

# THE ALABAMA LAWYER

## THE ARTIFICIAL INTELLIGENCE ISSUE

From Robots to Rules: An Overview of AI and Its Current Legal and Regulatory Landscape  
**172**

Using AI in Litigation  
**179**

Navigating the Legal Implications of Artificial Intelligence  
**184**

The Ethics of Generative Artificial Intelligence in Law Practice  
**189**

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# THE ALABAMA LAWYER

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## On The Cover

Featuring a robotic hand poised over a keyboard, the cover symbolizes the ever-evolving realm of AI and its significant impact on the legal field.

*Designed by Olivia Walker, Alabama State Bar*

## FEATURE ARTICLES

### THE ARTIFICIAL INTELLIGENCE ISSUE

#### From Robots to Rules: An Overview of AI and Its Current Legal and Regulatory Landscape

*By Brandon N. Robinson and Amy Rodenberger*

172

#### Using AI in Litigation

*By J.R. Davidson*

179

#### Navigating the Legal Implications of Artificial Intelligence

*By Ashley Robinson and Anne M. Golson*

184

#### The Ethics of Generative Artificial Intelligence in Law Practice

*By Marcus R. Chatterton*

189

#### Alabama Lawyers Hall of Fame

194

## COLUMNS

### President's Page

164

### Executive Director's Report

166

### Editor's Corner

168

### Important Notice

171

### The Appellate Corner

198

### Memorials

208

### Opinions of the General Counsel

210

### Young Lawyers' Section Update

213

### Disciplinary Notices

214

### About Members, Among Firms

218

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Alabama Association of Paralegals.....	187
Alabama Court Reporting, Inc. ....	159
Apollo Counseling.....	199
Attorneys Insurance Mutual Of the South.....	158
Cain & Associates Engineers.....	173
CLE Alabama .....	167
Davis Direct.....	201
J. Forrester DeBuys, III .....	175
The Finklea Group, Inc.....	205
Insurance Specialists, Inc.....	220
LawPay.....	219
National Academy of Distinguished Neutrals .....	160
Schreiber ADR.....	215
Upchurch Watson .....	163



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# WE SHED *LIGHT* ON CONFUSING ISSUES



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Brannon J. Buck  
bbuck@badhambuck.com



## Are We Better Off Today Than We Were a Year Ago?

The title of this column poses a question, “Are we better off today than we were a year ago?” We often ask it of ourselves as we close out a calendar year. Politicians tend to ask some form of this question to likely voters. And as I pass the gavel to President Tom Perry (who will undoubtedly take the bar to higher and better places), I ask it of myself.

In July 2023, I began the year as president of the Alabama State Bar with one overriding goal – to make a positive contribution to the legal profession. To that end, we launched two initiatives. The first, **Choose Civility**, focused on lawyers. The second, **Justice for All**, focused on the public. But these two initiatives tell only a fraction of the story.

Through **Choose Civility**, we reached thousands of Alabama lawyers, multiple times, with messaging and lessons about the importance of re-establishing civility and collegiality as the culture of our bar. My fear in July of last year when we launched this campaign was that it would be met with despair. After all, bar associations have been preaching civility, collegiality, and professionalism for decades.

But my hunch was that, in this new environment where we spend more time working and communicating remotely than ever before, we need to renew our focus on civility and mutual respect. And you all agreed. Countless people have told me how thankful they are that the state bar is reminding our members to be courteous and to show each other just a bit of grace. The messaging has broken through, and many of us are now hearing a quiet voice that reminds us to practice law with civility.



The **Justice for All** project took most of the year to develop but will, I believe, make a lasting contribution to the access to justice effort in Alabama. Born from the reality that there are nearly one million Alabamians who cannot afford a lawyer and don't know where to turn for basic legal assistance, we designed and recently launched **Justice4AL.com** – a new website that serves as a one-stop-shop for legal aid and access to justice resources. It will be the virtual courthouse door to Alabama's legal system for those in need.

You will grow accustomed to seeing the **Justice4AL.com QR Code** in courthouses all over our state. People searching for help with a legal problem can simply scan the QR code and easily navigate the prompts on the website to find the assistance they need. Our hope is that all of you, our state bar members, will refer people to **Justice4AL.com** when you are unable to help someone yourself.

While **Choose Civility** and **Justice for All** were highlights, we did a lot more. For starters, we connected with our members in new and different ways. We hosted **OutREACH** events in Brewton, Jasper, Rainsville, Demopolis, and Montgomery. These regional conferences provided five hours of CLE credit, including a local bench and bar lunch panel, for hundreds of lawyers who typically do not attend our annual meeting. Attendees learned not only about this year's two initiatives, but also about the state bar's various member programs and benefits that often get overlooked. Be on the lookout for an **OutREACH** event in your area next year.

This past year also witnessed the revitalization of the Litigation Section, the Criminal Law Section, and the IP, Entertainment, and Sports Law Section. In addition, the Bench and Bar Committee hosted an enormously successful online CLE that was attended virtually by over 200 lawyers. During Pro Bono Month and Law Week, hundreds of our members spent thousands of volunteer hours in service to the public. And in January, we held our State Bar Leadership Conference where we brought together the officers and directors of bar associations and legal non-profits from all over the state for a day of education and collaboration.

These are just a few of the ways the Alabama State Bar made a positive impact this past year. We forget, though, how much our bar contributes to the profession *every year*. The list is exhausting – two bar exams, ethics advice, rules enforcement, the Volunteer Lawyers Program, Free Legal Answers, the Lawyer Assistance Program, Law Practice Management, insurance benefits, mental health counseling, specialization, legislative updates, the Client Security Fund, the Lawyer Referral Service, Leadership Forum, the Lawyers Hall of Fame, and so many others. Then, there are the active sections and committees which, in turn, offer countless more benefits to our members.

This work – the work of the Alabama State Bar – is critically important. Many of us take for granted that the law license we worked so hard to earn would be meaningless without a regulated

profession. For 100 years, our state bar has filled that regulatory function, and its success has depended, primarily, on the volunteer service of our members. Self-regulation is a privilege. We will retain that privilege only if we are good stewards of the profession and we regulate ourselves effectively and with integrity.

So, thank you! Thank you to everyone who volunteers time and energy to support our mission. And thank you to our state bar staff who so ably assist us in this endeavor. It would be impossible to name every individual who has made a meaningful contribution this year. But please know that the profession is quietly grateful for your service.

So, in the end, I hope and believe that the answer is yes – because of the work of so many of you, we are better off as a profession today than we were a year ago.

It has been the honor of my career to serve as president of the Alabama State Bar. Thank you for giving me the opportunity. ▲



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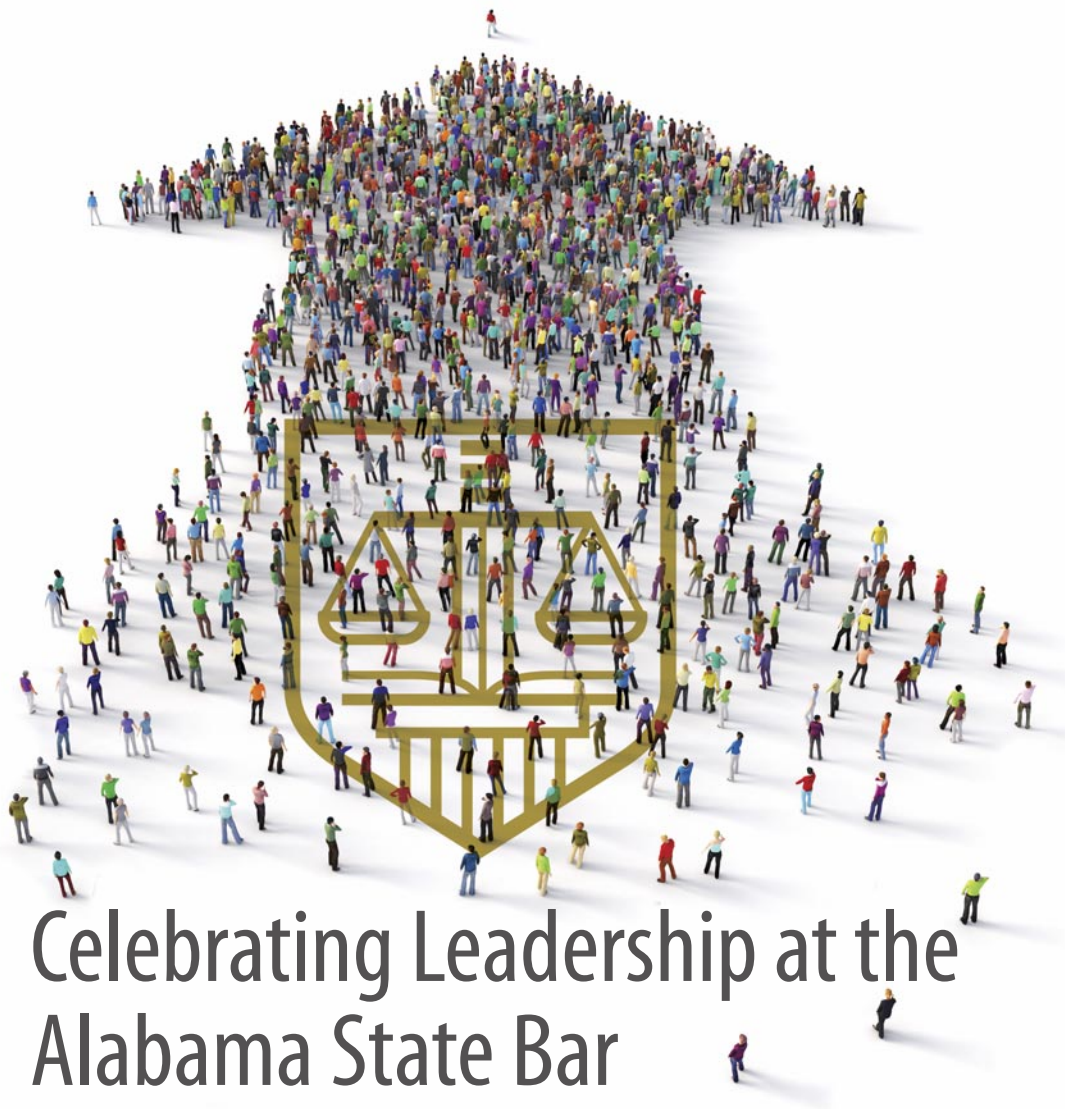
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## EXECUTIVE DIRECTOR'S REPORT

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



# Celebrating Leadership at the Alabama State Bar

Summertime always brings change to the Alabama State Bar. At our annual meeting, we bid farewell to our outgoing president and welcome a new one, along with a fresh set of elected and appointed leaders. It's a brief moment for reflection and gratitude and a pause before diving back into the year's work.

Looking back on Brannon Buck's tenure as our 148<sup>th</sup> president, his achievements are remarkable. From organizing five OutREACH CLE events statewide to launching the **Justice4AL.com** website and promoting civility, Brannon's dedication never wavered. Those who have worked alongside him know that professionalism isn't just a concept – it's woven into every interaction with Brannon. He exemplifies collegiality and respect, setting a standard that elevates our entire legal community.

Brannon's legacy extends beyond his presidency, particularly through his foundational work on our bylaws. His tireless efforts before and during his term will ensure a robust foundation for future generations of Alabama lawyers. His leadership style, characterized by humility and a focus on continuous improvement, embodies true service.

It has been a pleasure working with Brannon this year. His energy and dedication have been contagious, and we are grateful for his leadership. Thank you, Brannon, for your vision and commitment.

As we welcome our 149<sup>th</sup> president, Tom Perry, we look forward to the year ahead. Tom is a seasoned leader within

our bar, known not only for his ability to lighten any room with laughter but also for his deep commitment to helping and serving others.

Hailing from the "metropolis of Demopolis," as he fondly calls it, Tom brings a unique perspective shaped by his understanding of life and legal career opportunities in rural Alabama. He is passionate about bridging the legal gap and enhancing access to justice statewide. Tom's warmth and dedication to people are matched only by his infectious personality – we are fortunate to have him leading us.

We have an exciting year ahead, and it has already begun! ▲

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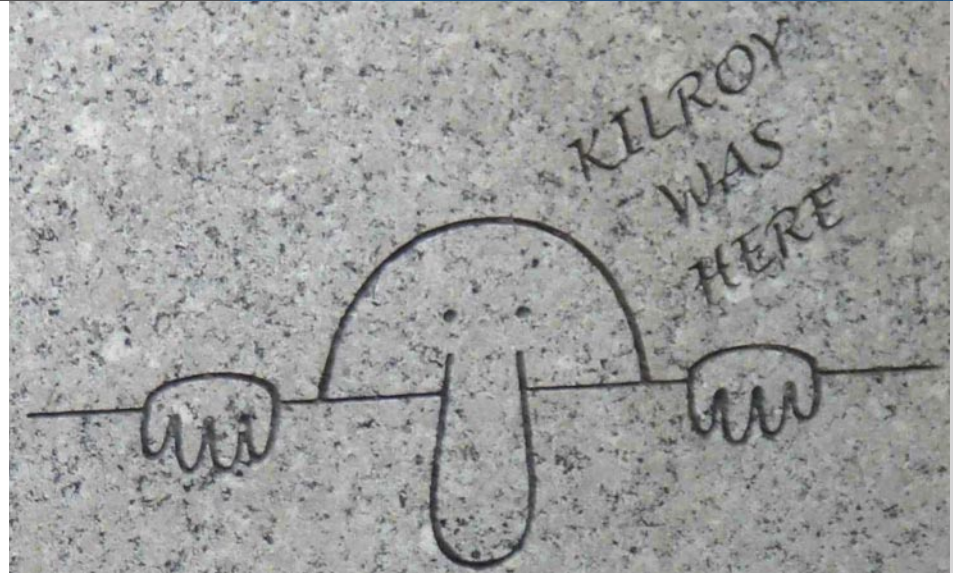
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## EDITOR'S CORNER

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# Mr. Roboto, Meet Mr. Rahimi

*You're wondering who I am (secret secret; I've got a secret)  
Machine or mannequin (secret secret; I've got a secret)  
With parts made in Japan (secret secret; I've got a secret)  
I am the modern\* man  
\*In Dennis DeYoung's voice, it's pronounced "modren"*

In 1983, the band Styx (with Alabamian Tommy Shaw on guitar) pressed a protest album, "Kilroy Was Here," a rock opera raging against perceived theocratic repression (embodied in then-recent legislative action requiring the disclosure of "backmasking," wherein hidden messages were engraved in the reverse-playing of vinyl albums). In Kilroy's desolate dystopia, the Majority for Musical Morality (MMM) has outlawed rock, and the protagonist **Robert Orin Charles Kilroy** has been imprisoned, guarded 24-7 by robots. In the album's opener "Mr. Roboto," Kilroy escapes with the help of a robot, by assuming the mask and the body of the robot.

The lead-in is a paean to Mr. Roboto's liberating power (Japanese in romanization, with English subtitles):

*Domo arigato, Mr. Roboto (thank you very much)  
Domo arigato, Mr. Roboto (thank you very much)  
Mata au hi made (Until we meet again)*

*Domo arigato, Mr. Roboto (thank you very much)  
Himitsu o shiritai (I want to know the secret)*

It begs the question of the song: What is the “secret”?  
In MMM’s economy, robots provide only sub-menial labor.  
Thus, as he is freed, Kilroy sings this encomium to his metallic  
master:

*Thank you very much, Mr. Roboto  
For doing the jobs nobody wants to  
And thank you very much, Mr. Roboto  
For helping me escape to where I needed to  
Thank you, thank you, thank you  
I want to thank you, please, thank you, oh yeah*

Performing “the jobs **nobody wants to,**” and “**helping me**  
escape where I needed to” – that is the robot’s role. But we  
humans have taken it all too far, and thus the singer laments:

*The problem’s plain to see, **too much technology**  
Machines to save our lives, **machines dehumanize***

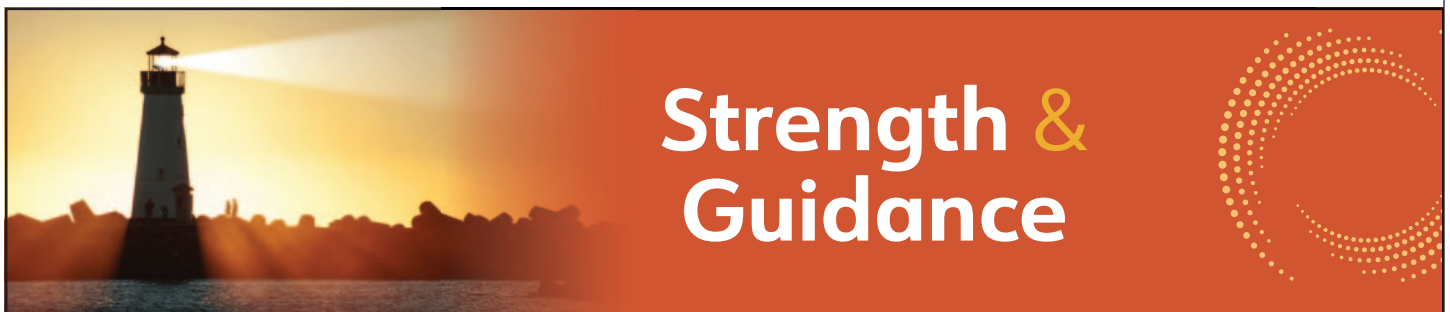
But ultimately the singer has escaped his confinement,  
and thus –

*The time has come at last (secret secret I’ve got a secret)  
To throw away this mask (secret secret I’ve got a secret)  
Now everyone can see (secret secret I’ve got a secret)  
My true identity...*

So what was the prisoner’s true identity? DeYoung  
screams as the track closes: *I’m Kilroy! Kilroy! Kilroy!* Yes, it’s  
Kilroy: that anonymous liberator scrawled by Allied troops  
upon Europe’s walls as town upon town was freed in the  
1940s. You see it in the art at the top of this piece, just as it –  
or it is as he? - appears at the National WWII Memorial  
(thanks for the pic, Wikipedia). Both liberator and liberated  
are the everyman.

