485 (Ala. Mar. 31, 2023)***

The dismissal of wrongful death claims against an insurance company were partially affirmed and partially reversed. The court held that the insurer could not be liable for its coverage decision regarding benefits under the decedent's health plan because such claims were defensively preempted by ERISA. However, the court reversed the trial court's decision to dismiss a claim arising from the insurer's alleged providing of medical advice regarding whether the decedent should request that physicians perform a surgical procedure on an emergency basis.

**Civil Procedure**

***Davis v. Hamilton, No. SC-2023-0042 (Ala. Mar. 24, 2023)***

The court held that a trial court exceeded its discretion by allowing the appointment of a personal representative in place of a plaintiff who had died. The court held that the appointment of a personal representative happened too late after the six-month deadline in Rule 25(a) and that the substituted plaintiff's general allegations regarding the impact of the COVID-19 pandemic did not justify a 15-month delay in moving to substitute.

**Quo Warranto**

***Hudson v. Ivey, No. SC-2022-0836 (Ala. March 24, 2023)***

An action seeking to remove a judge from office had to be brought as a petition for a writ of quo warranto, as quo warranto affords the exclusive mechanism to expel a public official from office. Even though other claims and defendants were included in the action, the presence of the judge as a defendant and the request for an injunction barring the judge from exercising any authority as a circuit judge mandated the use of a petition for a writ of quo warranto.

**SERVICES**

**Hire a Private Judge**  
to hear any case assigned a CV or DR case number by the Alabama Administrative Office of Courts

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

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

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

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

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

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

**Hon. James M. Russell**  
mack@mackrussell.com  
(334) 399-2558

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

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

**Hon. Dave Jordan**  
dave@schreiberadr.com  
(251) 867-7724

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

**Hon. John Lockett**  
johnlockett2020@gmail.com  
(251) 656-6629

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

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

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

**FAST • EASY • APPEALABLE**

AL Acts No. 2012-266 and 2018-384

For more information, search "Find a Private Judge" at [www.alabamaADR.org](http://www.alabamaADR.org)

(Continued from page 315)

## Judgment Enforcement

**Allie Construction, Inc. v. Mosier, No. SC-2022-0790 (Ala. Mar. 24, 2023)**

Obtaining writs of garnishment one day before the 20-year statute of limitations for enforcing a judgment expired was timely, as obtaining the writs commenced the action to enforce the judgment. The writs were served very shortly after the statute expired, but the court determined that commencing the action within the statute made the action timely. The Alabama Supreme Court therefore reversed the trial court's finding that the garnishment proceeding was untimely.

## Restrictive Covenants

**Cole v. Davis, No. SC-2022-0723 (Ala. Mar. 24, 2023)**

The court affirmed the enforcement of a restrictive covenant preventing a property owner from subdividing his lot. Because the owner had actual knowledge of the restrictive covenant, he could not prevail under the "relative hardship" defense, and he had similarly failed (in the court's view) to provide admissible evidence showing that he would suffer a harm considerably disproportionate to the benefit received by the other lot owners. The court also affirmed the trial court's conclusions that the owner failed to satisfy the "change-in-the-neighborhood" test. The court similarly rejected other arguments by the property owner, including the argument that Rule 19 required joining all property owners in the neighborhood as necessary or indispensable parties.

## Standing

**Hanes v. Merrill, No. SC-2022-0869 (Ala. April 7, 2023)**

Plaintiffs challenging Alabama's use of electronic voting machines in the 2022 election were found to lack standing. In the court's view, the possibility of tampering with such machines was conjectural and did not give rise to an injury-in-fact. The court similarly found the plaintiffs to lack taxpayer standing because the machines at issue had already been purchased. While they may have had standing to challenge a future expenditure, the court found them to lack standing to challenge a past expenditure. Two justices authored concurring opinions inviting future litigants to address whether the *Lujan* standing analysis Alabama has borrowed from federal law is the proper framework under the Alabama Constitution.

## Appellate Procedure

**Million v. Shumaker, No. SC-2022-0986 (Ala. April 7, 2023)**

A plaintiff appealed an order dismissing less than all defendants. After plaintiff appealed, the trial court certified the order under Alabama Rule of Civil Procedure 54(b). The Alabama Supreme Court dismissed the appeal, noting that a Rule 54(b) certification occurring after an appeal is filed is a nullity.