\*\*\*\*\*

The last thing anyone (other than he himself) wanted was  
for Zackey Rahimi to have guns. He had battered his child’s



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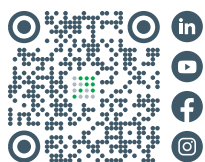


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A member benefit of the:



(Continued from page 169)

mother during a lunch date, then shot at Mom as she fled. Mom got a restraining order – entered with Rahimi's consent – finding he had committed "family violence" and was a continuing threat to Mom and Child, and (among other relief) suspending his gun license for two years. Later, he violated that order by threatening Mom additional times, then was charged with aggravated assault of another woman (with a deadly weapon, no less), and later became a suspect in five additional shootings. Police obtained a warrant and searched his home, where they found guns and ammo, even along with a copy of the order. (Can't make that up.) When Rahimi was charged under 18 U.S.C. 922(g)(8), which prohibits possession of a firearm while being the subject of a domestic violence order, he claimed a Second Amendment right to keep and bear his arsenal.

Second Amendment law is constitutional white dog. *Heller v. District of Columbia*, 554 U.S. 570 (2008) marked the start, only 16 years ago. Two years later came Fourteenth Amendment incorporation in *McDonald v. City of Chicago*, 561 U.S. 742 (2010). Then came *New York State Rifle & Pistol Assn., Inc. v. Bruen*, 597 U.S. 1 (2022), under which a State regulation of firearms is deemed valid only if it is consistent with the "Nation's historical tradition of firearm regulation." That "historical tradition" test, penned by Justice Thomas, garnered six votes – so it's on *terra firma*, right?

The question in *Rahimi* was really just an application of *Bruen*: is there a "historical tradition of firearm regulation" in the Nation, per *Bruen*, which protects a trigger-happy domestic batterer? The Fifth Circuit answered in the negative, applying *Bruen's* test and concluding there was no "historical tradition" of barring the Rahimis of the world from carrying.

So one might safely bet that Justice Thomas, the "modren man" who molded *Bruen* just 24 months prior, would be the logical source of authority for interpreting *Bruen's* test and explaining the proper outcome of *Rahimi*. Right?

Wrong.

Two weeks before this issue went to print, the Court upheld 922(g)(8)'s constitutionality 8-1, reversing the Fifth Circuit. Justice Thomas was the lone dissenter, his carefully crafted *Bruen* majority opinion so coopted (he might say so corrupted) as to be "masked."

But with what? Mr. Roboto's leaden face (watch the music video on YouTube) is flat, depthless. The *Rahimi* eight's vizard is Janus in a house of mirrors. Various opinions viewed *Bruen's* test as through a winding kaleidoscope, colored by the text, history, tradition, pre-ratification history, post-ratification history, and precedent of the Second Amendment.

These opinions read like debates of theologians – they sift and sort, but the cards just end up reshuffled, as if each creator rearranged the spectrum with her own prism.

A few years ago, reflecting on the late Justice Scalia's legacy, Justice Kagan famously remarked that "we're all textualists now." (You'll see that quote in a feature article in these pages). But *Rahimi* (and one could say *Bruen* as well) unapologetically goes beyond the text. If we stopped at the text, Mr. Rahimi would likely have a gun. But no one wanted that. Society couldn't afford that. So we had to "refine" *Bruen* (Justice Thomas has the prerogative to interpret his own majority opinion therein). The standard changed. The goalposts moved.

\*\*\*\*\*

To my point, then. Yes, I know - it's been a long time coming. We spend a lot of time talking about AI in law. We'll talk about it in this issue. How it will impact practice. How it should facilitate some tasks in matter handling. How its use should be disclosed, and at times limited.

How should we interpret words in a statute or in a contract? Google Gemini might well accumulate the world's extant wisdom on a term's usage. But that has limits, and properly so, at least at present. AI cannot reliably look forward. It cannot reasonably anticipate the next problem, one always precipitated by humanity's inexhaustible creativity in evading the proverbial rule. AI cannot think for itself. It does not live. AI has no capacity for making an ethical or moral judgment, which sometimes – not always, certainly, but *sometimes* — should properly be considered in forming a legal judgment.

Mr. Roboto was always designed to accomplish the menial task. He was not designed to think creatively. He was not designed to develop legal tests, much less apply them. He was not designed to analyze, but rather to execute tasks, given a set of data or parameters. His task was to facilitate the liberty of the individual – the anonymous individual. But Mr. Roboto has no agency in himself. Mr. Roboto was not designed to have moral judgment. Neither is AI.

The tool is not the laborer. Only Kilroy can free Kilroy. What does that really mean, you might ask? Like you, I "want to know the secret." *Himitsu o shiritai*.

\*\*\*\*\*

P.S. – It's not "the" secret, but here's a little one: my headshot at the beginning of this column was created by AI. ▲



## IMPORTANT NOTICE

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# Harold Albritton Pro Bono Leadership Award

The Harold Albritton Pro Bono Leadership Award seeks to identify and honor individual lawyers who through their leadership and commitment have enhanced the human dignity of others by improving pro bono legal services to our state's poor and disadvantaged. The award will be presented in October, which is officially designated Pro Bono Month. To nominate an individual for this award, submit no more than two single-spaced pages that provide specific, concrete examples of the nominee's performance of as many of the following criteria as apply: 1. Demonstrated dedication to the development and delivery of legal services to persons of limited means or low-income communities through a pro bono program; 2. Contributed significant work toward developing innovative approaches to the delivery of volunteer legal services; 3. Participated in an activity that resulted in satisfying previously unmet needs or in extending services to underserved segments of the population; or 4. Successfully achieved legislation or rule changes that contributed substantially to legal services to persons of limited means or low-income communities. To the extent appropriate, include in the award criteria narrative a description of any bar activities applicable to the above criteria. Nominations must be submitted by Aug. 1. For more information about the nomination process, contact Linda Lund at (334) 269-1515, ext. 2246, or [linda.lund@alabar.org](mailto:linda.lund@alabar.org).



# From Robots to Rules:

## An Overview of AI and Its Current Legal and Regulatory Landscape

*By Brandon N. Robinson and Amy Rodenberger*

Artificial Intelligence is “having its moment,”

a moment that may not last forever, but will certainly have profound effects on our lives in 2024 and beyond. As Secretary of State Anthony Blinken said: “A global technology revolution is now underway. The world’s leading powers are racing to develop and deploy new technologies like artificial intelligence... that could shape everything about our lives – from where we get energy, to how

we do our jobs, to how wars are fought.”<sup>1</sup> Secretary Blinken has not been the only voice chiming in on this transformative era in technology. AI is being discussed on our television screens; in our newsfeeds; at our schools; churches, kitchen tables, and grocery stores; and, of course, by the regulatory powers that be in the United States.

Like many attempts to regulate emerging technologies, the development of a regulatory framework around AI has moved at a cautious pace compared to the rapid advancements in the technology itself,



and likely will continue to do so. Right-sizing regulation of rapidly evolving technology can be tricky: over-regulation can restrict trade and competition, create an uneven playing field (i.e., pick “winners and losers”), stifle innovation and market forces, and sometimes reduce both consumer and business welfare. On the other hand, under-regulation can lead to unpredictable, inconsistent, or even deceptive products or services; a lack of transparency and accountability; intellectual property disputes; and for consumer technologies, security and privacy concerns. One thing is clear, however – that AI has moved from experimental and academic to mainstream and operational – as more businesses and individuals alike incorporate the use of AI into their daily commercial and personal lives.

Artificial intelligence in some form (e.g., machine learning) has been around since the 1950s, when British mathematician Alan Turing began exploring its possibilities.<sup>2</sup> The term was said to be coined by computer scientist John McCarthy in 1955, when he developed the first AI programming language, Lisp.<sup>3</sup> However, the last decade has witnessed dramatic increases in computing power, a marriage of AI capabilities with “big data,” and advancements in deep learning, neural networks, and large language models, all of which have converged to lead to breakthroughs in artificial intelligence at a dizzying pace and through a variety of applications. Thus, as regulators continue to grapple with “big tech,” a sentiment has emerged – across political aisles, tech industry, and even among the public – that it *is* time for some form

of regulation of AI, and that the time for such regulation is *now*.<sup>4</sup> As of the summer of 2024, we are still just beginning to see what that regulation might look like.

## What Is AI Anyway?

Before we discuss the regulation of AI, however, it is important to clarify what AI *actually* is, something even our lawmakers allegedly admit they do not fully grasp.<sup>5</sup> The umbrella term “AI” is thrown around in the media and certain circles without the specificity required to fully understand the benefits and risks associated with certain types, uses, and applications of artificial intelligence. Understanding AI is difficult for many reasons. For starters, it involves computer and data science terms that most of us have never heard before nor care to understand in more than a general sense. Additionally, and perhaps an effect of the difficulty in explaining AI rather than a cause, there is no universal definition of AI. Even within the U.S. government itself, there is no definite consensus, just common aspects of a definition. For example, the National Artificial Intelligence Act of 2020 defines AI as:

“[A] *machine-based system* that can, for a given set of *human-defined objectives*, make *predictions, recommendations or decisions* influencing real or virtual environments.”<sup>6</sup>

The proposed Future of Artificial Intelligence Act, meanwhile, defines AI as:

“Any *artificial systems* that *perform tasks* under *varying and unpredictable circumstances*, without *significant human oversight*, or that can learn from their experience and improve their performance.”<sup>7</sup>

Both of these definitions are accurate descriptions of AI, but they clearly do not say or mean the same thing. Numerous definitions like these are currently peppered across various pieces of legislation, regulations, and industry standards.

Adding to this confusion is the fact that AI itself is an umbrella term, within which there are a great many different types of AI. While

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“AI” is today’s simple buzzword, and the newest and most advanced iterations of AI garner the most attention, not all AI tools are new, nor are they all colloquially known as AI. Spell check on our Word documents, suggested content on our social media feeds, and traffic apps that help us avoid congestion are all applications of AI used already in our daily life, but that we may not necessarily lump in the same category as other, newer AI technology. This means that AI is not one single thing that needs to be regulated; it is a myriad of tools, models, algorithms, etc., each of which takes many forms and will change our lives in different ways. There is “narrow AI,” “general” or “strong” AI, and “superintelligent AI.” There is machine learning, deep learning, natural language processing, and the use of AI with large language models (often thought of as “generative AI”). “Narrow AI” refers to AI that can perform only narrow sets of tasks. Contrast these with “broad AI,” which we see growing exponentially today,<sup>8</sup> that enables groups of AI systems to work together and perform more complex sets of tasks, the kinds of things that previously only fictional machines could do. Each of these types of AI has its own capabilities and limitations and comes with its own set of risks and benefits.

OpenAI’s ChatGPT is one of the first examples of broad AI to gain mainstream popularity and arguably launched today’s AI frenzy. ChatGPT uses generative AI technology to interpret massive amounts of data; find patterns and statistical likelihoods within that data; and “generate” text, images, movies, and music in response to human prompts based off of what it has learned from the data.<sup>9</sup> Although it

Even today’s top computer scientists and tech engineers cannot predict all of AI’s capabilities over the next decades; what we *do* know, however, is that such potential also carries a corresponding amount of risk.

was first introduced only two years ago, today ChatGPT already has valid competitors in Google, Microsoft, Amazon, and more, and the advances from these and other tech companies do not seem to be slowing down.<sup>10</sup> Building off the success of generative AI models and the other advances in broad AI technology, these companies are building AI technology that really will “shape everything about our lives,” as Blinken said, from entertainment to health to finances and beyond.<sup>11</sup>

AI continues breaking and recreating the boundaries of its definition, and this might mean a set definition will not emerge for some time. This is as exciting as it is terrifying. There is an open-ended amount of potential in AI technology because of how “broad” it is and how quickly it is advancing. Even today’s top computer scientists and tech engineers cannot predict all of AI’s capabilities over the next decades; what we *do* know, however, is that such potential also carries a corresponding amount of risk. Some risks of AI are already known, some are sector-

or application-specific, and some are relevant only to the developers of the AI technology, not those who utilize it. For these and other reasons, regulatory frameworks around AI will likely: (i) be dispersed across multiple agencies, sectors, and jurisdictions within the US; and (ii) continue to evolve along with the technology.

The current regulatory trend in the United States already exemplifies this multifaceted and decentralized concept. It involves overarching federal frameworks highlighting basic rights, executive agency-specific rulings targeting sector-specific issues, implementation and enforcement of more general laws to cover AI-specific risks, various Congressional bills attempting to either address AI comprehensively or tackle discrete issues more narrowly, and individual state efforts to address all of AI’s promises while mitigating its risks to society. In the following sections, we present an overview of a few recent examples of regulatory efforts at various levels.

## International Action

Just as the European Union took the lead on privacy regulation with the its General Data Protection Regulations (“GDPR”) (which we later saw reflected in U.S. state laws, such as California’s Consumer Privacy Act, later amended by the California Privacy Rights Act), it passed the first comprehensive AI regulation this spring with the E.U. AI Act. This followed years of debate among representatives of the European Commission, the European Parliament, and the Council of

the European Union on the shape and contents of the Act.<sup>12</sup> The resulting legislation classifies applications of AI into three levels of risk: AI that creates unacceptable risk is banned; AI that creates high risk is subject to specific rules and requirements; and AI that poses little or low risk is left largely unregulated. The Act also differentiates between developers and deployers (or users) of AI, with the majority of obligations falling on the former. In accordance with the Act's provisions, the European AI Office was established within the Commission to oversee the Act's enforcement and implementation.<sup>13</sup>

Like with the GDPR, the E.U.'s regulation will likely impact U.S. and other businesses outside of the E.U. that wish to operate in the E.U., and some "high risk" AI systems could even be completely banned. And while the E.U. is the first to pass such regulations, the AI Act will likely serve as a model for future regulations by more authorities. By the end of 2023, numerous other countries, including China, India, and Japan, had proposed their own AI regulatory frameworks, some comprehensive in nature like the E.U.'s, but others more specific. Additionally, as of April 2024, the United Nations General Assembly also adopted its first resolution on AI rules, with all 193 member nations supporting the adoption.

## Federal Executive Action

In the U.S., the President and the Executive Branch have addressed AI in multiple ways, including by setting forth guiding principles to companies and agencies on the


creation and use of AI and by demanding concrete action across the Executive Branch. One of the earliest examples of executive action was the "AI Bill of Rights," published in October 2022 by the White House Office of Science and Technology Policy.<sup>14</sup> It focuses on protecting civil rights and democratic values in the age of AI and sets forth five principles to "guide the design, use, and deployment of automated systems to protect the American public in the age of artificial intelligence."<sup>15</sup> These non-binding principles lay out a framework of both potential threats from AI and general standards to mitigate these threats and highlight what the federal government will be most focused on in the coming years. They include ensuring that: (1) AI systems are safe and effective; (2) algorithms are fair and nondiscriminatory; (3) individual privacy rights are respected; (4) readily available notice is given to citizens about when and how AI is used; and (5) the design, development, and implementation of AI keeps human rights and well-being at the forefront.

In October 2023, a year after the AI Bill of Rights was published, the White House announced President Biden's Executive Order ("EO") on the Safe, Secure, and Trustworthy Development of AI, the third and most comprehensive order on AI to date.<sup>16</sup> Like the Bill of Rights, this EO emphasizes the core principles needed to responsibly develop and use AI systems while addressing its potential risks: primarily concerns associated with bias, discrimination, and privacy. However, it also highlights the importance of AI innovation in the U.S. and the desire of

the Executive Branch not to stifle development with overbearing regulations. Most concretely, it directs federal agencies to develop specific action plans for responsible AI use within their respective jurisdictions. In addition, it requires these agencies to address and report on key security risks arising from their AI use and to conduct risk assessments on AI use in critical infrastructure sectors.

## Agency Action

Since the President issued the EO, federal agencies have begun developing action plans to address AI-related issues within their specific areas of expertise and have taken other steps to further their



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individual studies and deployments of AI. Many agencies appointed internal chief AI officers as initial steps in this process.<sup>17</sup> Additionally, as of the spring of 2024, numerous agencies, including the Department of Defense (DOD), the Department of Transportation (DOT), the Treasury, and the Department of Health and Human Services (HHS) have completed their risk assessments.<sup>18</sup> Finally, different agencies have proposed rulemakings specific to their sectors on a variety of far-ranging issues. For example, the DOT has focused on self-driving cars amongst other AI transportation technologies, and the Food and Drug Administration is prioritizing regulating AI for the development of medical products.<sup>19</sup>

These same agencies and others are also working to apply existing general legislation to new issues arising from AI. Many of these efforts relate to anti-bias and anti-discrimination legislation and include enforcement of bills like the Equal Credit Opportunity Act, the Fair Housing Act, and Title VII of the Civil Rights Act.<sup>20</sup> This has been seen with the Securities and Exchange Commission (“SEC”) and Consumer Financial Protection Bureau (“CFPB”), as both agencies have separately proposed rules ensuring financial systems in the U.S. using AI in their decision making processes remain unbiased for all consumers.<sup>21</sup> Other efforts by agencies relate to ensuring existing privacy-related laws, such as the Health Insurance Portability and Accountability Act (“HIPAA”), the Fair Credit Reporting Act (“FCRA”), and the Children’s Online Privacy Protection Rule (“COPPA”), remain enforced

**The FTC’s mandate has always been interpreted broadly, and the organization has already begun scrutinizing AI within this context, specifically in areas like misleading AI practices, unfair data collection, and algorithmic biases.**

in spite of the onslaught of AI technology.

Notably, the Federal Trade Commission (FTC) has emerged as a leader in the agency efforts to mitigate AI risks, focusing specifically on risks that are created by companies and that impact consumers. They assert jurisdiction derived from Section 5 of the FTC Act, which prohibits unfair or deceptive acts and practices by businesses.<sup>22</sup> The FTC’s mandate has always been interpreted broadly, and the organization has already begun scrutinizing AI within this context, specifically in areas like misleading AI practices, unfair data collection, and algorithmic biases. For example, on February 27, 2024, as a result of an FTC lawsuit, a federal court temporarily shut down a business opportunity scheme that lured consumers to invest \$22 million in online stores, using claims that their use of AI would ensure success and profitability for consumers who agreed to invest.<sup>23</sup> The FTC has no specific AI rules yet, but additional

efforts to build on this Section 5 enforcement and to protect citizens from AI use more broadly are expected and will likely set the pace for the rest of the administration.<sup>24</sup>

## Congressional Action

Congress has also been actively attempting both to understand AI and to mitigate its risks in numerous, although not completely cohesive, ways. The federal legislature has held hearings across committees and parties; proposed legislation that addresses AI comprehensively but also targets specific AI-areas, including national security, research and development, and election security; and announced competing, bipartisan frameworks to guide forthcoming AI legislation in a holistic manner. The federal legislature also hosted a well-attended forum on AI in the fall of 2023, where Senate Majority Leader Chuck Schumer (D-NY) gathered two-thirds of the Senate along with key AI tech CEOs, civil rights leaders, and labor rights representatives to discuss potential AI legislation. Then, in May 2024, the Senate released a “Roadmap for Artificial Intelligence” that recommended further study into how existing regulations can apply to AI but did not itself create any explicit guardrails.<sup>25</sup> This widespread and bipartisan interest and support of AI regulation suggests that at least some of the more targeted bills will be passed, although the odds of comprehensive legislation passing in this year’s legislative session are uncertain.

## Individual State Action

There has also been a flurry of state activity over the past year with respect to AI, differing widely across the country, but that has mirrored federal efforts in that some proposals address discrete concerns while others address AI more holistically.

The numbers representing the breadth of state action speak to the importance of these issues at the state level. For example, in 2023, 25 states introduced AI bills. Most prominently, at least 12 states have passed bills to address privacy concerns, including California.<sup>26</sup> Several other bills have addressed bias and discrimination, fair election protections, and children's rights with respect to generative AI content. Several states, including Alabama, have passed laws mandating further government research on AI's potential.<sup>27</sup> Other states even went so far as to establish AI Advisory Councils and specific state divisions to address AI.<sup>28</sup> Colorado was the first state to pass a comprehensive AI law, in May 2024, that requires developers and deployers of AI to comply with various reporting and compliance obligations. Finally, the National Conference of State Legislators, a nonpartisan organization of sitting state legislators, published an AI report in the summer of 2023 that focused on exploring best practices for state regulations, building a consensus around AI definitions, and raising awareness on the risks of AI.<sup>29</sup> As states have historically done, these efforts and experimental approaches

to AI legislation will demonstrate what ideas work and what ideas do not and will hopefully guide future federal legislation and agency action.

## Conclusion

While this piecemeal approach to AI regulation may initially be cause for confusion and distress among those innovators and entrepreneurs who may be impacted, it is not unique in how our country has historically approached new and emerging technologies. Indeed, consider the introduction of the automobile or the airplane. When first introduced to the public, there were few, if any, existing guardrails in place to protect people from the risks of these technologies. Slowly but surely, both federal and state regulation evolved along with the technologies. Seatbelts were introduced and later mandated. States developed speed limits and required driver's licenses for which driving tests were required. Today, the Department of Transportation ("DOT") and Federal Aviation Authority ("FAA") regulate the automobile and aviation industries at the federal level, while the Transportation Security Administration ("TSA") is responsible for ensuring the safety and security of the traveling public, alongside state highway safety offices and departments of transportation. There are safety standards for companies that create cars and planes and serious consequences when violations occur. This evolution reflects our philosophy that technology is neither good nor bad, but rather

dependent on how it is used, by whom, for what purposes, and under what restrictions or standards – all designed to harness the benefits of technology while mitigating its risks. And AI is no different.

As the AI regulatory framework grows in the U.S., there will continue to be new and evolving laws to match the new and evolving technologies. We should expect more activity in the months and years that follow, as many federal and state branches of government across the country, as well as technical, standards, and industry organizations, prioritize how to address AI most effectively. As President Biden's Executive Order idealistically stated, the overarching goal of AI regulation should be "to ensure that America leads the way in seizing the promise and managing the risks of artificial intelligence."<sup>30</sup> The past year gave us a small glimpse of how our federal and state governments intend to address these goals, and 2024 will continue to be a banner year in the AI regulatory space as more regulations are proposed and passed. ▲

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# Using AI in Litigation

*By J.R. Davidson*

## You Are Already Using Artificial Intelligence

Today, few of us ever visit our firm or law school libraries to research a legal question in printed material. LexisNexis went online in 1996.<sup>1</sup> Westlaw.com was released in 1998 as the first web-based version of Westlaw.<sup>2</sup> Whether we acknowledge it or not, we have some basic level of trust that LexisNexis has properly “Shepardized” and Westlaw has properly “KeyCited” the precedent we research. Faith in collectively accepted precedent is the fiat currency of the practice of law. But how do these search engines really work?

According to the Berkeley Law Library, “Both Westlaw and Lexis use a default Natural Language

search, similar to Google’s: type a keyword, a group of terms, or a question, and press Enter. Results appear ranked for relevancy.”<sup>3</sup> Natural language search is powered by natural language processing, which is a branch of artificial intelligence, or “AI.” Even if you’re searching with Boolean operators (the “terms and connectors” most of us forgot after our legal writing classes), whatever database you are querying likely has used some form of machine learning to organize and restructure the cases, statutes, and secondary sources it contains. If you are using Westlaw, LexisNexis, Trellis, Fastcase, Casetext, or any of the handful of other search engines or their sub-features, the odds are high that you are already using “AI” in some format.

## Docket Alerts/Client Alerts

The easiest way to begin using AI in litigation is to sign up for a docket alert service (e.g., Docket Alarm, Docket Alerts, etc.).<sup>4</sup> In fact, most commercial litigators tap into new business opportunities by registering for alerts with some form of docket alert service.

At this point you may be asking: Do I not already receive alerts from Alacourt or PACER for cases I am involved in? Does opposing counsel not have to serve me with a copy of every filing? Sure, but even assuming you automatically receive alerts for cases where you are counsel of record, what about cases against your clients' competitors, or cases based on facts or questions of law similar to those your client is facing? While setting up multiple alerts for cases you are interested in may be cumbersome, legal analytics platforms with alert-only type services, like Courthouse News Service and Trellis, can help find similarly situated cases, generate alerts, and use the information these cases provide for deep legal analysis.

Trellis, for example, uses AI to provide clients with daily filing reports for new cases and docket entries.<sup>5</sup> A daily filing report is much more than a traditional docket alert. It is a spreadsheet that contains detailed coverage of newly filed state and federal litigation actions, filed in a specific jurisdiction, curated just for the user. Reports can be emailed to subscribers every morning and include all case metadata (i.e., judge, party, counsel, practice area) as well as direct links to the docket and the complaint. This saves the time and expense of having an associate or staff member constantly check a court's docket.<sup>6</sup>

## Generative AI

But doesn't AI often get things wrong? We all know, for example, the horror story of the New York attorneys who were sanctioned for filing a brief citing fake cases generated by ChatGPT.<sup>7</sup> At one level, time and use refine the output AI provides a user. Unlike the machine learning and natural language processing AI we have already been using (whether we knew it or not), *generative* AI ("GenAI") technologies like ChatGPT (developed by OpenAI), Gemini (Google), Claude (Anthropic), and Llama (Meta), just to name a few, can create new material. These GenAI platforms typically operate in the form of question and response

between the user and a "chatbot." GenAI programs are built around, or "trained" on, among other things, large language models ("LLM") consisting of billions of words of ordinary language.<sup>8</sup> Most of us are familiar with chatbots, but now with GenAI powered chatbots, not only can you ask questions, you can tell the chatbot to do something based on certain instructions (a "prompt") and it will *generate* the output in the form of something new: new text, new images, new audio, etc.

OpenAI made ChatGPT available to the public in November 2022, and its growth and adoption in use has exploded exponentially. With the recent explosion of GenAI technology, the legal world is slowly reacting to what could be landmark changes in the way attorneys practice law. This is true across both transactional and litigation practices. Lawyers are finding ways to incorporate AI, including GenAI, into their practices while still protecting client data, maintaining privilege, and avoiding pitfalls like those mentioned in the New York case above.<sup>9</sup>

## Be Not Afraid

Lawyers should embrace AI with the understanding that it is a supplement, not a replacement, for human legal reasoning. "[J]ust like artificial intelligence is not intelligence, machine learning is not learning."<sup>10</sup> It is almost cliché at this point, and that is because it is true: AI is never going to fully replace lawyers, but lawyers using AI may replace lawyers who do not.

When LexisNexis and Westlaw were digitized, lawyers who became adept at using Boolean operators combined with natural language search immediately gained an advantage over those who kept digging through the old Michie's and West's reporters. But lawyers still have to take the materials Westlaw or LexisNexis provides to craft arguments for their clients. Similarly, while AI and GenAI can now take some of the legwork out of legal research and writing, they are never going to replace a human attorney's ability to make value judgments. AI is only as good as the information it is trained on and the lawyer using it.

So how can attorneys, especially litigators, use AI to their advantage, while remaining ever mindful of its limitations? The following paragraphs will walk through just a few examples of how various AI technologies can give litigators a competitive edge.



## Pleadings and Motion Practice

What do you do with these filings and their respective metadata? Let us use a real-world example. Everyday legal practice is filled with stories about attorneys asking their colleagues for anecdotes about a judge, a jurisdiction, a client, or opposing counsel – anything that may give them an advantage in litigation. What if you had this information at your fingertips via AI, and what if it were measurable?

Imagine you represent a manufacturer, as either in-house or local counsel, and your client is being sued for a workplace injury. You can now use a legal analytics platform to catalog every dispute filed against your client and its industry peers by browsing through an archive of daily filings reports and registering for new alerts for any cases involving workplace injuries. The outcome of this simple practice can reveal astounding, otherwise unidentifiable, insights about the current litigation landscape, all displayed in an interactive dashboard:

- How are the judges in different jurisdictions handling these types of cases?
- What types of arguments are holding sway?
- Does opposing counsel tend to settle early? Do they usually push through to trial?
- What are typical settlement values for cases with similar facts?
- Is there anything your client can put into practice now to help them mitigate their risk of exposure to litigation in the future?

This information can then help you “optimize” your motion practice. You can make a statistically informed decision on what motions are likely to succeed in a given forum. This in turn will likely save you time and your client money.<sup>11</sup>

What about the actual work of motion practice, that is, drafting the documents? Most practicing attorneys would not dream of drafting a pleading or motion by

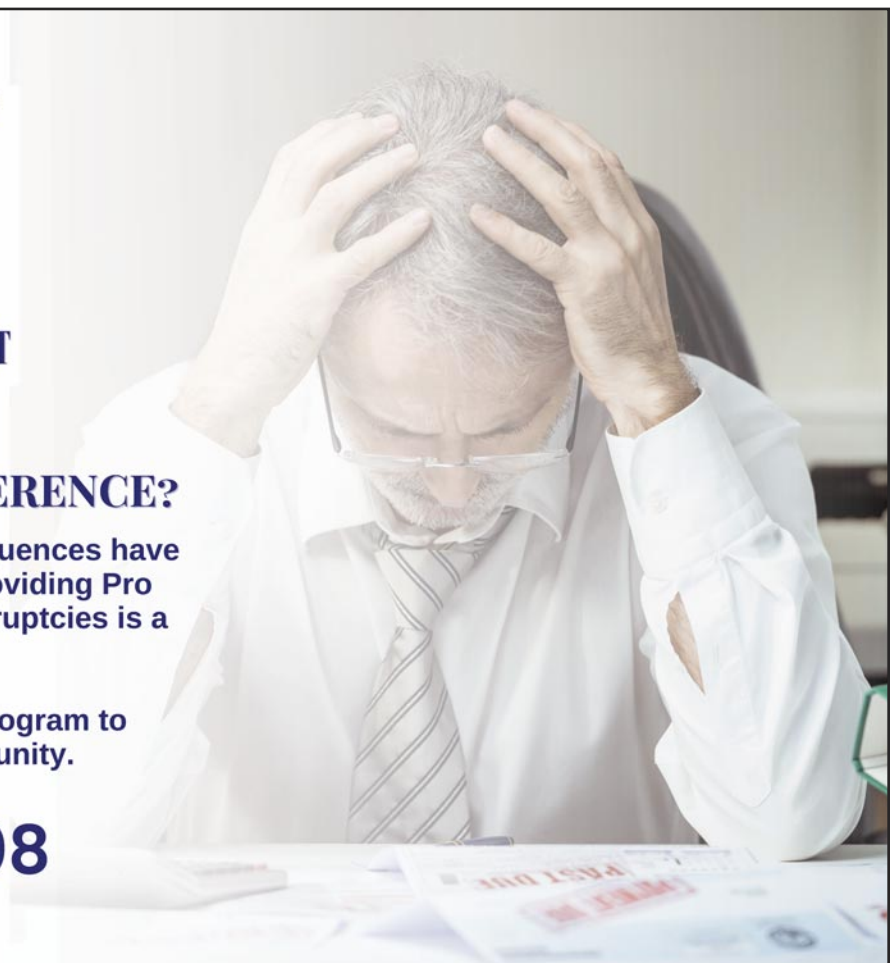
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hand, from scratch. We take bits and pieces of previous filings, cases, and other templates we have saved, and we mold them into a document that suits our client's needs. What if your docket alert or legal analytics service provided drafting capabilities within their respective platform, allowing you to copy and paste from filed documents which their system has already "read" (performed optical character recognition, or "OCR")?

But is OCR not just a fancy way of converting a PDF to Word to cut snippets from old documents? Could a good associate with Adobe not do the same? That is true. But what if you could train AI to *write like you write*.

Picture yourself as a senior partner who wants to work fewer hours while still guiding the younger attorneys at the firm. You can now mold certain tech to mimic your hard-won legal acumen. As legal tech experts Noah Waisberg and Dr. Alexander Hudek have noted, "[o]ne of the most interesting implications of artificial intelligence is that if you teach it to be like you, to answer questions as you would, or to make the legal decisions that you would make in a specific situation, you could – effectively – be doing work when you're not actually doing work. Consequently, the retiring senior partner mentioned above could be vacationing in the Cayman Islands while his insights are benefiting attorneys in his former firm. If this sounds closely like a 'robotic' attorney, it is, minus the tailored suits and cliché stock photos."<sup>12</sup> These developments are real, and they are happening in real time.

## Discovery

Most litigators are familiar with electronic discovery ("eDiscovery") platforms that help manage document review of electronically created information. These services help attorneys filter through mountains of emails, letters, contracts, invoices, receipts, and other electronic documentary evidence (or print material that has been digitized), both to provide relevant discovery responses and to scour opposing counsel's production. Still, reviewing hundreds or thousands of emails to find the handful that are responsive to a discovery request is time-consuming, expensive, and not always successful.

AI is having a tremendous impact on this search-and-review phase of discovery. While eDiscovery platforms have long been able to perform OCR to sort and filter otherwise unsearchable documents, this has only

marginally reduced the time spent manually reviewing eDiscovery material. With AI, attorneys can now go through a relatively small sample of documents to train the eDiscovery platform on what they are looking for. The system can then perform a search of the remaining records to retrieve relevant material, while simultaneously documenting the math and statistical reasoning it used to later justify its methods to both the requesting attorney and the court.<sup>13</sup>

Solo practitioners and small firms can use this technology to triage their document review, allowing them to take on larger and more complex cases with confidence. In-house counsel can similarly use these features to reduce spending. “You can do data discovery and review with AI, and then use outside counsel to do a more thorough analysis of the most relevant data.”<sup>14</sup>

## Conclusion

Legal analytics platforms are unpacking the silos that have previously rendered data inaccessible to all but the largest of firms that had the staffing capabilities to chase it down. The practice of law is moving away from gut instinct and towards actionable data. However, “Data, like technology, has no intrinsic value,” writes Mark Cohen, CEO of Legal Mosaic.<sup>15</sup> “It acquires enormous significance, however, when it is mined, parsed, and turned into information that is analyzed and crystallized by data analytics.”<sup>16</sup>

According to Waisberg and Hudek, “Today, AI enhances lawyers, rather than replacing them. AI is helping lawyers do work that they never would have been able to do before. Instead of framing the decision as whether to trust AI or a human lawyer, consider whether you should trust a lawyer doing work the same old way over a technology-enhanced one. We wouldn’t.”<sup>17</sup>