**REDDINGCRASH**  
Reconstruction, LLC

**Ronnie Redding, Owner/Reconstructionist**  
ACTAR Accredited #1546  
Cell: (251) 401-3651  
Email: ronnie@reddingcrash.com  
www.reddingcrash.com

- ✓ Retired Trooper/Traffic Homicide Investigator
- ✓ Internationally Accredited (ACTAR)
- ✓ 20+ Years Experience in the Field
- ✓ EDR Download & Analysis—Passenger & Commercial Vehicles
- ✓ Commercial Vehicle Inspection & Reconstruction
- ✓ 3-D Animation
- ✓ Aerial Photography





# NEED MORE CLIENTS?

## Join the ASB Lawyer Referral Service

### Why join?

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

### Overview of the Program

- Referrals in all 67 counties
- Annual fee of \$100
- Maximum percentage fee of 5% on attorney fees collected between \$1,000 and \$6,000
- Professional liability insurance required for participation

Learn more and sign up here:



[LRS@alabar.org](mailto:LRS@alabar.org)

### **Kawzinski v. Lyne, No. SC-2022-0818 (Ala. April 21, 2023)**

In a sale-by-division case, the order directing the sale and the order confirming the sale are both final judgments for purposes of appeal. The appellant failed to file an appeal after the order directing the sale, so her appeal of a subsequent order related to the prior order was dismissed as untimely. But the court noted that an appeal could lie from an order confirming the sale.

### **Real Property**

#### **Upchurch v. Upchurch, No. SC-2022-0478 (Ala. April 7, 2023)**

The Alabama Supreme Court reversed summary judgment for the defendants and held that joint tenants entering into a contract to sell a piece of property terminated the joint tenancy and converted it to a tenancy in common.

### **Contracts**

#### **Lafayette Land Acquisitions II, LLC v. Walls, No. SC-2022-0765 (Ala. April 21, 2023)**

The court reversed summary judgment because it concluded that the trial court misinterpreted a contract provision. The provision at issue stated that, at the conclusion of a diligence period, the buyer would be deemed to have approved the property unless it provided written notice to the seller of its election not to purchase the property. The evidence showed that the buyer never provided such notice, so the Alabama Supreme Court decided that the parties were obligated to close the transaction.

# From the Alabama Court of Civil Appeals

### **Termination of Parental Rights**

#### **S.D. v. Randolph Cty. DHR, Nos. CL-2022-0787 and CL-2022-0793 (Ala. Civ. App. Mar. 17, 2023)**

The court concluded that DHR had not provided sufficient evidence to establish that the father was unable or unwilling to fulfill his parental responsibilities or that his conduct or condition rendered him unfit to care for the child. Therefore, the court determined that the juvenile court could not have been clearly convinced that termination of the father's parental rights was justified.

(Continued from page 317)

***T.F.H. v. A.L.S.*, No. CL-2022-0531 (Ala. Civ. App. Mar. 17, 2023)**

Because actions for terminating parental rights require personal service unless a motion for service by certified mail is made upon good cause shown, the court held that service by certified mail upon a father was insufficient and the juvenile court's judgment was void.

***K.G. v. J.T.*, No. 2210352 (Ala. Civ. App. Mar. 10, 2023)**

The juvenile court found that the mother had abandoned the child, failed to provide for the child's material needs, and lacked consistent contact with the child. However, the Alabama Court of Civil Appeal reversed the judgment terminating the mother's parental rights, finding that the evidence presented did not amount to clear and convincing evidence required to terminate parental rights. The court concluded that the circumstances did not warrant such a drastic measure and remanded the case.

***R.H. v. Madison Cty. DHR*, No. CL-2022-0799 (Ala. Civ. App. Mar. 24, 2023)**

The court reversed the decision to terminate parental rights because it determined that the maintaining the status quo, i.e., the children in foster care and having contact with the parents, was a viable alternative to termination.

***K.H. v. Madison Cty. DHR*, No. CL-2022-0917 (Ala. Civ. App. April 7, 2023)**

The court affirmed the decision to terminate parental rights and allow siblings to be adopted. While there was evidence that the mother had a close relationship with one child, the best interest of the children was served, in the court's view, by the children remaining together and being adopted. The court also found that the evidence supported the conclusion that the mother was unwilling or unable to remain sober, and the mother failed to produce evidence at the termination hearing.