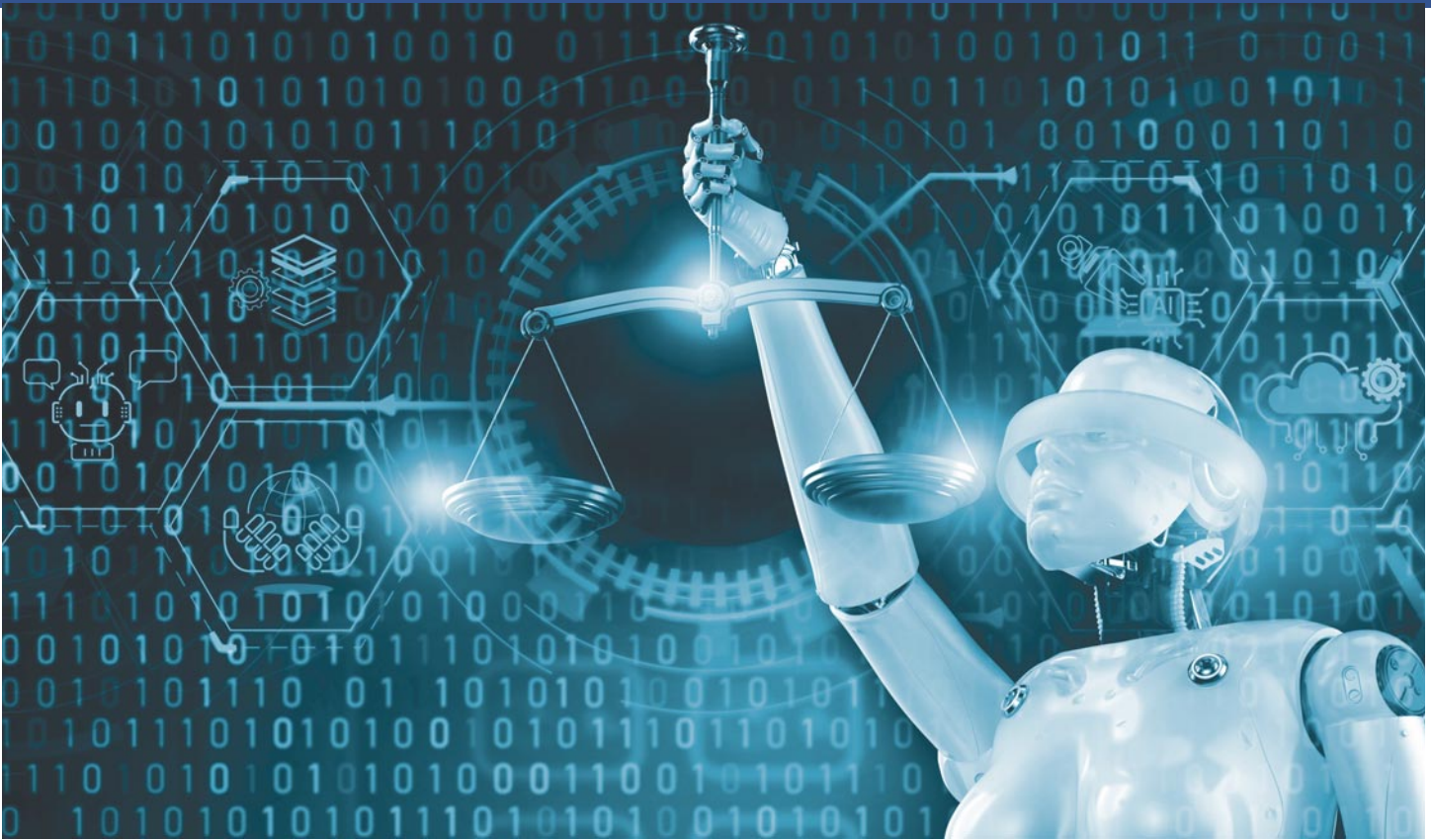
Attorneys are constantly required to make judgment calls, at any given moment, based on information about dozens of cases. Whether we know it or not, we each do this by mentally developing our own probability distributions. Each has its own shape and range of possibilities. We know that some outcomes are more likely than others and that some predictions command more confidence than others. Some attorneys make these decisions on gut feeling and instinct. Some rely on legal analytics. *Why not use both?*<sup>18</sup> ▲

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# Navigating the Legal Implications Of Artificial Intelligence

*By Ashley Robinson and Anne M. Golson*

## Artificial Intelligence, What Is It?

The terms “artificial intelligence” and “AI” are nearly ubiquitous, but what do they really mean? Despite their pervasiveness, there is currently no uniform dictionary definition of either term. The authors generally understand AI to refer to computer technology with the ability to simulate human intelligence by analyzing and learning from data to reach conclusions, finding patterns, and predicting future behavior. But why not ask the experts? Well, that’s what we did –

we prompted ChatGPT and Google’s Gemini with the following question: “What is the ordinary meaning of artificial intelligence?” Their responses are below:

**ChatGPT:** Artificial intelligence refers to the simulation of human intelligence processes by machines, especially computer systems. This includes tasks such as learning, reasoning, problem-solving, perception, and language understanding.<sup>1</sup>

**Gemini:** In its ordinary meaning, artificial intelligence (AI) refers to computer systems

capable of performing complex tasks that were traditionally thought to be exclusive to humans. These tasks include reasoning, problem-solving, and decision-making.

Think of AI as the ability of a machine to “think” and act intelligently, even though it doesn’t possess human consciousness or emotions. It’s about building systems that can learn, adapt, and perform tasks in a way that mimic human intelligence.

However, it’s important to note that the term “AI” encompasses a wide range of technologies, from simple rule-based systems to complex machine learning algorithms. While some AI systems are highly sophisticated and can excel in specific areas, true “general intelligence” that matches human capabilities across all domains remains a theoretical concept.<sup>2</sup>

Unsurprisingly, or maybe surprisingly to some attorneys, the author-crafted definition and the AI-crafted definitions are similar. That is so, as Judge Kevin Newsom recently discussed in his concurrence in *Snell v. United Specialty Insurance Company*, because large language models (“LLMs”) draw on such a broad and varied data set that they can fairly and effectively capture the common understanding and usage of a word.<sup>3</sup> That ability to track the evolution of a word’s “ordinary meaning” in real time is only one of many AI capabilities that could transform how attorneys approach the practice of law.

## Day-to-Day Efficiencies

AI is already an integral part of most attorneys’ practices, whether they realize it or not. All attorneys, even AI skeptics, are exposed to artificial intelligence through daily tasks like emailing, reviewing documents, billing, scheduling, and creating templates. Some AI tools, like the predictive email text that appears when you begin to draft a response, may not seem exceptionally helpful. But if an attorney uses that feature in even half of the emails she writes over the course of a day, she has saved valuable time that can be better used on substantive work.

While tools like predictive email text are helpful, they are not the highest and best use of artificial intelligence in everyday legal practice. Attorneys often must engage in routine, pattern-based tasks that require less strategic thinking. These tasks, like drafting engagement letters, billing narratives, and standard letter templates, can be optimized and streamlined by successfully integrating artificial intelligence into your legal practice. And, importantly, such tasks require minimal human oversight or review.

Imagine, for example, an associate who would like to request funds from her law firm to attend a conference. Drafting these requests can be tedious and more time consuming than necessary. But what if this attorney instead made a list of the elements needed in a budget request email and then prompted an AI platform to draft the email for her? Below is an

example of such a prompt submitted to ChatGPT and its response:

**Prompt:** Draft an email from an associate attorney to a partner requesting funds to attend the international trademark association conference in Atlanta in May 2024. Include that I will have two clients also attending the event and that my legal practice includes trademark prosecution and litigation.

**Response:** Subject: Request for Funding to Attend International Trademark Association Conference in May 2024

Dear [Partner’s Name],

I hope this email finds you well. I am writing to request funding to attend the International Trademark Association Conference, which will be held in Atlanta in May 2024. As a devoted associate attorney in the trademark practice group, I believe that attending this conference is crucial for my professional development and will be incredibly beneficial for our firm.

I will be accompanied by two clients who will also be attending the event, providing an excellent opportunity to strengthen our relationships and enhance our client service. My legal practice focuses on trademark prosecution and litigation, and I am confident that the knowledge and insights gained from this conference will contribute significantly to my work with our clients.

Attending the International Trademark Association Conference will allow me to stay up to date with the latest trends and

developments in trademark law, network with industry professionals, and gain valuable knowledge and insights that will benefit our clients and our firm as a whole.

I kindly request your support in covering the registration fees, travel expenses, and accommodations for this conference. I am confident that the knowledge and connections gained from attending this event will be invaluable to our practice and will ultimately benefit our clients.

Thank you for considering my request. I look forward to discussing this further with you.

Best regards,

[Your Name] Associate Attorney<sup>4</sup>

While certainly not perfect, ChatGPT's response provides the attorney with a helpful starting point that she can then revise and perfect. AI has its limitations, but the value of a working first draft is hard to overstate. This scenario is a prime example of how an attorney may use artificial intelligence to safely decrease the amount of time spent on more administrative tasks that do not require creative legal analysis, which artificial intelligence is (thankfully for our job security) unable to accomplish.

Judge Newsom recently identified another way that AI, and specifically LLMs, can provide a helpful starting point for lawyers and judges alike: by assisting in the search for a term's "ordinary meaning."<sup>5</sup> As Justice Elena Kagan stated in a lecture at Harvard Law School, "We're all textualists now."<sup>6</sup> So all interpretive analysis must begin, and often end, with the ordinary meaning of

And while most attorneys likely appreciate a billable task that they can perform in their pajamas, those who have assisted in substantial document reviews know just how time consuming and expensive they can be.

the constitutional, statutory, regulatory, or contractual text.<sup>7</sup> That's where, as Judge Newsom posits, LLMs come in. LLMs train on such large and comprehensive data sets – from the opinions of Justice Antonin Scalia to the musings of teenagers on Tumblr – so that they can effectively suss out the most common and ordinary usages of a term. As Judge Newsom lays out in his concurrence in *Snell*, LLMs are not perfect. But that does not mean they are not helpful. While no one should throw away their copy of *Webster's Second*, you may want to follow Judge Newsom's lead and add a quick, generalized query to an LLM to your textualist toolbox. If Judge Newsom's concurrence in *Snell* is any indication, you certainly would not be alone in doing so.

## Selecting the Right Tool for the Task at Hand

There are an overwhelming number of artificial intelligence tools available to attorneys, and choosing the right one can be a daunting task. Anyone can ask ChatGPT or Microsoft's Copilot for the ordinary meaning of a term, but there are additional artificial intelligence tools that have been created specifically to assist attorneys in more specialized aspects of a legal practice. Currently, artificial intelligence is most prevalently used in discovery or to assist with legal research. Document review historically required traveling offsite to a warehouse to physically work through boxes and boxes of documents. Some poor souls must still venture into these dusty warehouses and storage facilities, but most new attorneys' introduction to document review involves only electronically stored information. This means emails. Thousands of emails. And while most attorneys likely appreciate a billable task that they can perform in their pajamas, those who have assisted in substantial document reviews know just how time consuming and expensive they can be.

The use of artificial intelligence by document review platforms is nothing new. These platforms have benefited significantly from the rapid evolution of AI technology and have enhanced their review capabilities tenfold in recent years. For example, Relativity has

created “Relativity aiR.” The Relativity aiR for Review application “uses natural language and AI-powered predictions to augment the thorniest part of the e-discovery process.”<sup>78</sup> It does so by targeting “three specific use cases to make this chore a bit more palatable: responsiveness review (predicting which documents will be relevant to a matter), issues review (locating documents related to the key issues at the heart of a case), and identification of key documents (pinpointing those potential smoking guns that attorneys need to get their hands on as quickly as possible).”<sup>79</sup>

While document review programs like Relativity aiR can significantly increase a legal team’s productivity, attorneys must remember that the process was done by a computer. And while the technology is impressive, attorneys must still stay vigilant to avoid disastrous and embarrassing outcomes caused by the technology’s imperfections. Because of those imperfections, human quality control is imperative and must be integrated into any AI-based process. The efficiency gains achieved by using these technologies are great, but they cannot replace the human review and analysis that are integral to the practice of law.

## A Cautionary Tale

By now, most people have heard stories of attorneys who mistakenly relied on artificial intelligence to support legal briefs and arguments. The courts are not amused. But why are some uses of artificial intelligence so much

more dangerous than others? One answer lies in the type of AI used. AI platforms that help speed up the document review process or generate an engagement letter template do not use *generative* artificial intelligence. The budget request email from the associate to the partner, on the other hand, does. What is the difference? The main difference is that generative artificial intelligence uses a set of data to create original content. But that original content is not necessarily accurate. Two New York attorneys for a Roberto Mata learned this lesson the hard way when the court discovered that their brief was generated by artificial intelligence – and that the cases cited in that brief did not actually exist.<sup>10</sup>

Like in the email example, artificial intelligence can provide a solid starting point for legal research, but it should never be used as the unchecked legal basis for any work product, especially for submissions to a court. Imagine our same associate from before is now tasked with outlining a client’s position in response to allegations of libel. As a new associate, they are not sure where to start, so they type “elements of libel” into Microsoft Bing’s Copilot program. Copilot provides the following response:


Certainly! The **elements of libel** typically include the following:

- 1. False Statement of Fact:** The defendant must make a false statement about the plaintiff. This statement can be written (libel) or spoken (slander).
- 2. Publication or Communication:** The defamatory statement

must be disseminated to a third party. In the case of libel, this usually involves publishing it in writing.

- 3. Fault or Intent:** The defendant must be at fault for making the false statement. This fault can be due to negligence or actual malice.
- 4. Damage to Reputation:** The plaintiff’s reputation must suffer harm as a result of the false statement.<sup>11</sup>

Copilot also provides citations and suggested follow-up questions like “what is the difference between libel and slander?” The associate continues to “chat” back and forth with Copilot, until they have their




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bearings. Now, they can efficiently begin their legal research with more targeted search terms.

That is not what Mr. Mata's lawyers did. Instead, they submitted ChatGPT's brief to the court without confirming the accuracy of its content – a mistake that could easily be avoided with a simple cite check.<sup>12</sup> The plaintiff in *Mata* alleged that he was injured when a metal serving cart struck him during a flight.<sup>13</sup> But when his attorneys filed an "Affirmation in Opposition" to a pending motion to dismiss his case, Mata's straightforward personal injury case became anything but. That affirmation in opposition cited and quoted from purported judicial decisions published in the *Federal Reporter*, the *Federal Supplement*, and on Westlaw. Mata's attorneys insisted that the authorities were legitimate, even after defendants and the court questioned the legitimacy of the sources in Mata's affirmation in opposition. But the truth was eventually revealed – Mata's attorneys had used ChatGPT to write the brief, and ChatGPT had fabricated the cases. Schwartz, one of Mata's attorneys, stated that "[he] just was not thinking that the case could be fabricated, so [he] was not looking at it from that point of view. [His] reaction was, ChatGPT is finding that case somewhere. Maybe it's unpublished. Maybe it was appealed. Maybe access is difficult to get. [He] just never thought it could be made up."<sup>14</sup> The court sanctioned the attorneys, required that they notify Mata and the judges that were

falsely identified as the authors of the fake opinions of what had transpired, and ordered them to pay a monetary fine.<sup>15</sup>

Of course, this cautionary tale is not meant to deter attorneys from using artificial intelligence in their practice. But like with all other tools, attorneys must use the technology wisely. They should be cognizant of the purposes for which they are using the artificial intelligence and should think critically before relying solely on generated content. In its current iteration, artificial intelligence is immensely helpful in economizing the pattern-based aspects of legal practice. But there is no substitute for the creative legal analysis that an attorney provides. The integration of artificial intelligence into legal practice is likely unavoidable, so it is all the more important for attorneys to understand and assess its limitations. Artificial intelligence is not going anywhere, but it also is not replacing attorneys anytime soon. And that is good news for all of us. ▲

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15. *Id.* at 466.

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**Ashley Robinson** joined Bradley Arant Boult Cummings LLP in 2022 after graduating from Syracuse University College of Law. She is part of the intellectual property practice group and the artificial intelligence industry group. Her practice focuses on trademark and patent prosecution and litigation.




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**Anne Miles Golson** joined Bradley Arant Boult Cummings LLP in 2021 after clerking for Judge Andrew L. Brasher on the Eleventh Circuit Court of Appeals. She is part of the litigation and healthcare practice groups.



Her practice focuses on managed care and appellate litigation and specifically representing providers in payment disputes with Medicare and managed care organizations.





# The Ethics of Generative Artificial Intelligence in Law Practice

*By Marcus R. Chatterton*

If this edition of *The Alabama Lawyer* and other recent publications are any evidence,

the use of Generative Artificial Intelligence (GenAI) in law is *the* hot topic for lawyers right now. The authors of the other articles in this issue have already defined GenAI and contrasted it with the analytical or non-generative types of AI that have existed in the legal industry (whether we know it or not) for

many years. My fellow authors have also discussed how GenAI may benefit a law practice and highlighted some of the obvious risks. So, let's cut straight to the question of how a lawyer may ethically use GenAI in a legal practice.

Every lawyer must understand the risks and benefits of technology used in connection with their law practice. Like any new technology, GenAI must be evaluated and used in a way that satisfies a lawyer's obligations of professional responsibility. Applying these obligations will



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always involve many factors, including the identity of the client, the nature of the matter requiring legal services, the lawyer's practice area, and the technology itself. GenAI implicates several areas that are directly regulated by the Alabama Rules of Professional Conduct:

## Duty of Competence

ARPC 1.1 explains the foundational concept of legal ethics that "competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation." Although the technology is continuously improving, GenAI outputs may include information that is false, inaccurate, or biased. Before using GenAI in the practice of law, a lawyer must have an adequate understanding of the technology and its limitations to ensure (1) that the technology is being used in a competent and secure manner, (2) that the output is factually and legally accurate, and (3) that the lawyer, the firm, and the client are not over-relying on the technology.

The potential replication of bias in the output of a GenAI platform has recently come under scrutiny. As Judge Newsom of the Eleventh Circuit Court of Appeals recently noted, data sets used to train a GenAI application are often held in confidence and almost certainly fail to represent certain classes of individuals.<sup>1</sup> Each AI algorithm depends on the data set that is used to train the system – making it inherently susceptible to bias that reflects (and may exacerbate) societal prejudices present in its training data. In the legal context, biased AI systems may perpetuate inequities in decision-making, such as disparate outcomes in sentencing or access to justice.

GenAI outputs may be valuable as a starting point, but they should be scrutinized carefully. The output from a GenAI platform is analogous to driving directions received from a GPS application – it suggests one or more routes to the destination, but the driver is still responsible for navigating the vehicle and exercising human judgment, and that judgment might require departing from the GPS-generated route. The GPS output should never be substituted for the driver's sound judgment. Similarly, GenAI should never be used as a substitute for a lawyer's own professional judgment.

As the State Bar of California recently explained:<sup>2</sup>

A lawyer must critically review, validate, and correct both the input and the output of generative AI to ensure the content accurately reflects and supports the interests and priorities of the client in the matter at hand, including as part of advocacy for the client. The duty of competence requires more than the mere detection and elimination of false AI-generated results. A lawyer’s professional judgment cannot be delegated to generative AI and remains the lawyer’s responsibility at all times. A lawyer should take steps to avoid over-reliance on generative AI to such a degree that it hinders critical attorney analysis fostered by traditional research and writing. For example, a lawyer may supplement any AI-generated research with human-performed research and supplement any AI-generated argument with critical, human-performed analysis and review of authorities.

The duty of competence calls for meaningful consideration and care before using GenAI in the practice of law. Conversely, the duty of competence embodied in ARCP 1.1 and other rules might eventually be understood to carry an affirmative responsibility for lawyers to learn and use GenAI in some circumstances. For example, the duty of competence is generally understood to obligate lawyers to become familiar with and use the widely available eDiscovery tools to manage and review large volumes of data exchanged in litigation.<sup>3</sup> To collect and review millions of pages of documents the “old-fashioned way” could arguably trigger a breach of the lawyer’s duty of competence, and in many instances, will result in far higher legal costs incurred by the client. Although it is probably not at this point yet, the accessibility and reliability of GenAI may one day reach a point where a lawyer’s refusal to learn and use the technology could breach the duty of competency.

**A lawyer anticipating the need for GenAI’s use or involvement in the engagement of a matter may need to cover the topic of data confidentiality and use in a written engagement agreement, so that some “ground rules” are established and client consent can be fully informed.**

## Duty of Confidentiality

To provide usable output, GenAI platforms must have access to large amounts of data – in many cases, client-owned data – for training and decision-making. Many GenAI systems are trained on the data submitted by their users, which is then used to generate output for multiple (and perhaps all) other users. ARCP 1.6 obligates lawyers to safeguard “information relating to representation of a client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation.” When using client data to train or prompt a GenAI system, a lawyer might satisfy this obligation through a combination of (1) informed consent of the client, (2) verifying that the GenAI vendor has appropriate safeguards and data security, or (3) anonymizing the submitted data to avoid or minimize prejudice to the client in the event that the data is inadvertently disclosed. A lawyer anticipating the need for GenAI’s use or involvement in the engagement of a matter may need to cover the topic of data confidentiality and use in a written engagement agreement, so that some “ground rules” are established and client consent can be fully informed.

## Duty to Supervise

ARCP 5.1 and 5.3 obligate any lawyer having supervisory authority over another lawyer or non-lawyers to make reasonable efforts to ensure that their firms or those they are supervising conform to the Rules of Professional Conduct. In practice, this means that firms and legal departments should have a sound policy concerning the use of GenAI, and that senior lawyers cannot turn a blind eye to the methods used by junior lawyers or staff. The output from any GenAI product should be reviewed and scrutinized even more than the work product of a junior lawyer or staff member to ensure that the output conforms with

the standards of quality and accuracy of a legal professional. Again, if a matter arises in which the lawyer anticipates the need for the use of GenAI, it may be advisable to articulate in the written engagement the need for attorney review of GenAI, so that client expectations regarding the relative cost of using GenAI are kept in check.

## Duties of Communication And Candor

That last point dovetails with the next rule in play. ARPC 1.4 obligates a lawyer to “explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.” GenAI applications operate using complex models that may not always be transparent to end-users. Lawyers should ensure transparency in GenAI processes by disclosing the methodologies, costs, and limitations of these systems to clients. Communication regarding the use of GenAI should consider facts and circumstances of both the technology and the specific representation – including the novelty of the technology, risks associated with GenAI, the scope of the lawyer’s representation, existing guidance from the client or related entities (like a parent company or an insurer), and the sophistication of the client.

## Candor to the Tribunal

A lawyer may also have an obligation to disclose the use of GenAI to the court or another tribunal. Although the scope of ARPC 3.3 does not explicitly require the disclosure of technologies like GenAI, the issued or standing orders of some courts restrict the use of GenAI or obligate counsel to disclose its use in discovery or in the preparation of materials submitted to the court.<sup>4</sup> Conversely, the Fifth Circuit recently declined to implement rules requiring disclosure of GenAI used by counsel.<sup>5</sup>

The court, having considered the proposed rule, the accompanying comments, and the use of artificial intelligence in the legal practice, has decided not to adopt a special rule regarding the use of artificial intelligence in drafting briefs at this time. Parties and counsel are reminded of their duties regarding their filings before the court under Federal Rule of Appellate Procedure 6(b)(1)(B). Parties and counsel are responsible for ensuring that their filings with the court, including briefs, shall be carefully checked for truthfulness and accuracy as the rules already require. “I used AI” will not be an excuse for an otherwise sanctionable offense.

Even without a specific order, though, the failure to disclose the use of GenAI may, in some circumstances, constitute a “false statement of material fact” to a tribunal.

## Other Risks

Without safeguards, the use of GenAI platforms may expose a lawyer to risks beyond the Rules of Professional Conduct, including (1) exposing confidential data related to their firm or law practice; (2) obligating the lawyer or their firm to comply with undesirable or unacceptable terms and conditions, such as agreeing to indemnify others or granting a license in information contained in training data, prompts, or outputs from GenAI; or (3) inadvertently violating privacy, copyright, or other laws.

Notably, copyright law restricts the preparation of “derivative works” that are based on original works protected by copyright.<sup>6</sup> The potential for copyright infringement in GenAI outputs that are trained using unlicensed works has drawn considerable discussion within the IP bar, and this potential has already generated some litigation.<sup>7</sup> Copyright infringement lawsuits over the content of a lawyer’s work product are rare, but they are not unheard of.<sup>8</sup> The use of GenAI to produce graphics, charts, or other summaries used in a brief or other court submission may present a greater risk of copyright infringement to lawyers.

## Conclusion

GenAI may soon be as common in the practice of law as email, Microsoft Office, or eDiscovery software. Lawyers wrestled with the ethical implications of those technologies when they were new, just like we are now in grappling with GenAI. While GenAI holds immense potential to enhance efficiency, accuracy, and access to justice, its use will always be guided by the Rules of Professional Conduct, and its output cannot be substituted for a lawyer’s own professional judgment. ▲

### Endnotes

1. *Snell v. United Specialty Ins. Co.* No. 22-12581, Slip Op. at 22-23 (11<sup>th</sup> Cir. May 28, 2024) (Newsom, J. concurring).
2. See [www.calbar.ca.gov/Portals/0/documents/ethics/Generative-AI-Practical-Guidance.pdf](http://www.calbar.ca.gov/Portals/0/documents/ethics/Generative-AI-Practical-Guidance.pdf).
3. See, e.g. State Bar of California Standing Committee on Professional Responsibility and Conduct, Formal Opinion No. 2015-193 (finding that California’s Duty of Competence carries an obligation to acquire sufficient skill or associate with someone who does before taking on a representation that involves eDiscovery).
4. See, e.g. Standing Order for Civil Cases before Magistrate Judge Peter H. Kang (N.D. Ca), available at <https://cand.uscourts.gov/wp-content/uploads/judges/kang-phk/Civil-Standing-Order-PHK-001.pdf>; Mandatory Certification Regarding Generative Artificial Intelligence (Judge Brantley Starr, N.D. Tex.) available at <https://www.txnd.uscourts.gov/judge/judge-brantley-starr>.
5. [https://www.ca5.uscourts.gov/docs/default-source/default-document-library/court-decision-on-proposed-rule.pdf?sfvrsn=5967c92d\\_2](https://www.ca5.uscourts.gov/docs/default-source/default-document-library/court-decision-on-proposed-rule.pdf?sfvrsn=5967c92d_2).
6. See generally Copyright in Derivative Works and Compilations, [www.copyright.gov/circs/circ14.pdf](http://www.copyright.gov/circs/circ14.pdf).
7. See generally <https://hbr.org/2023/04/generative-ai-has-an-intellectual-property-problem>.
8. See [www.abajournal.com/news/article/biglaw-firms-motion-was-almost-verbatim-copy-boutique-firm-alleges-in-copyright-lawsuit](http://www.abajournal.com/news/article/biglaw-firms-motion-was-almost-verbatim-copy-boutique-firm-alleges-in-copyright-lawsuit).

**Marcus R. Chatterton** is a technology-minded trial attorney in the Birmingham office of Balch & Bingham. He is an experienced litigator and advisor focused on intellectual property and technology, most often representing businesses in matters involving patents, trademarks, trade secrets, and copyrights.



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THE ALABAMA LAWYER



# ALABAMA LAWYERS HALL OF FAME

The year 2024 marks the 20<sup>th</sup> induction ceremony for the Alabama Lawyers Hall of Fame. The Alabama State Bar's Hall of Fame Selection Committee is extremely proud of this significant milestone. During the first five years of its ceremonial recognitions, from 2005 to 2009, there were four lawyer-honorees each year. However, because there were so many deserving nominees, we increased the number of lawyers recognized from four to five each year. Therefore, with the induction ceremony on May 3, 2024, we have now honored 95 lawyers.

You may ask, what are the criteria for selecting candidates for the Alabama Lawyers Hall of Fame? Here are the standards for our choices:

- Honorees must have a record of extraordinary skill and service to the bar and in the profession of law.
- Honorees must be Alabama lawyers who have made extraordinary contributions through the law at the state, national, or international level.
- Honorees must demonstrate a lifetime of achievement.
- Honorees need some, if not all, of the following traits to qualify:
  - > A breadth of achievement rather than a single achievement
  - > A profound respect for professional ethics
  - > A leadership role in advancing the interests of the community
  - > A recognized ability to mentor, lead, or inspire others to pursue justice
- Honorees must be deceased to be considered.

Honorees must be preeminent exemplars of the legal profession. They have been nominated because they have had a distinguished career in the law. This is demonstrated through many different forms of achievement, leadership, service, mentorship, political courage, or professional success. Each inductee must have been deceased at least two years at the time of their selection. And then comes another challenge. Among the honorees, at least one must have been deceased a minimum of 100 years. This means that no one will have known the potential honoree personally, and the committee will be solely dependent on history books, written records, and the results of their deeds subject to the judgment of time. Thus, the committee considers the totality of a person's life. That places a tremendous responsibility on the committee and requires a significant amount of historical research.

Over the years we have recognized men and women, black and white attorneys, members of the Supreme Court of the United States and the Supreme Court of Alabama; other judges, both appellate and trial, both federal and state; military heroes; public servants; law professors; a clerk of the Alabama Supreme Court and reporter of decisions, Assistant US Attorneys; governors; senators; members of congress; mayors; city councilors; an ambassador; speakers of the Alabama legislature, a speaker of the United States House of Representatives; and a Vice President of the United States. But our largest single demographic is the group of lawyers, all outstanding individuals, who have labored in the field of private practice. All our lawyer-inductees are the true giants, the mentors, and, yes, the heroes of our profession. Their plaques are located in the lower rotunda of the Heflin-Torbert Judicial Building, and together they form a very impressive collection.



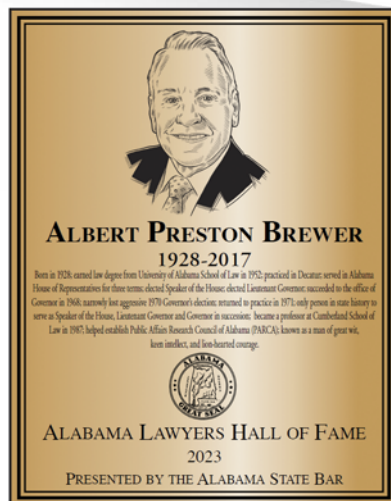
A 12-person panel serves as the Selection Committee for the Hall of Fame. The 12 members are:

- The director of the Alabama Department of Archives and History
- Four people named by the Board of Bar Commissioners for a term of three years
- The immediate past president of the Alabama State Bar
- The executive secretary of the Alabama State Bar or his/her designate
- One person nominated by the Chief Justice of the Supreme Court of Alabama
- One person nominated by each of the three presiding judges of the Federal District Courts of Alabama for a term of three years
- A representative of the Alabama Bench and Bar Historical Society

I encourage anyone to consider making a nomination for our Alabama Lawyers Hall of Fame. The nomination form and instructions can be found on the Alabama State Bar's website. I say this each year, but remember, great lawyers cannot be considered for this honor if they have not first been nominated.

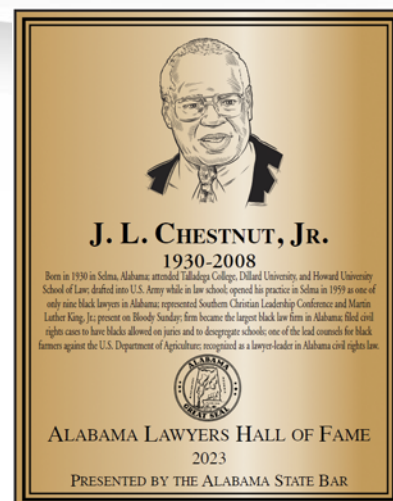
Here are the new inductees to the Alabama Lawyers Hall of Fame. We hope that all their stories and achievements will serve to inspire the present and future citizens of Alabama. ▲

–Samuel A. Rumore, Jr.  
Chair, Alabama Lawyers Hall of Fame Selection Committee



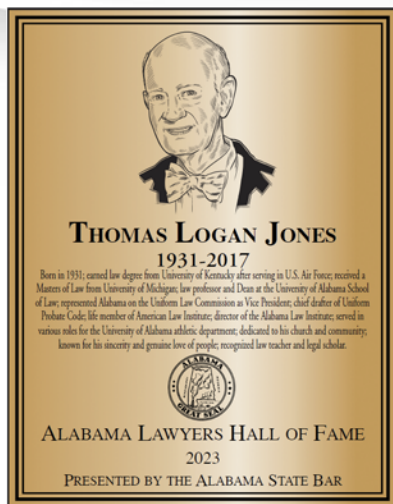
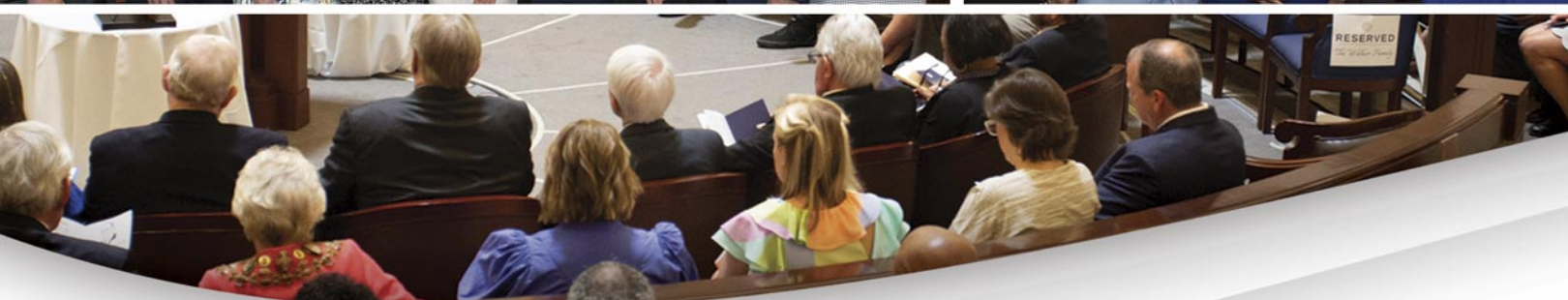
**ALBERT PRESTON BREWER  
1928-2017**

Born in 1928; earned law degree from University of Alabama School of Law in 1952; practiced in Decatur; served in Alabama House of Representatives for three terms; elected Speaker of the House; elected Lieutenant Governor; succeeded to the office of Governor in 1968; narrowly lost aggressive 1970 Governor's election; returned to practice in 1971; only person in state history to serve as Speaker of the House, Lieutenant Governor and Governor in succession; became a professor at Cumberland School of Law in 1987; helped establish Public Affairs Research Council of Alabama (PARCA); known as a man of great wit, keen intellect, and lion-hearted courage.



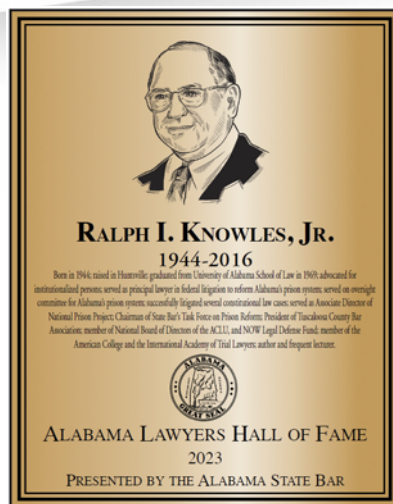
**J.L. CHESTNUT, JR.  
1930-2008**

Born in 1930 in Selma, Alabama; attended Talladega College, Dillard University, and Howard University School of Law; drafted into U.S. Army while in law school; opened his practice in Selma in 1959 as one of only nine black lawyers in Alabama; represented Southern Christian Leadership Conference and Martin Luther King, Jr.; present on Bloody Sunday; firm became the largest black law firm in Alabama; filed civil rights cases to have blacks allowed on juries and to desegregate schools; one of the lead counsels for black farmers against the U.S. Department of Agriculture; recognized as a lawyer-leader in Alabama civil rights law.



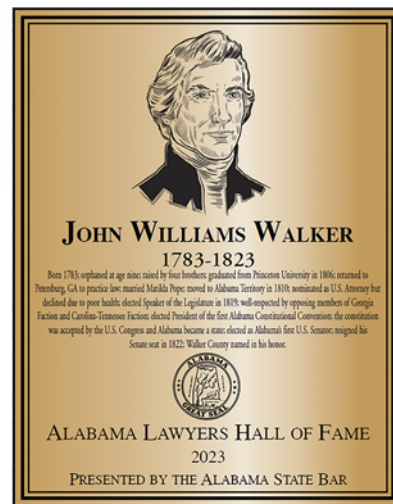
**THOMAS LOGAN JONES  
1931-2017**

Born in 1931; earned a law degree from the University of Kentucky after serving in U.S. Air Force; received a Master of Law from the University of Michigan; law professor and Dean at the University of Alabama School of Law; represented Alabama on the Uniform Law Commission as Vice President; chief drafter of Uniform Probate Code; life member of American Law Institute; director of the Alabama Law Institute; served in various roles for the University of Alabama athletic department; dedicated to his church and community; known for his sincerity and genuine love of people; recognized law teacher and legal scholar.