***W.W. v. H.W.*, No. CL-2022-0710 (Ala. Civ. App. April 14, 2023)**

The court reversed the termination of a father's parental rights, finding that the record did not establish that termination of the father's rights would serve the best interests of the child.

***J.T. v. Chambers Cty. DHR*, No. CL-2022-0687 (Ala. Civ. App. April 14, 2023)**

The court held that the juvenile court lacked jurisdiction to issue a gag order binding a non-party maternal grandmother,

and that the court had failed to comply with Rule 65's requirements for either a temporary restraining order or a preliminary injunction.

## Appellate Procedure

***Seibert v. Fields*, No. CL-2022-1062 (Ala. Civ. App. Mar. 17, 2023)**

The appellate court dismissed the former husband's appeal, stating that the notice of appeal was not timely filed and therefore did not invoke the court's jurisdiction. The court determined that the notice of appeal, which was filed directly with the appellate court instead of the trial court, is a legal nullity and cannot be considered as validly invoking the appellate court's jurisdiction.

## Custody

***Ex parte F.G.*, No. CL-2023-00009 (Ala. Civ. App. Mar. 17, 2023)**

The court held that the juvenile court had jurisdiction to adjudicate child custody in a parentage action, so it denied a mandamus petition asking the court to determine that the juvenile court exceeded its jurisdiction.

***Michalak v. Peterson*, No. CL-2022-0629 (Ala. Civ. App. Mar. 3, 2023)**

The court affirmed a trial court's decision to modify custody, finding (over the father's objection) that the issue had been tried by consent. The court also rejected the father's arguments that the custody modification violated his constitutional and statutory rights.

***Shanklin v. Shanklin*, No. CL-2022-0751 (Ala. Civ. App. Mar. 10, 2023)**

After a custody judgment awarded custody to maternal great-grandparents who had intervened, a father argued that the judgment was void because the trial court lacked jurisdiction. The court of civil appeals disagreed, determining that the motion to intervene filed by the maternal great-grandparents did not initiate a de facto dependency action, and therefore, the trial court had jurisdiction to enter the custody judgment.

***M.A. v. C.S.*, Nos. CL-2022-0676 and -77 (Ala. Civ. App. Mar. 10, 2023)**

The court reversed a judgment awarding custody to maternal grandparents because the adjudicatory and dispositional hearings were held at different times and there was

no evidence that the child at issue remained dependent at the time of the dispositional hearing. The court likewise found the award of grandparent visitation to be void because the grandparents had not invoked the court's jurisdiction to award visitation.

## Adoption

**J.A. v. C.G.H., No. CL-2022-0927 (Ala. Civ. App. Mar. 3, 2023)**

The court dismissed a mother's appeal because it was filed one day late. The mother had filed a motion under Rule 77(d) in the trial court, but the court held that such motion was insufficient to extend her time to file an appeal because she had notice of the judgment. The mother may have believed that she only had 14 days (instead of 42 days) to appeal the adoption judgment, but that mistake did not, in the court's reasoning, constitute excusable neglect under Rule 77(d).

**Ex parte D.C.H., No. CL-2022-0617 (Ala. Civ. App. April 21, 2023)**

The court held that the circuit court erred by "retransferring" adoption petitions to the probate court after they had been transferred to the circuit court, finding that Alabama Code § 26-10A-21 allows discretionary transfers that "only go[] one way."

## Paternity

**C.L.R. v. M.B.M., No. CL-2022-1069 (Ala. Civ. App. Mar. 10, 2023)**

A former husband appealed a summary judgment entered by the juvenile court that denied his request to establish his paternity of a child born during his ex-wife's marriage to her current husband. The court reversed the judgment, stating that the juvenile court should have allowed an evidentiary hearing to determine the former husband's status as a presumed father and adjudicate who should be the legal father of the child.

Proud graphic designer of  
**The Alabama Lawyer**  
magazine for over 30 years.