**RALPH I. KNOWLES, JR.  
1944-2016**

Born in 1944; raised in Huntsville; graduated from University of Alabama School of Law in 1969; advocated for institutionalized persons; served as principal lawyer in federal litigation to reform Alabama's prison system; served on oversight committee for Alabama's prison system; successfully litigated several constitutional law cases; served as Associate Director of National Prison Project; Chairman of State Bar's Task Force on Prison Reform; President of Tuscaloosa County Bar Association; member of National Board of Directors of the ACLU, and NOW Legal Defense Fund; member of the American College and the International Academy of Trial Lawyers; author and frequent lecturer.



**JOHN WILLIAMS WALKER  
1783-1823**

Born in 1783; orphaned at age nine; raised by four brothers; graduated from Princeton University in 1806; returned to Petersburg, GA to practice law; married Matilda Pope; moved to Alabama Territory in 1810; nominated as U.S. Attorney but declined due to poor health; elected Speaker of the Legislature in 1819; well-respected by opposing members of Georgia Faction and Carolina-Tennessee Faction; elected President of the first Alabama Constitutional Convention; the constitution was accepted by the U.S. Congress and Alabama became a state; elected as Alabama's first U.S. Senator; resigned his Senate seat in 1822; Walker County named in his honor. ▲





# ALABAMA LAWYERS HALL OF FAME PAST INDUCTEES

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Harold Vaughan Hughston (1915-1981)  
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Arthur Alexander Madison (1883-1957)  
Clarence Frost Rhea (1921-2005)  
Janie Ledlow Shores (1932-2017)

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Jerome Alfred Cooper (1913-2003)  
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William Hooper Council (1849-1909)  
James Oscar Sentell, Jr. (1909-1985)

## 2020

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Cecil Howard Strawbridge (1906-1999)

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

## 2018

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

## 2017

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

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

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

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

## 2013

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

## 2012

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

## 2011

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

## 2010

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

## 2009

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

## 2008

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

## 2007

John Archibald Campbell (1811-1889)  
Howell T. Heflin (1921-2005)  
Thomas Goode Jones (1844-1914)  
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## 2006

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

## 2005

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

## 2004

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

*The Alabama Lawyers Hall of Fame is located on the ground floor of the Heflin-Torbert Judicial Building,  
300 Dexter Avenue, Montgomery, Alabama 36104.*



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 Criminal Decisions From the U.S. Supreme Court

### Ineffective Assistance of Counsel

***Thornell v. Jones*, 144 S. Ct. 1302 (2024):** In light of the standards of *Strickland v. Washington*, 466 U.S. 668 (1984), the Ninth Circuit Court of Appeals erred in granting habeas relief on the defendant's claim that his attorney rendered ineffective assistance at sentencing by not presenting certain mitigating evidence. The Supreme Court found that the evidence was weak and likely would not have changed the result, particularly given the strength of the aggravating circumstances, which included "multiple homicides, cruelty, pecuniary motivation, and murder of a child[.]" The Court of Appeals "downplayed" the aggravating factors and "overstated the strength" of the mitigating evidence in granting relief.

### Armed Career Criminal Act; Sentence Enhancement

***Brown v. United States*, 144 S. Ct. 1195 (2024):** The Armed Career Criminal Act, 18 U.S.C. § 924 *et. seq.*, a recidivist statute that focuses on a defendant's history of criminal activity to determine his "culpability and dangerousness," in part provides for harsher punishments where the defendant has "three previous convictions" for "a serious drug offense." The Court held that a state crime constitutes a "serious drug offense" if it involved a drug that was on the federal controlled substance schedules when the defendant possessed or trafficked in it, regardless of whether the drug was later removed from the schedules.

## From the Eleventh Circuit Court of Appeals

### Oral Pronouncement of Sentence; Clerical Error

***United States v. Zano*, No. 23-12716 (11<sup>th</sup> Cir. June 4, 2024):** Where the district court pronounces a sentence in open court that was contrary to its written order, the "oral pronouncement ... must control." The Court of Appeals noted that sentence imposed in the written order's sentence exceeded the statutory maximum for the offense.

## Sentence Variance

**United States v. Hayes, No. 23-13769 (11<sup>th</sup> Cir. May 30, 2024):** The drug trafficking defendant, whose sentence was harsher than that provided by the sentencing guidelines, was not entitled to notice that the district court would vary from the guidelines as a result of his role in the offense and criminal history. Distinguishing between a “variance” and a “departure,” the Court of Appeals held that notice only has been required if the sentence was a “departure,” *i.e.*, a non-Guidelines sentence.

## Capital Murder; Death Penalty

**Mills v. Hamm, 102 F.4<sup>th</sup> 1245 (11<sup>th</sup> Cir. 2024), cert. denied, No. 23A1065 (U.S. May 30, 2024):** The Court of Appeals refused to stay a death sentence imposed in 2007 on a capital murder defendant who killed his elderly victims with a machete, tire tool, and hammer. It found that the defendant was not likely to succeed on his Sixth, Eighth, and Fourteenth Amendment claims and that his “inequitable conduct” in seeking a last-minute delay weighed against staying the sentence. Noting that interference with the state’s interest in enforcing its criminal judgments would be “undue,” the Court of Appeals also observed that the “public’s interest in seeing its ‘moral judgment’ ... carried out promptly is the State’s interest too.”

## Appeal From Denial of Motion to Unseal Search Warrant

**Burke v. United States, No. 23-13649 (11<sup>th</sup> Cir. May 24, 2024):** The Court of Appeals dismissed the defendant’s appeal from the denial of his motion to unseal a search warrant affidavit, finding that the order was not appealable because it was tied to an ongoing criminal prosecution. The denial of the motion did not qualify for immediate appellate review under the collateral order doctrine, which allows for immediate review of orders disposing of motions to reduce bail, to dismiss on double jeopardy grounds, and to dismiss under the Speech or Debate Clause, as well as orders permitting involuntary medication to restore competence to stand trial.

## Conditions of Supervised Release; Access to Courts

**United States v. Etienne, 102 F.4<sup>th</sup> 1139 (11<sup>th</sup> Cir. 2024):** After the defendant pleaded *nolo contendere* to charges alleging that he threatened to assault and murder a federal magistrate judge and a courtroom deputy, the district court did not err in imposing special conditions for the defendant’s supervised release that prohibited him from visiting or calling certain courthouses or judges. As a matter of first impression, the Court of Appeals held that the conditions did not “absolutely bar his access to the federal courts,” noting that the defendant “need not visit a courthouse himself or call a judge or court facilities to conduct court business. He still enjoys sufficient access.”

# From the Alabama Supreme Court

## Ala. R. Crim. P. 32

**Greene v. Patterson, No. SC-2023-0945 (Ala. May 3, 2024):** The circuit court correctly granted an assistant district attorney’s motion to dismiss a civil complaint filed against him that, in substance, sought relief from the inmate-plaintiff’s rape, sodomy, and sexual abuse convictions. Noting that Ala. R. Crim. P. 32 “displaces all post-trial remedies” other than motions under Ala. R. Crim. P. 24 and appeal, the Supreme Court concluded that the inmate had “attempted to use a civil action to challenge the propriety of his convictions by suing the prosecuting attorney[.]” and that “a state prisoner ... may not use a rule of civil procedure to collaterally attack a criminal judgment[.]”

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(Continued from page 199)

## From the Alabama Supreme Court

### Service of Process

***Ex parte Foremost Ins. Co., No. SC-2023-0759 (Ala. May 10, 2024).*** The Alabama Supreme Court granted a writ of mandamus directing the circuit court to dismiss a proposed amended complaint. As the insurer, the proposed amendment, which was filed within 42 days of the first trial setting, (a) was not supported by good cause because the plaintiff knew the facts supporting the complaint before discovery and (b) would cause actual prejudice to the insurer by expanding the scope of claims and issues after discovery. As to the agency-side defendants, the court first held that the issue of service of process raised “a matter of importance beyond the basic issues in dispute” supporting mandamus review (and did so on grounds that appear to apply to every challenge to service), and then decided that service on both the individual and agency defendant was improper based on the documents in the record.

### Arbitration

***Jamison v. SNH AL Crimson Tenant, Inc., No. SC-2023-0861 (Ala. May 17, 2024).*** The circuit court’s failure to allow a non-moving party to respond to late-submitted materials supporting a motion to compel arbitration was held not to be harmless because the timely-submitted materials did not include substantial evidence of the existence of a valid arbitration agreement signed by a representative with the authority to bind the party through whom the plaintiff brought suit. Accordingly, the Alabama Supreme Court reversed the order compelling arbitration and remanded for further proceedings.

### Appellate Jurisdiction

***Coprigh v. Jones, No. SC-2023-0675 (Ala. June 21, 2024).*** The Court transferred to the Court of Civil Appeals an appeal relating to a request to set aside a deed. It determined that, in relevant part, the Court of Civil Appeals has jurisdiction to decide cases involving requests for equitable relief as long as the action is a civil action and the amount in controversy does not exceed the \$50,000 jurisdictional threshold.

### Civil Procedure

***Ex parte Nat’l Trust Ins. Co., No. SC-2023-0515 (Ala. May 24, 2024).*** An insurer filed a federal declaratory judgment action relating its obligation to cover a contractor relating to a fatal accident. Later, and in a lawsuit relating to the accident, filed in state court a third-party complaint asserting breach of contract and bad faith against the insurer relating to the same accident. The Alabama Supreme Court found that the third-party complaint was barred by Alabama’s abatement statute, § 6-5-440, insofar as it related to the contractor’s obligation to indemnify the prime contractor because the third-party claims are compulsory counterclaims in the federal action that was pending first and all of the relevant facts (including the obligation of the contractor to indemnify the prime contractor) had occurred before the contractor answered the federal action. However, the Alabama Supreme Court held that the third-party complaint against the insurer was not barred by Section 6-5-440 insofar as it related to the insurer’s obligation to indemnify the insurer’s obligation to indemnify the contractor for the settlement of the underlying plaintiff’s claim.

***Greene v. Patterson, No. SC-2023-0945 (Ala. May 3, 2024).*** A plaintiff cannot raise double-jeopardy arguments by filing a civil action under Alabama Rule of Civil Procedure 60(b). The sole mechanism for doing so is Rule 32 of the Alabama Rules of Criminal Procedure, except to the extent Criminal Rule 24 applies.

***Ex parte Hare, Wynn, Newell & Newton, LLP, No. SC-2023-09908 (Ala. May 24, 2024).*** In a civil action in which all named defendants were dismissed but fictitious defendants remained, the Alabama Supreme Court issued a writ of mandamus directing the circuit court to dismiss the action as to a defendant the plaintiff attempted to name more than 30 days after the last named defendants had been dismissed. The presence of fictitious defendants does not keep a judgment from becoming final, and the listing of the case as “active” on AlaCourt was not relevant.

### Church Property

***Aldersgate United Methodist Church of Montgomery v. Alabama-West Florida Conference of the United Methodist Church, Inc., No. SC-2023-0830 (Ala. May 31, 2024).*** The Court affirmed dismissal of a suit asserting that members of

a church had the right to vote on issues of disaffiliation, finding that the case could not be decided without necessarily deciding ecclesiastical matters, something the Court has found to be beyond its jurisdiction.

**Ex parte The Alabama-West Florida Conference of the United Methodist Church, Inc., No. SC-2023-0385 (Ala. April 24, 2024).** The Alabama Supreme Court held that the Circuit Court had subject matter jurisdiction over a property dispute between a church and the conferences to which it used to belong. The court determined that the defendant conferences that had filed the mandamus petition failed to carry their burden of showing that the church's complaint could not be decided by applying neutral principles of law to the language of the deed, charter, statutes, and other relevant provisions. It found the First Amendment to be no bar to the application of neutral principles that did not require deciding a religious controversy. The result was unanimous but did not produce a majority opinion.

## COVID Immunity Act

**Ex parte Triad of Alabama, LLC, No. SC-2023-0395 (Ala. Jan. 26, 2024).** Though 8-0 in the result that a hospital was entitled to writ of mandamus finding it immune under the Alabama COVID-19 Immunity Act for a claim arising from the plaintiff slipping and falling while using an "infusion entry," only two justices concurred with the main opinion and six concurred with the result.

## Parental Claims

**Deaton v. South Highland Child Development Center, Inc., No. SC-2023-0484 (Ala. June 7, 2024).** In a case against a day care facility related to whether a custodial parent could pick up a child, the Court held that a day-care does not owe a duty to a parent regarding parental pickup that goes beyond the duty imposed by DHR regulations—that is, maintaining a pickup list established by a parent or guardian. This lack of an independent duty caused the Alabama Supreme Court to affirm dismissal of the negligence

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(Continued from page 201)

and wantonness claims. Similarly, the Court affirmed dismissal of an outrage claim, noting that a daycare caught between a dispute between parents does not engage in extreme and outrageous conduct by complying with the applicable DHR regulations. Lastly, the Court held that the day care did not interfere with the plaintiff mother's parental rights because the day-care could not be found to have "enticed" or "harbored" the child by the act of relinquishing custody to the father instead of the mother.

### Consent Judgments

**Orange Beach v. The Lamar Cos., No. SC-2023-0657 (Ala. May 17, 2024).** The Alabama Supreme Court reversed a circuit court's failure to enforce a 12-year old consent judgment relating to the removal of certain signs, noting that consent judgments are interpreted just like contracts, that the complaining party had waived the right to complain about selective enforcement by entering a consent decree, and that the complaining party could not litigate matters arising after the consent decree in the action that concluded with the entry of the consent decree.

### Contractual Indemnity, Set Off, and Attorneys' Fees

**Alabama Plating Tech., LLC v. Georgia Plating Tech, LLC, No. SC-2023-0250 (Ala. June 21, 2024).** This case involves the close reading of an individually negotiated asset purchase agreement. A party with a contractual indemnification right was found to have timely invoked that right and the counterparty was found not have timely objected. The counterparty was not entitled to rely on the indemnified party's right to conduct a diligence inspection to avoid a warranty. The Court held that the indemnified party properly applied a provision of the agreement related to set-off. As to attorneys' fees, the Court held that a litigant is a "prevailing party" if a judgment is rendered in its favor and a court has awarded it some relief, and that the indemnified party was entitled to its attorneys' fees as a prevailing party. The counterparty was not found to be a prevailing party (even though it prevailed on some claims) because it was not awarded any relief.

### Real Estate Purchases

**Iskra v. Bear Roofing, LLC, No. SC-2023-0524 (Ala. June 14, 2024).** While purchasers of real estate were not found to be intended third party beneficiaries of a contract to perform

certain repairs at the real estate they were purchasing, the Alabama Supreme Court found substantial evidence that the purchasers were covered by a warranty related to the repairs and that the purchasers could pursue negligence claims against the repairer because there was evidence that the repairer knew about the purchaser and that the purchaser had relied upon the repairer in purchasing the house.

### Right of Way

**Coats v. Ayers, No. SC-2023-0134 (Ala. June 14, 2024).** Statutory rights-of-way under Section 18-3-1 were at issue, with the Alabama Supreme Court finding that the first property at issue was properly considered a single property, despite the proponents of the right-of-way contending that it was properly considered two properties—one with access to a public road and the other landlocked. The proponents' evidence showed that accessing all of the properties would be difficult and expensive because of a creek, but the Court held that "the plain language of § 18-3-1 does not allow landowners to seek a right-of-way over the property of another simply because they have no reasonable, adequate means to access parts of their property." Summary judgment was thus affirmed to this property. However, as to the second property, the Court found that there was substantial evidence tending to show that the property owners had consensual access to an adjacent tract to reach a public road, and that the existence of such proof precluded summary judgment on a statutory right-of-way.

### Ejection and Contempt

**Coan v. Championship Property, LLC, No. SC-2023-0740 (Ala. May 31, 2024).** The trial court acted within its discretion in ordering a defendant to deposit an amount approximately equal to her mortgage payment into court and in sanctioning the defendant for failing to do so. But the Alabama Supreme Court found that the trial court erred by awarding the foreclosing plaintiff possession of the property as a sanction against the defendant for contempt—finding that "the sanction is counterintuitive to the current posture of the litigation and, therefore, not appropriate."

### Immunity and Claim Preclusion

**McGilvray v. Perkins, No. SC-2023-0966 (Ala. June 21, 2024).** After being fired for allegedly sending inappropriate

email, an investigator for the Medical Board sued the Medical Board. The Alabama Supreme Court held that the Medical Board members were immune from the investigator's breach of contract claim, it does not shield them from injunctive relief claims and claims demanding they perform their official duties. Nevertheless, the Court held that all of the remaining claims were barred by the doctrine of res judicata—the investigator having previously filed an action for the same relief and lost at the summary judgment stage because the circuit court found his claims to be time barred.

## Landlord/Tenant

***Ex parte Housing Auth. of Talladega, No. SC-2023-0537 (Ala. May 24, 2024).*** The Alabama Supreme Court granted certiorari from the Court of Civil Appeals to clarify that Alabama applies §§ 360 and 361 of the Restatement (First) of Torts and Restatement (Second) of Torts as they pertain to “open and obvious” dangers, but it does not apply the “more liberal” § 343A from the Second Restatement—which bars recovery arising from open and obvious risks except where the possessor should anticipate the harm despite the obviousness.

## Livestock

***Edwards v. Crowder, No. SC-2023-0151 (Ala. May 24, 2024).*** The Alabama Supreme Court clarified that Alabama Code Section 3-5-3(a) creates an exclusive cause of action for recovery of injuries caused by livestock on a public road and that there is no common-law cause of action. Accordingly, in an action arising out of injuries caused by an accident involving horses on a public road, it affirmed summary judgment for all parties that did not own the horses because Section 3-5-3 permits no such claim. It also affirmed summary judgment for the owners because there was no indication that the owners had knowingly or willfully put their horses on the road.

## Malicious Prosecution

***Svensen v. Hester, No. SC-2023-0680 (Ala. May 17, 2024).*** A party who received a bad check swore out an affidavit against the check's maker that stated, among other things, that the bad check had been made out in the last 12 months. The maker was arrested but charges against him were dismissed because the statute of limitations had run. The maker sued the recipient for malicious prosecution, and the Alabama Supreme Court held that summary judgment was properly entered for the recipient. The court reasoned that the recipient had probably cause to believe that all of the elements of negotiating a worthless instrument were present, and “the expiration of the limitations period has nothing to do with whether the defendant actually committed the offense

charged.” Even though there was evidence that the recipient's affidavit was incorrect as to when the check was made out, there was no evidence that the recipient knew about the limitations issue or that the prosecution was actually time-barred.

## Probate

***Ex parte McLeroy, No. SC-2023-0636 (Ala. May 31, 2024).*** Because final settlement procedures had been begun in the probate court, the removing party's right to removal had been cut off and the circuit court should have remanded an estate proceeding to the probate court. The test is bright line: what matters is whether final settlement has begun, not whether it is proper.

## Receivership

***The Water Works & Sewer Bd. of Pritchard v. Synovus Bank, No. SC-2023-0881 (Ala. May 17, 2024).*** Affirming the circuit court's appointment of a receiver, the Alabama Supreme Court clarified that circuit courts should consider both contractual and equitable bases when deciding whether to appoint a receiver. The Alabama Supreme Court also held that the absence of a receivership remedy is the statute under which the defaulted debt obligations were issued did not preclude the appointment of a receiver because the statute gave the issuing entity the power to enter into contracts on terms the issuing entity deemed advisable—something the court found broad enough to encompass a receivership remedy.

## Real Property

***F Family South, LLC v. Property Owners Ass'n of Ono Island, Inc., No. SC-2023-0341 (Ala. May 17, 2024).*** The Court reversed the trial court's decision to invalidate a tax sale long after the 20-year rule of repose, rejecting the argument that the judicial redemption statute applied. The trial court did not reach the judicial redemption issue (which is never time barred), ruling instead on the basis of defects in the tax sale—a challenge that is subject to a 20-year repose. The Alabama Supreme Court affirmed the trial court's determination that restrictive covenants binding property on the island at issue remained in effect.

## Trusts, Special Masters

***Ex parte Marshall, No. SC-2023-0894 (Ala. May 31, 2024).*** The Alabama Supreme Court held the attorney general has standing under § 19-3B-110(d) to invoke the circuit court's jurisdiction assume control over a trust and to administer the trust according to its terms. It also held that no “exceptional condition” existed to justify referring either the entire case or the issue of accounting to a special master.

(Continued from page 203)

## Accrual of Underinsured Motorist Claim

***Ex parte State Farm Mut. Auto. Ins. Co., No. SC-2023-0528 (Ala. April 5, 2024).*** For statute of limitations purposes, Alabama Supreme Court held that a claim for underinsured motorist benefits accrues on the date of the accident and not on the date of the resolution of the insured's claim of the underinsured motorist. The court primarily relied on the existence of a direct claim, in which the plaintiff sues both the alleged tortfeasor and an insurer from which the plaintiff is legally entitled to recover damages. Because a plaintiff can bring a direct claim as soon as an accident occurs, the court reasoned that the accident must be the event that triggers the running of the statute. The court issued a writ of mandamus directing the trial court to dismiss the direct claim for underinsured motorist benefits. The court did not consider whether State Farm had sufficient notice of the claim under *Lowe*, as that issue was not decided below and not briefed on appeal. The court also did not reach the issue of whether the plaintiff's claim for breach of contract could survive the dismissal of the claim for underinsured motorist benefits.

## Forum Selection

***Ex parte COWS USA, LLC, No. SC-2023-0454 (Ala. April 5, 2024).*** The Court issued a writ of mandamus directing the circuit court to dismiss the plaintiffs' claims against a group of defendants that were subject to a mandatory outbound forum selection clause—even though there were other defendants not subject to that clause. The court reasoned that the forum selection clause required plaintiffs to sue the defendants who were parties to that agreement in the required forum, and the hardship accruing to the plaintiffs on account of litigating against the remaining defendants in the original forum resulted from the plaintiffs' choice to pick a forum different than the one required by the mandatory outbound forum selection clause.

## Alabama Litigation Accountability Act, Mandate Rule

***S&M Assocs. v. Players Recreational Group, LLC, No. SC-2023-0394 (Ala. April 12, 2024).*** In a second appeal following remand, the Alabama Supreme Court held that a trial court was correct in deeming an Alabama Litigation Accountability Act implicitly denied after the circuit court did not

specifically reserve jurisdiction on it in connection with the first appeal. It also affirmed the circuit court's decision not to award attorneys' fees on remand. But the Alabama Supreme Court reversed the circuit court's judgment to the extent that judgment addressed the priority of a mortgage recorded by one of the parties, finding that reaching that topic exceeded the scope of the mandate from the prior appeal.

## Preemption of Ordinances, Motor Scooters

***City of Gulf Shores v. Coyote Beach Sports, LLC, No. SC-2023-0637 (Ala. April 12, 2024).*** Reversing the circuit court, the Alabama Supreme Court held that a municipal ordinance requiring motor scooter operators to have a class-M license (or analogous class from another state) as a condition of renting a scooter was not preempted by Alabama's general licensure statutes. The court found a lack of field or conflict preemption over the ordinance because the ordinance applied to the act of renting, while the licensure statutes applied to the act of operating certain vehicle classes.

## Birmingham/Bessemer Jurisdiction and Venue

***State of Alabama v. Jay's Charity Bingo, No. SC-2023-0314 (Ala. April 19, 2024).*** The Alabama Supreme Court reaffirmed the rule that the term "jurisdiction" in the Bessemer Act, Local Act No. 213 of 1919, has been will continue to be interpreted to refer instead to venue. Thus, the court found that actions arising in the Bessemer Cutoff but filed in Birmingham were subject to transfer to the proper division, but that the Birmingham division had jurisdiction such that the actions were no nullities. The Court reversed the Bessemer Circuit Court's decision to dismiss the cases and ordered the Circuit Court to proceed with the State's requests for preliminary injunctions in the cases.

## Immunity

***Ex parte City of Montgomery, No. SC-2023-0735 (Ala. April 19, 2024).*** The Alabama Supreme Court found that two officers enjoyed state agent immunity arising from wrongful death claims arising from a police shooting. The Court found that no regulations prohibited the officers from approaching a car believed to be stolen with their sidearms drawn and that a requirement that deadly force be used only as a last resort did not change that analysis. It also concluded that the officers were entitled to believe that one of



them faced the imminent use of deadly physical force when there was an officer knocked to the ground near the wheels of a car and the driver of the car was attempting to use the car to escape. Finding the officers entitled to immunity, the Court likewise found that the city was entitled to summary judgment, as the only theory of liability against the city was vicarious liability. The Court issued a writ of mandamus.

### Alabama Litigation Accountability Act, Malicious Prosecution, Abuse of Process

**Seibert v. Stricklen, No. SC-2023-0741 (Ala. April 26, 2024).** The Alabama Supreme Court affirmed summary judgment for the defendants on malicious prosecution and abuse of process claims, but reversed on the award of attorneys' fees under the Alabama Litigation Accountability Act. The Court reasoned that a defendant cannot be liable for malicious prosecution where a police officer initiates the prosecution and the defendants did nothing more than give information to the officer, even though the defendants arguably mischaracterized the nature of a judicial order against the plaintiff. Further, noting that the tort of abuse of process can relate solely events occurring after process

has issued, the Court affirmed summary judgment for the defendants on abuse of process because the plaintiff's allegations related to the issuance of process itself. Lastly, the Court reversed the award of attorneys' fees under the ALAA, finding that the circuit court had not adequately explained its rationale for awarding fees.

## From the Alabama Court of Civil Appeals

### Immunity

**Ex parte Ala. Medical Cannabis Comm'n, No. CL-2024-0073 (Ala. Civ. App. June 21, 2024).** Because an action against the Commission was styled as being against the Commission and not the individual commissioners, the Alabama Court of Civil Appeals found that Section 14 Immunity applied and stripped the circuit court of subject matter jurisdiction. It dismissed the mandamus petition as moot and directed the trial court to dismiss the case.

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(Continued from page 205)

## Appellate Jurisdiction

**Norman v. Norman, No. CL-2023-0531 (Ala. Civ. App. June 7, 2024).** An order directing a mother to pay child support was a final order that conclusively adjudicated the final claim in a divorce action, therefore the mother had 42 days from the denial of her post-judgment motion related to that order to file an appeal. Her failure to do so rendered her appeal untimely in the judgment of the Alabama Court of Civil Appeals, so that could dismissed her appeal.

## Interpleader/Liens

**Board of Trustees of the University of Alabama for its Division University of Alabama Hospital in Birmingham v. Richards, No. CL-2023-0849 (Ala. Civ. App. June 7, 2024).** The court reversed judgment apportioning funds from an interpleader, finding that the trial court's decision to award a hospital less than the amount of its lien under Section 35-11-370 was error. The court reversed and directed the trial court to enter judgment apportioning funds in accordance with the hospital's lien and, if the funds are not sufficient to satisfy the lien, to permit the hospital to seek complete satisfaction outside the context of the interpleader.

## Civil Forfeiture

**Mitchem v. State, No. CL-2023-0412 (Ala. Civ. App. May 3, 2024).** The court reversed the circuit court's judgment forfeiting \$6,646 in currency because it found that the judgment was against the great weight of the evidence. The state presented evidence that the currency's owner had been previously convicted of drug offenses, but it did not tie the currency to any specific drug transaction or rebut the owner's evidence that the seized money was given by the owner's father to allow the owner to buy a vehicle.

## Civil Contempt

**Milton v. Delta Properties, LLC, No. CL-2023-0421 (Ala. Civ. App. May 3, 2024).** Because a prevailing party moving to hold a non-prevailing party in contempt for failure to comply with a previous judgment did not pay a filing fee before filing its motion, the Alabama Court of Civil Appeals held that the circuit court lacked jurisdiction to entertain the motion. It dismissed the appeal and directed the circuit court to dismiss the motion for contempt, though it noted that its order was without prejudice to the prevailing party's ability to file a motion in the future.

## Custody

**Ex parte R.B., No. CL-2023-0506 (Ala. Civ. App. May 24, 2024).** The court determined that Alabama did not obtain "home state" jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act because the children at issue did not live in Alabama with their parents for six consecutive months. Two of the children at issue had lived with a foster parent, but a foster parent's custody is physical only—i.e., does not include legal custody—and therefore could not satisfy the residence requirement of Section 30-3B-102(13). Accordingly, the court issued a writ of mandamus requiring the trial court to dismiss the Alabama custody petitions brought by the foster parent for lack of subject matter jurisdiction.

## Elder Abuse

**P.T.S. v. S.S., No. CL-2023-0673 (Ala. Civ. App. June 14, 2024).** The court of civil appeals affirmed the trial court's decision to enter an elder abuse protection order under Alabama Code §§ 38-9F-1 et seq. because it found that the stepson against whom the order had been entered had engaged in financial exploitation of an elder by taking \$25,000 out of an account in which he had no ownership interest. The stepson had argued that he had taken the money out of the account on the instructions of a person who did have an ownership interest, but the stepmother testified that both her and the account's other owner were surprised by the stepson's withdrawal of the funds. The court found that this evidence was sufficient to allow the trial court to conclude that the stepson had taken the stepmother's money without authorization.

## Termination of Parental Rights

**M.G.S. v. Lee Cty. D.H.R., No. CL-2023-0102 (Ala. Civ. App. May 10, 2024).** The court of civil appeals affirmed the juvenile court's determination that a mother facing termination of her parental rights received adequate assistance of counsel, even though the interpreter provided for the mother did not speak the mother's native language. The juvenile court was unable to find an interpreter speaking the mother's native language, but provided an interpreter that spoke Spanish, and the juvenile court determined through ore tenus evidence that the mother was sufficiently fluent in Spanish to communicate through the interpreter. The court likewise affirmed the juvenile court's determination that termination of parental rights was warranted.

## Alimony

**Snyder v. Snyder, No. CL-2023-0679 (Ala. Civ. App. May 17, 2024).** The court of civil appeals determined that an award of alimony that did not unequivocally appear to be alimony-in-gross was properly analyzed as periodic or rehabilitative alimony. In accordance with that determination, it reversed the award of alimony because the trial court did not make the findings required by Alabama Code § 30-2-57(a) or (b) (conditionally as to (b)).

## Divorce

**Brown v. Brown, No. CL-2023-0324 (Ala. Civ. App. June 28, 2024).** The court of civil appeals determined that the trial court's failure to hold a hearing on the wife's post-judgment motions was not harmless error because the wife had allegedly discovered new evidence. The trial court did not hold a hearing on that motion and the motion was denied by operation of law. Without reaching the merits of the wife's motion, the appellate court held that the failure to hold a hearing was not harmless error and required remanding for the trial court to hold a hearing.

## Child Support

**Hunter v. Allen, No. CL-2023-0544 (Ala. Civ. App. May 24, 2024).** The Alabama Court of Civil Appeals reversed the trial court's award of child support because the trial court did not hold a hearing on the father's post-judgment motion related to that issue. The trial court's final order required the father to pay a higher amount of child support than an interlocutory order required, but the court found that the change in amount was not adequately supported by the record. As a result, it could not hold that the failure to hold a hearing on the father's post-judgment motion was harmless. The court affirmed the trial court's visitation ruling.

## Sealing

**Ex parte A.H.R., No. CL-2024-0024 (Ala. Civ. App. May 24, 2024).** The court reversed the trial court's decision to seal part of a record because it determined that the trial court did not make sufficient written findings supporting its decision: "Any order sealing any portion of a record must contain written findings that the movant has shown by clear and convincing evidence that the information contained in the record or portion thereof sought to be sealed meets at least one of the six categories set forth in *Holland*." ▲

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## MEMORIALS

▲ Judge Philip Ben McLauchlin, Jr.

▲ David A. Simon

### Judge Philip Ben McLauchlin, Jr.

Judge Ben McLauchlin of Ozark, a long-time circuit judge, died on January 10, 2024, at age 83. Having served the 33<sup>rd</sup> Judicial Circuit, composed of Dale and Geneva counties for 37 years, he retired in 2013 but continued serving as an active retired judge until 2022. At the time of his retirement, the Dale County Commission designated his courtroom as the “The McLauchlin Courtroom,” recognizing his “dedication to the Rule of Law which he administered fairly, impartially, justly, and equally with integrity, humility, and compassion for all.”

During Judge McLauchlin’s tenure on the bench, he served as president of the Alabama Circuit Judges’ Association, a member of the Alabama Sentencing Commission, and a member and chair of the Alabama Judicial Inquiry Commission. For his service to the bench and bar, the Alabama State Bar awarded him its Judicial Award of Merit in 2012.

Judge McLauchlin was a graduate of the University of Alabama’s School of Commerce and Business Administration, graduating with a degree in accounting, and was a graduate of the University of Alabama School of Law, graduating with a Juris Doctor. During his time at the university, he was a member of Alpha Tau Omega social fraternity, sports editor for *The Corolla* yearbook, and a member of the *Alabama Law Review*.

Judge McLauchlin had a passion for University of Alabama football. He was regularly in attendance at games, always sporting a crimson-colored sports jacket and houndstooth hat, frequently mistaken for Bear Bryant and causing fans to request an autograph. From a young age, he and his father traveled together pursuing their love of baseball spring training in Florida, golf tournaments, and University of Alabama sporting events.

Judge McLauchlin served his country in the United States Army Reserve, served his community through a host of civic organizations, and served his church teaching a Sunday School class for many years. He was known for the respect and kindness he showed to all with whom he interacted.

Judge McLauchlin is survived by his wife of 50 years, Barbara Raymond McLauchlin; four children, Barbara McLauchlin Neal, Sandra Lynne McLauchlin, Clementine McLauchlin Johnson, and Philip Ben McLauchlin III; six grandchildren; and two great-grandchildren.

—Randall L. Cole, Retired Circuit Judge, Fort Payne



*McLauchlin*

# David A. Simon

On the 14<sup>th</sup> day of May 2024, David A. Simon, Sr. merged with the infinite, assumed room temperature, went home to Jesus, and escaped this mortal realm, casting off this mortal coil in hopes of exchanging it for eternal paradise or at least nothing bad. Esophageal cancer was the culprit here. He is survived by his wife of 42 years, Janice Crowder Simon, and two children, Catherine Simon Spann (Jody) and David A. "Boo" Simon, Jr. He is also survived by his brother, Richard Simon of Birmingham. Born on November 5, 1956 in Selma, his mother was merely traveling through the important civil rights city when the now-deceased first asserted himself.



*Simon*

Dave lived until he was five in Myrtlewood, Alabama in Marengo County. At age five he moved to Mobile and attended public schools there until graduation from Murphy High. He went on to the University of Alabama where he was Phi Beta Kappa and was inducted into several leadership honorary societies, including the Jasons, Omega Delta Kappa, Who's Who in American Colleges, and the Order of Omega Greek leadership honorary. As an undergraduate, he served as campus elections chair, as chief justice of the student court, as chief justice of the Interfraternity Council Court, and as president of his fraternity. After graduation, he

was admitted to the University of Alabama School of Law, where he again served as an honor court justice.