**TF**  
THE FINKLEA GROUP  
INC.  
Creative solutions for your marketing strategies

## Design and Marketing Services

Logos	Trade Show Exhibits
Websites	Publication Design
Brochures	Media Kits
Product Catalogs	Billboards
Print Ads	P.O.P. Displays
Product Packaging	Professional Portfolios
Sales Support Material	

300 North Dean Road, Suite 5-193 • Auburn, AL 36830  
334.799.7843 • [gavin@taplink.com](mailto:gavin@taplink.com)

(Continued from page 319)

## Venue

***Ex parte Honda Manufacturing & Development of Alabama, LLC*, No. CL-2022-1217 (Ala. Civ. App. Mar. 10, 2023)**

In a workers' compensation case, the court issued a writ of mandamus directing that a claim against a manufacturer be transferred to the county where the manufacturer's plant was located. The court rejected the argument that the manufacturer's dealings with suppliers in the plaintiff's home county, finding those dealings to be merely a necessary incident of its business.

## Divorce

***Stewart v. Sutton*, No. CL-2022-0818 (Ala. Civ. App. Mar. 31, 2023)**

While rejecting most of the ex-husband's arguments on appeal, the court reversed the trial court's award of unreimbursed postsecondary-education expenses. The court found that the record did not allow it to determine the basis on which such an award was made, and so it reversed and remanded so that the trial court could articulate the figures used in determining the ex-husband's arrearage.

***Friend v. Friend*, No. CL-2022-0592 (Ala. Civ. App. April 28, 2023)**

The court reversed the trial court's judgment as to alimony, property division, and the denial of an attorneys' fee award because the court found that the trial court failed to make express findings justifying its alimony award.

***Shook v. Shook*, No. 2210161 (Ala. Civ. App. April 28, 2023)**

In a proceeding involving numerous arguments on appeal related to contempt, custody, and child-support, the court of civil appeals affirmed some and reversed others. It also determined that the trial court exceeded its authority by including a period of probation for the father's criminal contempt.

## Discovery

***Ex parte Suhy*, No. CL-2023-0017 (Ala. Civ. App. April 7, 2023)**

The court declined to issue a writ of mandamus overturning an order requiring a father to turn over his electronic devices, finding that the devices might contain relevant information and that any privilege concerns could be addressed by the trial court's protective order limiting review of the devices to an expert that would not share privileged communications with the mother.

## Common-Law Marriage

***Ellison v. Stokes*, No. CL-2022-0845 (Ala. Civ. App. April 21, 2023)**

The court found that the plaintiff, who had filed a complaint for divorce from a common-law marriage that she alleged to have existed before the Alabama statute finding common-law marriages no longer legal, stated a cause of action under the "no set of facts" pleading standard.

## Landlord and Tenant

***Wallace v. The Housing Auth. of Talladega*, No. 2210486 (Ala. Civ. App. April 14, 2023)**

The court found that the Alabama Supreme Court's decision in *Daniels v. Wiley*, 314 So. 3d 1213 (Ala. 2020), did not apply to abrogate the standard from *Coggin v. Starke Bros. Realty Co.*, 391 So. 2d 111 (Ala. 1980), regarding the issue of when a landlord may owe a special duty when the claim involved the allegation of an open and obvious danger – in this case, a missing handrail in a stairwell.

## Medicaid

***Diversicare of Winfield, LLC v. Alabama Medicaid Agency*, No. CL-2022-0714 (Ala. Civ. App. April 14, 2023)**

The court determined that an aggrieved party's deadline to file an appeal from a final decision of the agency runs the date on which a motion for reconsideration is deemed denied by operation of law under Alabama Code § 41-22-17(e).

**From the Eleventh Circuit Court of Appeals**

## Abstention

***Leonard v. Alabama State Bd. of Pharmacy*, No. 22-11124 (11<sup>th</sup> Cir. Mar. 2, 2023)**

The court affirmed the district court's decision to abstain under *Younger*, finding that proceedings before the board of pharmacy afforded the plaintiff an adequate opportunity to assert her PREP claim, assert PREP act preemption, and raise an immunity defense.

## Arbitration

***Corporacion AIC, SA v. Hidroelectrica Santa Rita, S.A.*, No. 20-13039 (11<sup>th</sup> Cir. April 13, 2023)**

The *en banc* Eleventh Circuit held that, under the New York Convention, the grounds that can be asserted to vacate an arbitral award where the United States is the primary jurisdiction (meaning that the U.S. was the place of the arbitration or where U.S. law governed the conduct of the

arbitration) were the grounds for vacatur set out in domestic law – currently, Section 1 of the Federal Arbitration Act. The court overruled its *Industrial Risk Insurers* and *Inversiones y Procesadora Tropical INPROTSA, S.A.* decisions.