He began legal practice in Bay Minette with James R. Owen and E.E. Ball. He practiced there for 32 years, before relocating his practice to Fairhope. Known as a courtroom lawyer, he was rated "AV" by Martindale Hubbell, its highest rating representing exceptional legal work. Although in general practice, his practice steered toward mostly family law (divorces and child custody disputes) and criminal law. Dave handled 38 murder cases in his career and thousands of divorces. In 1998 he was president of the Baldwin County Bar Association. He also served as vice president of the Alabama Criminal Defense Lawyers Association.

He never suffered fools gladly and usually let them know it. He loved the Alabama Crimson Tide and his friends. He loved fried foods, all kinds. He believed that Coca-Cola was the most perfect beverage ever created. The chirp of a cicada alone could make him happy, and when coupled with the song of a whippoorwill, he was in downright ecstasy. He loved Mardi Gras and was a long-time member of a Fairhope Mystic Society. He died living on Mobile Bay, which he also loved. He enjoyed baseball and local community theater. He was always terrifically proud of his family and his children's accomplishments.

Now, having taken that long, final, unknown, definitive journey, he leaves you behind to worry with this old world. Cremation will take place at the family's convenience, and his ashes will spread to various locations that he enjoyed in life. A small private remembrance service shall be conducted at an Eastern Shore establishment that serves adult beverages to toast the memory of the departed. ▲

**Anne Christine Christensen**

*Andalusia*

Died: Jan. 29, 2024

Admitted: Sept. 25, 2009

**Alice George Davidson**

*Orange Beach*

Died: Oct. 30, 2023

Admitted: Apr. 30, 1990

**Wilson Maxwell Hawkins, Jr.**

*Mobile*

Died: May 12, 2024

Admitted: July 30, 1970

**Judith D'Alessandro Holt**

*Birmingham*

Died: Apr. 6, 2024

Admitted: Sept. 26, 1988

**Hon. Joseph James Jasper**

*Birmingham*

Died: Feb. 3, 2024

Admitted: June 1, 1954

**Robert Exum Minor**

*Lexington, VA*

Died: Feb. 21, 2024

Admitted: Apr. 27, 1979

**Brian O'Neal Noble**

*Birmingham*

Died: May 28, 2024

Admitted: Sept. 23, 2010

**General Robert Wheeler Norris**

*Birmingham*

Died: May 12, 2024

Admitted: Feb. 24, 1955

**Robert Franklin Prince**

*Tuscaloosa*

Died: May 2, 2024

Admitted: Nov. 15, 1974

**Sidney Owens Roebuck, Jr.**

*Birmingham*

Died: Apr. 19, 2024

Admitted: Apr. 25, 1986

**David Alan Simon**

*Fairhope*

Died: May 14, 2024

Admitted: Apr. 23, 1982



## OPINIONS OF THE GENERAL COUNSEL

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



# A non-lawyer may not represent a party in a court-ordered arbitration proceeding in Alabama

### QUESTION:

May a non-lawyer represent a party in a court-ordered arbitration proceeding in Alabama?

### ANSWER:

No, absent a federal or state statute allowing such, the representation of a party by a non-lawyer in a court-ordered arbitration proceeding in Alabama would constitute the unauthorized practice of law. Moreover, a lawyer has an obligation to bring the matter of the non-lawyer's representation of a party to the attention of the arbitrator and, where appropriate, to the attention of the court.

### DISCUSSION:

The Disciplinary Commission of the Alabama State Bar has been asked to opine on whether the representation of a party by a non-lawyer in a court-ordered arbitration would constitute the unauthorized practice of law by the non-lawyer and, if so, what

duties would an attorney involved in the matter as an arbitrator or lawyer have to raise such issue in the arbitration or before the court. By way of background, Canon IV(C) of the Alabama Code of Ethics for Arbitrators and the American Arbitration Association Code of Ethics provides that “[t]he arbitrator should not deny any party the opportunity to be represented by counsel or by any other person chosen by the party.” Some have interpreted this provision as allowing the representation of a party to an arbitration by a non-lawyer. However, the preamble to the Alabama Code of Ethics for Arbitrators also states that all provisions of the Code should be read in conjunction with applicable law. In addition, Rule 26 of the American Arbitration Association Commercial Arbitration Rules and Mediation Procedures states that a party may be represented by “any other representative of the party’s choosing unless such choice is prohibited by law.”

As such, the question then becomes whether a non-lawyer may represent a party during an arbitration in Alabama or whether such representation would constitute the unauthorized practice of law. As a starting point, Rule 5.5, Ala. R. Prof. C., provides as follows:

Rule 5.5.

Unauthorized Practice of Law.

(a) A lawyer shall not:

- (1) practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction; or
- (2) assist a person who is not a member of the bar in the performance of an activity that constitutes the unauthorized practice of law.

(b) Subject to the requirements of Rule VII, Rules Governing Admission to the Alabama State Bar (Admission of Foreign Attorneys Pro Hac Vice), a lawyer admitted in another United States jurisdiction but not in the State of Alabama (and not disbarred or suspended from practice in that or any jurisdiction) does not engage in the unauthorized practice of law when the lawyer represents a client on a temporary or incidental basis (as defined below) in the State of Alabama. Services for a client are within the provisions of this subsection if the services:

- (1) are performed on a temporary basis by a lawyer admitted and in good standing in another United States jurisdiction, including transactional, counseling, or other nonlitigation services that arise out of or are reasonably related to the lawyer’s practice in a jurisdiction in which the lawyer is admitted to practice;

- (2) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding held or to be held in this or in another jurisdiction; or

- (3) are performed by an attorney admitted as an authorized house counsel under Rule IX of the Rules Governing Admission to the Alabama State Bar and who is performing only those services defined in that rule.

(c) A lawyer admitted to practice in another jurisdiction but not in the State of Alabama does not engage in the unauthorized practice of law in the State of Alabama when the lawyer renders services in the State of Alabama pursuant to other authority granted by federal law or under the law or a court rule of the State of Alabama.

(d) Except as authorized by these Rules or other law, a lawyer who is not admitted to practice in the State of Alabama shall not (1) establish an office or other permanent presence in this jurisdiction for the practice of law, or (2) represent or hold out to the public that the lawyer is admitted to practice law in Alabama.

(e) Practicing law other than in compliance with this rule or Rule VII or Rule VIII of the Rules Governing Admission to the Alabama State Bar, or other rule expressly permitting the practice of law, such as the Rule Governing Legal Internship by Law Students, shall constitute the unauthorized practice of law and shall subject the lawyer to all of the penalties, both civil and criminal, as provided by law.

Rule 5.5 does not state that representing a party in arbitration is not the practice of law. Rather, Rule 5.5 is, in part, a multi-jurisdictional practice rule that expressly allows attorneys licensed in other states to represent parties in arbitrations taking place in Alabama. In doing so, it does not expressly allow non-lawyers to represent parties in arbitration.

Obviously, if a state or federal statute or law specifically allows a non-lawyer to represent a party during an arbitration, such statute or law would control. However, the Disciplinary Commission is unaware of any Alabama Supreme Court opinion that addresses whether representation of a party during an arbitration proceeding would constitute the unauthorized practice of law. The Disciplinary Commission is also unaware of any law or statute that expressly permits or prohibits the representation of a party by a non-lawyer during an arbitration.

The Supreme Court of Alabama has previously stated that “the specific acts which constitute the unauthorized practice of law are and must be determined on a case-by-case basis.”

(Continued from page 211)

*Coffee Cty. Abstract and Title Co. v. State, ex rel. Norwood*, 445 So.2d 852, 856 (Ala. 1983). As a starting point, § 34-3-6, Ala. Code 1975, which defines the practice of law, provides, in pertinent part, as follows:

- (a) Only such persons as are regularly licensed have the authority to practice law.
- (b) For the purposes of this chapter, the practice of law is defined as follows:

Whoever,

- (1) In a representative capacity appears as an advocate or draws papers, pleadings or documents, or performs any act in connection with proceedings pending or prospective before a court or a body, board, committee, commission, or officer constituted by law or having authority to take evidence in or settle or determine controversies in the exercise of the judicial power of the state or any subdivision thereof; or
- (2) For a consideration, reward or pecuniary benefit, present or anticipated, direct or indirect, advises or counsels another as to secular law, or draws or procures or assists in the drawing of a paper, document or instrument affecting or relating to secular rights; or
- (3) For a consideration, reward, or pecuniary benefit, present or anticipated, direct or indirect, does any act in a representative capacity on behalf of another tending to obtain or secure for such other the prevention or the redress of a wrong or the enforcement or establishment of a right; or
- (4) As a vocation, enforces, secures, settles, adjusts or compromises defaulted, controverted or disputed accounts, claims, or demands between persons with neither of whom he is in privity or in the relation of employer and employee in the ordinary sense; is practicing law.

(c) Nothing in this section shall be construed to prohibit any person, firm or corporation from attending to and caring for his or its own business, claims or demands, nor from preparing abstracts of title, certifying, guaranteeing or insuring titles to property, real or personal, or an interest therein, or a lien or encumbrance thereon, but any such person, firm or corporation engaged in preparing abstracts of title, certifying, guaranteeing or insuring titles to real or personal property are prohibited from preparing

or drawing or procuring or assisting in the drawing or preparation of deeds, conveyances, mortgages and any paper, document or instrument affecting or relating to secular rights, which acts are hereby defined to be an act of practicing law, unless such person, firm or corporation shall have a proprietary interest in such property; however, any such person, firm or corporation so engaged in preparing abstracts of title, certifying, guaranteeing or insuring titles shall be permitted to prepare or draw or procure or assist in the drawing or preparation of simple affidavits or statements of fact to be used by such person, firm or corporation in support of its title policies, to be retained in its files and not to be recorded.

In addition, the Supreme Court of Alabama has repeatedly held that the purpose of § 34-3-6 is to ensure that laymen do not serve others in a representative capacity in areas that require the skill and judgment of a licensed attorney. *Porter v. Alabama Ass'n of Credit Executives*, 338 So.2d 812 (Ala.1976).

It is the opinion of the Disciplinary Commission that under section (b)(1) of the UPL statute a non-lawyer may not represent a party during an arbitration absent an express federal or state statute or law allow for such. A non-lawyer representative would be making an appearance in a representative capacity. Moreover, it is presumed that during the arbitration, the non-lawyer representative would be introducing exhibits, conducting an examination of witnesses, including expert witnesses, objecting to exhibits, and making legal arguments on behalf of the party and/or providing legal advice to the party. Such activities generally require the skill and judgment of a licensed attorney and under the UPL statute constitute the practice of law.

In addition, Rule 5.5, Ala. R. Prof. C., prohibits a licensed Alabama lawyer from assisting “a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law.” If a lawyer were to stay silent and allow a non-lawyer to represent a party in an arbitration, that lawyer would be aiding and abetting that non-lawyer in the unauthorized practice of law. As such, a lawyer has an obligation to bring the matter of the non-lawyer’s representation of a party to the attention of the arbitrator and, where appropriate, to the attention of the court and the Office of General Counsel.

As always, if you have any questions about this opinion or another matter, please call us or email at [ethics@alabar.org](mailto:ethics@alabar.org). ▲





## YOUNG LAWYERS' SECTION UPDATE

Ryan J. Duplechin  
[ryan.duplechin@beasleyallen.com](mailto:ryan.duplechin@beasleyallen.com)



The Alabama State Bar's Young Lawyers' Section (YLS) has been busy in the first half of 2024 with its annual Minority Pre-Law Conference (MPLC) in April and Orange Beach CLE in May. The YLS recently hosted the MPLC across the state, providing valuable insights and guidance to hundreds of high school students considering a legal path. The YLS received special recognition from the American Bar Association five years ago for our MPLC program, and somehow, it continues to improve each year.

Each MPLC conference in Huntsville, Birmingham, Mobile, and Montgomery offers students an opportunity to delve into the legal field, explore the prerequisites for law school admission, and engage in panel discussions around legal careers. Students also have the opportunity to witness a mock trial, in which students listen carefully to the evidence and participate in simulated jury deliberations. Attendees receive valuable insights from seasoned attorneys and judges, as well as ask questions and network with other students with similar legal aspirations.

Our MPLC Chair, Denzel Okinedo, worked tirelessly to coordinate and put on a memorable 2024 MPLC. A special thank-you also to this year's MPLC Committee and city chairs, Darius Crayton and Larry Boothe (Birmingham), Whitney Aboko-Cole (Huntsville), Matthew Smith (Mobile), and Miland Simpler and Chenelle Smith (Montgomery).

We also hosted our annual Orange Beach CLE at Perdido Beach Resort which brought together young lawyers from across Alabama. The theme, "Alabama Lawyers: Where We've Been, Where We Are, Where We're Going," involved several speakers and explored the rich history of Alabama's legal profession. From landmark cases to influential attorneys, participants gained a deeper appreciation for Alabama's legal beginnings as well as a modern look at current legal markets and what is to come. Attendees also enjoyed networking opportunities during the welcome reception, poolside social, and beach party.

If you missed either the MPLC or Orange Beach CLE this year, we would love to have you join us in April and May 2025. If you are interested in participating in these or any programs with the YLS, please reach out to me anytime. ▲



**NOTICE**

## DISCIPLINARY NOTICES

- ▲ Reinstatement
- ▲ Transfer to Inactive Status
- ▲ Surrender of License
- ▲ Suspensions

### Reinstatement

- Mobile attorney **Sidney Moxey Harrell, Jr.** was reinstated with conditions to the active practice of law in Alabama by order of the Supreme Court of Alabama, effective February 9, 2024. Harrell was previously disbarred from the active practice of law on February 22, 2018. [Rule 28, Pet. No. 2023-328]

### Transfer to Inactive Status

- Macon County attorney **Linda W.H. Henderson** was transferred to inactive status pursuant to Rule 27(c), Alabama Rules of Disciplinary Procedure, effective February 7, 2024, by order of the Supreme Court of Alabama. The Supreme Court of Alabama entered its order based upon the February 7, 2024 order of the Disciplinary Board of the Alabama State Bar in response to a request by her conservator submitted to the Office of General Counsel requesting she be transferred to inactive status. [Rule 27(C), Pet. No. 2024-200]

### Surrender of License

- On February 23, 2024, the Supreme Court of Alabama issued an order accepting the voluntary surrender of **Raymond James Hawthorne, Sr.'s** license to practice law in Alabama, with an effective date of February 5, 2024. [ASB Nos. 2020-540, 2020-775, 2021-772, 2022-987]

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(Continued from page 214)

## Suspensions

- Albertville attorney **Albert Dalton Chandler** was suspended from the practice of law for five years in Alabama by the Supreme Court of Alabama, effective April 11, 2024. The Supreme Court of Alabama entered its order based upon the Disciplinary Commission's acceptance of Chandler's conditional guilty plea, wherein Chandler pled guilty to violating Rules 1.15, 8.1, and 8.4 (c) and (g), Alabama Rules of Professional Conduct. [ASB Nos. 2023-408 and 2023-901]
- Dadeville attorney **Jackson Brett Harrison** was suspended from the practice of law in Alabama for five years, effective February 9, 2024. The suspension was based upon the Disciplinary Commission's acceptance of Harrison's conditional guilty plea, wherein he pled guilty in ASB No. 2021-123 to violating Rules 1.3 [Diligence], 1.4 [Communication], 1.5(c) [Fees], 1.15 [Safekeeping Property], 8.1(a) [Bar Admission and Disciplinary Matters], and 8.4(c), (d), and (g) [Misconduct], and in ASB No. 2021-396 to violating Rules 1.3 [Diligence], 1.4 [Communication], 1.15 [Safekeeping Property], 8.1(a) [Bar Admission and Disciplinary Matters], and 8.4(c), (d), and (g) [Misconduct], Alabama Rules of Professional Conduct. [ASB Nos. 2021-123 and 2021-396]
- Braselton, Georgia attorney **Kimberly Murphree Partain** was summarily suspended from the practice of law in Alabama by the Disciplinary Commission of the Alabama State Bar, effective March 18, 2024, for repeatedly failing to appear for a public reprimand before the board of bar commissioners. [Rule 20(a), Pet. No. 2024-372]
- Parrish, Alabama attorney **Jeffrey Grant Rainer** was summarily suspended from the practice of law in Alabama by the Disciplinary Commission of the Alabama State Bar, pursuant to Rule 20a, Alabama Rules of Disciplinary Procedure, effective January 29, 2024, for his repeated failure to abide by discipline imposed by the Disciplinary Commission of the Alabama State Bar. After Rainer complied with a request to pay restitution to his former client and set up a payment plan for the disciplinary costs/fines, the Disciplinary Commission dissolved the summary suspension on March 8, 2024. The Alabama Supreme Court noted the dissolution of the summary suspension effective March 8, 2024. [Rule 20(a), Pet. No. 2024-225] ▲



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## ABOUT MEMBERS, AMONG FIRMS

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[melissa.warnke@alabar.org](mailto:melissa.warnke@alabar.org).

### About Members

**Brenen Ely, Susan McCurry, and Seth Hunter** announce the formation of **Ely, McCurry, & Hunter LLC** and that **Lauren Wiggins** is an associate with the firm.

**John Pennington** and **Abbey Clarkson** announce the opening of **Clarkson Pennington Law LLC** with offices in Birmingham and Fort Payne.

### Among Firms

**Bressler, Amery & Ross PC** announces the addition of **Jessica Bonds** to the Birmingham office.

**Fisher Phillips** announces that **Catherine "Ree" Harper** joined as a partner in the Atlanta office.

**Massey, Stotser & Nichols PC** of Birmingham announces that **Emily McClendon** joined the firm.

**Norris Injury Lawyers PC** announces that **Nathan Evans, Alex Alred, and Miles Turney** joined the firm.

**Outside Chief Legal LLC** announces the addition of **Ben Kilborn, Jr.**

**Porterfield, Harper, Mills, Motlow & Ireland PA** announces that **Joel S. Isenberg** and **Matthew W. Nicholson** joined the firm.

**Spain & Gillon LLC** announces that **Stephen P. Leara** joined as counsel in the Birmingham office.

**Webb McNeill Walker PC** announces that **J. Mark Cowell** is now of counsel. ▲

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