### Political Question Doctrine

***PDVSA US Litig. Trust v. Lukoil Pan Americas LLC, No. 22-10675 (11<sup>th</sup> Cir. Mar. 13, 2023)***

The court affirmed the district court’s decision not to reopen a case that had previously been dismissed for lack of standing. The board of directors of the entity that had requested reopening was appointed by a leader not recognized as legitimate by the United States government, so the court reasoned that granting the motion to reopen would require adjudicating the nonjusticiable political question of the validity of government actions already decided by the Department of State.

### Voting Rights

***Thompson v. Alabama, No. 21-10034 (11<sup>th</sup> Cir. April 26, 2023)***

The court affirmed summary judgment that upheld Alabama’s felony disenfranchisement provision contained in Amendment 579 of the Alabama Constitution, finding it to be a non-penal regulation of the franchise.

### Standing

***Kimberly Regenesis, LLC v. Lee Cty., No. 21-13880 (11<sup>th</sup> Cir. April 10, 2023)***

A non-party county commissioner was served with a deposition notice, and the county objected on absolute quasi-judicial immunity. The district court overruled the objection and both the county and the commissioner appealed. The Eleventh Circuit dismissed the appeal, finding that the county was not injured or aggrieved by a finding that a commissioner’s immunity may have been infringed, and the commissioner was not a party and had not participated before the district court at all.

**+ We’ve got you covered**  
Your full service marketing partner



**davisdirect**  
On Target. On Time.

- Offset printing
- Digital printing
- Display graphics
- Wide format
- Custom design
- Direct mail
- Fulfillment

1241 Newell Parkway  
Montgomery, AL 36110

+ Toll Free: (877) 277-0878  
davisdirect.com

+ 1006 Opelika Road  
Auburn, AL 36830

(Continued from page 321)

## Class Actions

***Williams v. Reckitt Benckiser LLC*, No. 22-11232 (11<sup>th</sup> Cir. April 12, 2023)**

The court vacated a class action settlement because it found the plaintiffs seeking injunctive relief had failed to establish that they are likely to suffer an injury. None of the plaintiffs alleged that they planned to purchase the product at issue again, so the court vacated the settlement that was based in “real part” on the award of injunctive relief.

## Insurance

***Shiloh Christian Center v. Aspen Specialty Ins. Co.*, No. 22-11776 (11<sup>th</sup> Cir. April 13, 2023)**

Despite evidence that the parties subjectively intended to exclude coverage for windstorm damage from an insurance policy, the policy that issued did not include the exclusion. The court reversed summary judgment for the insurer and found that the absence of the exclusions was determinative on the basis of plain language or, if a policy were considered ambiguous, by construing the policy against the insurance company as its drafter.

## Second Amendment

***Nat’l Rifle Ass’n v. Bondi*, No. 21-12314 (11<sup>th</sup> Cir. Mar. 9, 2023)**

The court found a Florida statute forbidding 18-to-20-year-olds from purchasing firearms did not violate the Second Amendment because the court found the statute to be consistent with regulations existing at the time of Reconstruction, when the Fourteenth Amendment was enacted. Thus, under the third factor of the *Bruen* test, the court upheld the statute.

## Section 1983

***Williams v. Radford*, No. 20-13364 (11<sup>th</sup> Cir., April 4, 2023)**

The court reversed summary judgment for defendants on almost all claims. It found that a reasonable jury could conclude that a captain had improperly retaliated against an inmate’s complaints about the conditions of his confinement by handcuffing him, sending him to administrative segregation, and “trashing” the inmate’s cell in the course of a search. The court affirmed summary judgment for the defendants as to the plaintiff’s allegation that the defendants had retaliated against him by planting a knife in his cell because he had an adequate hearing on that issue. The court reversed summary judgment on the excessive force claim against an officer who the plaintiff claimed to have beaten the plaintiff

while the plaintiff was handcuffed. Likewise, the court reversed summary judgment on failure-to-intervene claims brought against officers who were present when the excessive force event was alleged to have occurred.

# RECENT CRIMINAL DECISIONS From the United States Supreme Court

## First Amendment; Threatening Language

***Counterman v. Colorado*, 143 S. Ct. 2106 (2023)**

The Court rejected the defendant’s argument that his conviction for stalking arising from his posting of threatening Facebook messages violated the First Amendment. In a criminal prosecution for a true threat, the First Amendment requires proof that the defendant had a subjective understanding of the threatening nature of his statements. Recklessness, not any subjective intent on the defendant’s part to threaten another, is the proper mens rea for prosecution arising from threatening communications. Accordingly, the prosecution must show only that the defendant consciously disregarded a substantial risk that his communications would be viewed as threatening violence. This recklessness standard offers sufficient “breathing space” for protected speech, “without sacrificing too many of the benefits of enforcing laws against true threats.”

## First Amendment; Overbreadth

***United States v. Hansen*, 143 S. Ct. 1932 (2023)**

Title 8 U.S.C. § 1324(a)(1)(A)(iv), which provides criminal penalties for “encourag[ing] or induc[ing]” illegal immigration, was not facially overbroad in violation of the First Amendment. Even if the statute did reach some protected speech, there were not enough possible unlawful applications “to justify the ‘strong medicine’ of facial invalidation for overbreadth.”

## Confrontation Clause

***Samia v. United States*, 143 S. Ct. 2004 (2023)**

A non-testifying codefendant’s statement claiming that the defendant shot the victim was testimonial for purposes

of the Confrontation Clause analysis. However, the Confrontation Clause was not violated by the admission of a redacted version of the statement which did not directly inculcate the defendant and that was accompanied by an appropriate limiting instruction.

## Writ of Habeas Corpus; Successive Petitions

**Jones v. Hendrix, 143 S. Ct. 1857 (2023)**

Noting the government's interest in the finality of judgments, the Court held that a federal inmate may not file a second or successive motion to vacate his sentence under 28 U.S.C. § 2255 based on a more favorable interpretation of a statute that was adopted after his conviction became final.

## Double Jeopardy

**Smith v. United States, 143 S. Ct. 1594 (2023)**

The Venue and Vicinage Clauses require that criminal trials be tried in the state where the crime was committed and by a jury from that state. A violation of these clauses is remedied by a new trial in the proper venue, and the Double Jeopardy Clause does not prohibit such a retrial.

## Immigration

**Pugin v. Garland, 143 S. Ct. 1833, 1836 (2023)**

A noncitizen may be deported following a conviction for an offense "relating to obstruction of justice" under 8 U.S.C. § 1101(a)(43)(S), regardless that the offense does not require that an investigation or proceeding be pending for conviction. The Court noted that some obstruction offenses can occur when an investigation or proceeding is not pending, such as threatening a witness to prevent him or her from reporting a crime to the police.

# From the Eleventh Circuit Court of Appeals

## Writ of Habeas Corpus; Successive Petition

**Walker v. Crespi, No. 22-13872 (11<sup>th</sup> Cir. July 20, 2023)**

The district court properly construed the petitioner's pleading, labeled as a complaint under 42 U.S.C. § 1983 but challenging his Alabama trial court conviction and sentence, as a petition for writ of habeas corpus. Accordingly, the requirements of the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), including its bar on second or succes-

sive petitions, were applicable to the petition. The petitioner failed to receive authorization before filing the petition, so the district court properly dismissed the petition as an unauthorized successive habeas petition.

## Writ of Habeas Corpus; Ineffective Assistance

**Williams v. Alabama, No. 21-13734 (11<sup>th</sup> Cir. July 11, 2023)**

In this capital murder/death penalty case, the court concluded that trial counsel's failure to investigate the petitioner's background for mitigating evidence fell outside the range of "professionally competent assistance." It further found that it was reasonably probable that, absent the deficient performance, "the balance of aggravating and mitigating factors in [the petitioner's] case did not warrant a sentence of death." The petitioner thus met the standard of *Strickland v. Washington*, 466 U.S. 668 (1984) and was entitled to habeas relief.

### GET THE SUPPORT YOU NEED TO THRIVE IN YOUR LEGAL CAREER

SUPPORTING HIGH-ACHIEVING PROFESSIONALS & EXECUTIVES WITH:

- STRESS & BURNOUT
- DEPRESSION & ANXIETY
- RELATIONSHIP ISSUES
- CAREER CONCERNS
- TRAUMA & GRIEF

SECURE TELEHEALTH AVAILABLE THROUGHOUT ALABAMA

**FRANNIE HORN, JD EDS MA ALC NCC**  
ASSOCIATE LICENSED COUNSELOR UNDER THE SUPERVISION OF CAROL J. WHITE, LPC-S, SUPERVISING COUNSELOR



APOLLO COUNSELING

APOLLOCOUNSELING.ORG



(Continued from page 323)

## From the Alabama Court of Criminal Appeals

### Ala. R. Crim. P. 32 Preclusion; Cruel and Unusual Punishment

*State v. Cross*, CR-2023-0079 (Ala. Crim. App. June 23, 2023)

The trial court erred in granting relief pursuant to Rule 32 of the Alabama Rules of Criminal Procedure on the petitioner's challenge to her sentence. The petitioner's claim that her 20-year sentence under the Alabama Habitual Felony

Offender Act, Ala. Code § 13A-5-9, constituted cruel and unusual punishment was precluded under Ala. R. Crim. P. 32.2(c) as arising from an untimely petition. The trial court was not permitted to disregard this procedural bar that was properly asserted by the state. Regardless, the petitioner's sentence did not violate the Eighth Amendment; it fell within the proper statutory range for her identity theft conviction as a three-time prior felony offender, and it was not disproportionate or excessive.

### Ala. R. Crim. P. Preclusion; Juror Misconduct

*T.C.S. v. State*, CR-2022-1285 (Ala. Crim. App. June 23, 2023)

The postconviction petitioner's juror misconduct claim was not jurisdictional and was thus subject to preclusion under Ala. R. Crim. P. 32.2. The petition was untimely filed outside of the one-year limitation period of Ala. R. Crim. P. 32.2(c), and the court did not have to address his request for equitable tolling because the state correctly pleaded that the juror misconduct claim was precluded under Ala. R. Crim. P. 32.2(a)(3) and 32.2(a)(5) because it could have been raised at trial or on appeal.

### Sexual Abuse; Evidentiary Weight; New Trial

*C.L.A. v. State*, CR-2022-0651 (Ala. Crim. App. June 23, 2023)

The jury's verdict finding the defendant guilty of sexual abuse was not against the weight of the evidence. The defendant's claims that he was merely tickling his stepdaughter contrasted with her description of his abuse, and it was the jury's responsibility to determine witness credibility and to resolve their conflicting testimony. However, the court remanded for the trial court to conduct a hearing on the defendant's motion for a new trial. The motion alleged that a witness had come forward after trial and claimed that he heard the victim deny that the abuse occurred. The record indicated that the trial court intended to hold a hearing on the motion, but the motion was denied by operation of law before the scheduled hearing.

### Ala. R. Crim. P. 32; Amendment to Petition; Ala. R. App. 28 (a)(10)

*Burgess v. State*, CR-19-1040 (Ala. Crim. App. June 23, 2023)

In this capital murder/death penalty Ala. R. Crim. P. 32 proceeding, the trial court's refusal to permit an amendment to

**ALABAMA LEGAL & INVESTIGATIVE SERVICES, INC.**

**SERVICES**

- Statewide Process Serving >
- Skip Tracing >
- Tag Registration Searches >
- Vehicle Lien Searches >
- Private Investigative Services >

JIM HENDERSON                      CLAY HENDERSON

**(334) 478-4147 • www.alis-inc.com**



the petition was, at most, harmless, because the ineffective assistance of counsel claims asserted in the proposed amendment were insufficiently pleaded. The petitioner's remaining claims, including numerous other claims of ineffective assistance of trial and appellate counsel and freestanding trial court error, were insufficiently pleaded or meritless. Further, several arguments for reversal made on appeal failed to comply with Ala. R. App. P. 28(a)(10), which requires proper appellate briefing and argument; a "laundry-list approach" to arguments does not comply with the rule.

### **Writ of Mandamus; Timeliness of Petition**

***Ex parte Jones*, CR-2023-0229 (Ala. Crim. App. June 23, 2023)**

The defendant, charged with murder, sought "Stand Your Ground" immunity from prosecution under Ala. Code § 13A-

3-23; the trial court denied the motion following a hearing. He then petitioned the Alabama Court of Criminal Appeals for a writ of mandamus, but the court dismissed the petition as untimely. Pursuant to Ala. R. App. P. 21(a), a petition for a writ of mandamus must be filed within a presumptively reasonable time, which, in the case of this immunity proceeding, was 42 days from the trial court's order. The petition was filed outside of the 42-day period, and the court noted that a delay in the court reporter's preparation of the hearing transcript was insufficient to serve as good cause to allow it to review the petition. The defendant should have filed the petition within the presumptively reasonable time and simultaneously moved for permission to supplement it with the transcript once it was prepared and certified. ▲



### **WANT TO MAKE A DIFFERENCE?**

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

Call your local volunteer lawyers program to learn how you can help your community.

**(334) 517-2108**





## ABOUT MEMBERS, AMONG FIRMS

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

### Among Firms

The **Alabama State Department of Education** announces that **Tina Coker Hammonds** and **Peggy Rossmanith** joined as associate counsels.

The **Office of Governor Kay Ivey** announces that **Reid Harris** joined as deputy general counsel.

**Balch & Bingham** announces that **Clark Watson** rejoined as counsel in the Birmingham office.

**Bradley Arant Boult Cummings LLP** announces that **Brad Neighbors** joined as a partner and **Keith Windle** rejoined as a partner, both in the Birmingham office.

**Little Mendelson PC** announces that **Kimberly R. Ward** joined as special counsel in its Birmingham office.

**Robert C. Lockwood** announces the opening of **Lockwood & Associates,**

**Inc.** and that **Michelle S. Laughlin** joined as an associate. Offices are located at 527 Fountain Row SW, Huntsville 35801. Phone (256) 400-4522.

**Jim Pino and Associates PC** announces that the firm name is now **Pino Law Firm PC**, and **Jim Pino** and **Jeff Pino** are partners.

**Porterfield, Harper, Mills, Motlow & Ireland PA** announces that **Tabitha L. Dailey, J. Alston Dinning,** and **Cole N. Duncan** joined as associates.

**Sanders & Williams LLC** of Birmingham announces that **Vina Nguyen** and **Emily Coyne** joined as associates.

**Stone Crosby PC** announces that **Ivan E. Ingram** joined as an associate.

**Wolfe, Jones, Wolfe, Hancock, Daniel & South** of Huntsville announces that **Timothy P. Pittman** joined as an associate. ▲



**ALABAMA LAW**  
THE UNIVERSITY OF ALABAMA\*



**BALCH**  
& BINGHAM LLP

Introducing the Balch & Bingham Endowed Roundtable in Law and Business at The University of Alabama School of Law



Scan to learn more

PART OF THE  University of Alabama System

# LAWPAY<sup>®</sup>

AN AFFINIPAY SOLUTION

+



Alabama  
State Bar

Member  
Benefit  
Provider

“I love LawPay! I'm not sure why I waited so long to get it set up.

– Law Firm in Ohio

Trusted by 50,000 law firms, LawPay is a simple, secure solution that allows you to easily accept credit and eCheck payments online, in person, or through your favorite practice management tools.



22% increase in cash flow with online payments



Vetted and approved by all 50 state bars, 70+ local and specialty bars, the ABA, and the ALA



62% of bills sent online are paid in 24 hours

YOUR FIRM LOGO HERE

Trust Payment  
IOLTA Deposit

New Case Reference

\*\*\*\* \* 9995

TOTAL: \$1,500.00

VISA



POWERED BY  
LAWPAY

eCheck

DISCOVER

PAY ATTORNEY

PAYMENT  
RECEIVED



Get started at

[lawpay.com/alabar](http://lawpay.com/alabar)  
866-730-4140

Data based on an average of firm accounts receivables increases using online billing solutions.

LawPay is a registered agent of Synovus Bank, Columbus, GA, and Fifth Third Bank, N.A., Cincinnati, OH.



**Competitive rates on disability insurance thanks to you. All of you.**

**Help protect your income from the unexpected.**

**Members of the Alabama State Bar can apply for disability income insurance at a competitive price.**



**GET STARTED TODAY**

[www.isi1959.com/ASB](http://www.isi1959.com/ASB) • 1-888-474-1959



**MetLife**

ADF# DI2046.19  
L0122019586[exp0124][All States]  
[DC, GU, MP, PR, VI] © 2022 MSS